Agreement Between the Government of the Republic of Turkey and the Government of Malaysia For the Reciprocal Promotion and Protection of Investments

The Government of the Republic of Turkey and the Government of Malaysia, hereinafter referred to as the "Contracting Parties;"

Desiring to expand and deepen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

1. For the purpose of this Agreement:

(a) "investments" means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens and pledges;

(ii) Shares, stocks and debentures of companies;

(iii) A claim to money or a claim to any performance having financial value related to an investment;

(iv) Intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources;

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

(c) "investor" means:

(i) (1) With respect to the Republic of Turkey, any natural person possessing the citizenship of Turkey in accordance with its laws;

(2) With respect to Malaysia, any natural person possessing the citizenship of or permanently residing in Malaysia in accordance with its laws; or

(ii) Legal entities such as corporations, partnerships, trusts, joint-ventures, organisations, associations or enterprises incorporated or duly constituted for the purpose of commercial and/or investment activities in accordance with applicable laws of that Contracting Party;

(d) "territory" means:

(i) With respect to the Republic of Turkey, the territory of the Republic of Turkey including any area in which laws of the Republic of Turkey are enforced, as well as the maritime areas adjacent to the coast over which the Republic of Turkey in accordance with international law, exercises sovereign rights;

(ii) With respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil

and airspace above;

(e) "freely usable currency" means the original currency in which the investment was made, or any other currency, all of which are widely used to make payments for international transactions and widely traded in the international principal exchange markets.

2. (a) The term "investments" referred to in paragraph 1(a) shall only refer to all investments that are made in accordance with the laws, and regulations of the Contracting Parties.

(b) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and, in accordance with its laws and regulations, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded equitable treatment and shall enjoy full and adequate protection and security in the territory of the other Contracting Party.

Article 3. Most-favoured-nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties Is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

Article 5. Expropriation

Neither Contracting Party shall take any measures of expropriation or nationalization against the investments of an Investor of the other Contracting Party except under the following conditions:

(a) The measures are taken for a lawful or public purpose and under due process of law;

(b) The measures are non-discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value immediately before the measure of dispossession became public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

Article 6. Repatriation of Investment

1. Each Contracting Party shall, subject to its laws and regulations allow without unreasonable delay the transfer in any freely usable currency:

(a) The net profits, dividends, royalties, technical assistance and technical fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party;

(b) The proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;

(c) Funds in repayment of loans given by investors of one Contracting Party to the investors of the other Contracting Party Which both Contracting Parties have recognised as investment; and

(d) The net earnings and other compensations of investors of one Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rates applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third State.

Article 7. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any disputes arising between a Contracting Party and an investor of the other Contracting Party which involve:

(a) An obligation entered into by that Contracting Party with the investor of the other Contracting Party regarding an investment by such investor; or

(b) An alleged breach of any right conferred or created by this Agreement with respect to an investment by such investor, shall be resolved amicably through consultation and negotiation.

2. In the event that such a dispute cannot be settled amicably within six (6) months from the date of the written notification of such dispute, the investor may refer the dispute to either:

(a) The competent court of law of the Contracting Party in whose territory the investment was made; or

(b) The International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965.

3. Each Contracting Party shall not pursue through diplomatic channels any dispute referred to arbitration unless:

(a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

4. If within the periods' specified in paragraph 3 of this Article the necessary appointments have not been made, either

Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

1. In the event either Contracting Party establishes a guarantee scheme against non-commercial risks, any subrogation by the guarantor into the rights of the investor shall be recognised by the other Contracting Party.

2. The guarantor shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a Contracting party and the guarantor shall be settled in accordance with the provisions of Article (7) of this Agreement.

Article 10. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement

Article 11. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent

2. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or anytime thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Ankara this 25th day of February 1998 in Turkish, Bahasa Malaysia and the English Language, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF MALAYSIA