AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Malaysia and the Government of the People's Democratic Republic of Algeria hereinafter referred to as the "Contracting Parties;"

Desiring to expand and strengthen 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 promoting 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 or pledges;

(ii) shares, stocks and debentures of companies and any other forms of participation in a company or a business enterprise or interests in the property of such companies;

(iii) a claim to money or a claim to any performance having financial value;

(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) any natural person with respect to either Contracting Party in accordance with its laws, having:

- the Malaysian citizenship or permanently residing in Malaysia, and;

- the Algerian nationality, for the People's Democratic Republic of Algeria;

(ii) any corporation, partnership, trust, joint-venture, organisation, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;

(d) "territory" means:

(i) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(ii) with respect to the People's Democratic Republic of Algeria, the land territory, air space above, territorial sea as well as the maritime areas over which Algeria exercises jurisdiction or sovereign rights for the purposes of exploration, exploitation

and conservation of natural resources pursuant to International Laws.

(e) "freely usable currency" means the United States dollar, pound sterling, Deutschemark, French franc, Japanese yen or any other currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

(f) "Laws" means all written laws, regulations and rules, in so far as it is in operation in both the Contracting Parties.

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

(ii) 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, regulations and national policies, 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 or any other dispossession, having effect equivalent to nationalization or expropriation 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 market value of the investments affected immediately before the measure of dispossession became public knowledge, 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 an applicable official rate of the Special

Drawing Rights (SDR) as fixed by the international Monetary Fund (IMF) not later than three (3) months after reception of a complete documentation by the competent authority.

Article 6. Transfers

1. Each Contracting Party shall, subject to its laws, regulations and national policies with respect to investments by investors of the other Contracting Party allow, after the fulfilment of all fiscal obligations, without unreasonable delay the transfer in any freely usable currency:

(a) the net profits, dividends, royalties, 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 legally contracted borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognised as investment;

(d) the earnings of nationals of one Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party in accordance with the latter Contracting Party's exchange regulations;

(e) compensation pursuant to Article 4; and

(f) payments arising from the settlement of an investment dispute.

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 transfer. The currency transfer shall be permitted in the currency of the original investment or any other freely usable currency.

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 dispute between a Contracting Party and an investor of the other Contracting Party relating to an investment under this Agreement shall be settled amicably, as far as possible, by the parties to the dispute through consultation and negotiation.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the case to:

(a) competent local courts;

(b) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965; or

(c) an arbitrator or international ad hoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both parties to the dispute.

The choice of either procedure shall be final.

3. The award arbitration shall be final and binding for the parties to the dispute; each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

Article 8. Settlement of Disputes between the Contracting Parties

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

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months, it shall be 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 months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. The 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 in all other respects.

6. The arbitral tribunal shall reach its decisions on the basis of this Agreement, any agreement in force between the Contracting Parties and general international law, and shall take into account, as may be appropriate, the domestic law of the Contracting Party in which the investment in question is situated.

Article 9. Subrogation

If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee against non commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, of any right or claim from the investor to the former Contracting Party or its designated agency, as well as:

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

Article 10. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws, regulations or national policies by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute or any claim concerning an investment which was settled before its entry into force.

Article 11. Consultation and Amendment

1. Each Contracting Party may request that a consultation be held on any matter that both Contracting Parties agree to discuss.

2. This Agreement may be amended at any time, if it is deemed necessary, by mutual consent.

Article 12. 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 thereafter continue in force for an indefinite period, 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 any time after the expiry 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 the date of termination.

Article 13. The Application of the other Rules and Special Commitments

1. Where a matter is governed simultaneously by this Agreement and another international agreement to which both Contracting Parties are parties, or by general principles of international law, nothing in this Agreement shall prevent either Contracting Party from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance which its laws and regulations or other specific provisions of contracts are more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

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

Done in duplicate at ALGIERS this day of JANUARY 2000 in Bahasa Malaysia, Arabic 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 MALAYSIA

FOR THE GOVERNMENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA