AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the Republic of the Philippines and the Government of the Islamic Republic of Pakistan, hereinafter referred to as the Contracting Parties.

DESIRING to intensify economic cooperation between both STATES:

INTENDING to create favorable conditions for investments by investors of one Contracting Party In the territory of the other Contracting Party, and to increase prosperity in their respective territories;

RECOGNIZING that encouragement and protection of such investments will benefit the economic prosperity of both States;

HAVE AGREED AS FOLLOWS:

Article I. Promotion and Acceptance

Each Contracting Party shall promote as far as possible investments in its territory by investors of the other Contracting Party and shall admit such Investments In accordance with its Constitution, laws and regulations. Such investment shall be accorded equitable and reasonable treatment.

Article II. Definition of Terms

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset connected with business investment and accepted in accordance with the respective laws and regulations of either Contracting Party, and more particularly, though not exclusively:

(a) Movable and immovable property as well as other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) Shares of stock and debentures of companies or interest in the property of such companies;

(c) Claims to money utilized for the purpose of creating an economic value or to any performance having an economic value;

(d) Copyrights, industrial property rights, technical processes, know-how, trademarks and trade names;

(e) Business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

Any admitted alteration of the form in which assets are invested shall not affect their classification as an investment.

2. The term "investors" shall mean any legal entity or national of one Contracting Party who makes investment in the territory of the other Contracting Party:

(a) National means any physical person who is a citizen of either Contracting Party in accordance with its Constitution, laws and regulations.

(b) With respect to both Contracting Parties, legal entities mean any legal entities including companies, associations of companies, trading corporate entities including companies, associations of companies, trading corporate entities and other organizations that are incorporated or, in any event, are properly organized and actually doing business under the laws of

the respective Party and have their headquarters in the territory of the respective Party where effective management is carried out.

3. The term "territory" shall mean:

(a) With respect to the Republic of the Philippines, the national territory as defined in Article I of its 1987 Constitution.

(b) With respect to the Islamic Republic of Pakistan, the term ‘Pakistan' means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and in accordance with international law is an area within which rights of Pakistan with respect to the sea-soil and superjacent waters and their natural resources may be exercised.

4. The term "companies" shall mean corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in force in any part of the territory of that Contracting Party wherein a place of effective management is situated. Provided that any particular company may be excluded from the foregoing definition by mutual agreement between the Contracting Parties on the grounds of the need to maintain public order, to protect essential security interest or to fulfill commitments relating to peace and security.

5. The term "returns" shall mean the amount yielded by an investment for a definite period of time as profits, interest, capital gains, dividends, royalties, fees and other legitimate returns.

6. The term "market value" shall mean the value of property immediately prior to its expropriation/nationalization or immediately before its expropriation/nationalization was publicly announced.

Article III. Treatment

1. Each Contracting Party shall in its territory accord investments of investors of the other Contracting Party treatment not less favorable than that which it accords to investments or return of investments of investors of any third State.

2. Each Contracting Party shall in its territory accord the investors of the other Contracting Party, as regards management, maintenance, use, enjoyment, or disposal of their investments, treatment not less favorable than that which it accords to investors of any third State.

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

(a) Any existing or future customs union, common market, free trade area, or regional economic organization or measures leading to the formation of a customs union or free trade area of which either Contracting Party is or may become a member, or

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

4. All matters relating to profits/income and tax thereon shall be regulated by the provisions of the operative agreement on Avoidance of Double Taxation between the two countries and where provisions of the said agreement are silent, the domestic laws of each concerned state will be applicable.

Article IV. Expropriation

1. Each Contracting Party shall not take measures of expropriation, nationalization or dispossession, either direct or any measure equivalent thereto against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, public use or in the interest of the national defense on a non-discriminatory basis and under due process of law and upon payment of just compensation.

2. Such compensation shall amount to the market value of the expropriated investment immediately before the impending expropriation becomes public knowledge. The compensation shall be made without undue delay, and shall be effectively realizable and freely transferable.

Article V. Compensation

If a Contracting Party makes restitution, indemnification, compensation or other settlement for losses suffered owing to war, revolution, state of national emergency, revolt, insurrection, riot, or other armed conflicts in the territory of such Contracting Party, it shall accord to the investors of the other Contracting Party whose investments in the territory of the

former have suffered such losses, treatment no less favorable than that which the Contracting Party shall accord to the investors of any third State. Resulting payments shall be freely transferable.

Article VI. Transfers

Each Contracting Party shall within the scope of its laws and regulations, ensure the free transfer of investments, the returns thereof as well as the total or partial liquidation of investments of investors of the other Contracting Party subject however, to the right of the former Contracting Party to impose equitably and in good faith such measures as may be necessary to safeguard the integrity and independence of its currency, its external financial position and balance of payment.

Transfers as stipulated in Articles IV and V shall be made without undue delay, in accordance with their respective national laws and regulations. Such transfers shall be made in freely convertible currency at the market rate of exchange existing on the date of transfer with respect to spot transactions conducted through authorized dealers/commercial banks.

Article VII. Subrogation

In case one Contracting Party has granted any insurance or garantee agreement against non-commercial risks in respect of an investment made by its own investors in the territory of the other Party and has made payments to such investors under the guarantee the other Party shall recognize the transfer of the economic rights of the investors to the said Contracting Party. The subrogation will make it possible for one Contracting Party to receive payments of compensation that the investor would have been entitled to. This does not necessarily imply, however, a recognition on the part of the other Contracting Party of the merits of any case or the amount of any claim arising therefrom.

In respect of property rights or any other rights derived from ownership of the investment, subrogation will take place after the legal requirements of the host Party of the investment have been met.

Article VIII. Consultation

The Contracting Parties agree to consult each other at the request of either Party on any matters relating to investment between the two countries, or otherwise affecting implementation of this Agreement.

Article IX. Settlement of Disputes between a Contracting Party and a National of Another Contracting Party

1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation or similar measures, between a Contracting Party and an investor of the other Contracting Party concerning an investment or return of investment of that investor in the territory of the other Contracting Party shall be settled amicably through negotiations.

2. If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor concerned may submit the dispute to:

(a) The competent court of the Contracting Party for decision; or

(b) The International Centre for the Settlement of Investment Disputes established under the Convention on the Settlement of Investment Disputes between States and National of other States, of March 18, 1965 done in Washington, D.C.

3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to the CENTER until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the International Centre for Settlement of Investments Disputes or as otherwise agreed by the Parties decided by the Tribunal.

Article X. Settlement of Disputes between Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultations by both Parties through diplomatic channels.

2. If such disputes cannot be settled within six months from date on which either Contracting Party informs in writing the other Contracting Party, such disputes be submitted for settlement to an ad hoc international Arbitral Tribunal.

3. The ad hoc international arbitral tribunal mentioned above shall be established as follows: the Arbitral Tribunal is composed of three arbitrators. Each Contracting Party shall appoint one arbitrator; the two arbitrators shall propose by mutual agreement the third who is a national of a third State which has diplomatic relations with both Contracting Parties,

and the third arbitrator shall be appointed as Chairman of the tribunal by both Contracting Parties.

4. If the appointments of the members of the Arbitral Tribunal are not made within a period of six months from the date of request for arbitration, either Contracting Party may, in the absence of any court arrangement, invite the President of the International Court of Justice to make the necessary appointments within three months. Should the President be a national of one Contracting Party or should not be able to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, or to the next senior Judge of the Court who is not a national of either Contracting Party.

5. The Arbitral Tribunal shall determine its own procedure. The Arbitral Tribunal shall decide its award by majority of votes. Such award is final and binding upon the Contracting Parties.

6. Each Contracting Party shall bear the cost of its own member of the panel and of its representative in the Arbitral Tribunal proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties or as otherwise agreed by the Parties or decided by the Ad hoc International Tribunal.

Article XI. Application

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relation between the two Contracting Parties.

Article XII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force three months after the notification between the Contracting Parties completion of their respective internal procedures for the entry into force of this Agreement. It shall remain in force for a period of ten years and shall continue to be in force at any time thereafter for a period of five years unless denounced at any time in writing by either Contracting Party one year before its expiration.

2. In respect to investments made prior to the date of termination of this Agreement, its provisions shall continue to be effective for a further period of five years from date of termination of this Agreement.

Done In duplicate at Metro Manila, Philippines on April 23, 1999 In the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

FOR THE OVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN