AGREEMENT

BETWEEN

THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

AND

THE GOVERNMENT OF MALAYSIA

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of The Federal Democratic Republic of Ethiopia and The Government of Malaysia, 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 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) "investor" means:

(i) any natural person possessing the citizenship of or permanently residing in the territory of a Contracting Party in accordance with its laws and who has made investments in the territory of the other Contracting Party;

(ii) any legal person such as corporation, partnership, trust, joint venture, organization, association or enterprise who undertake economic activities and are incorporated or duly constituted in accordance with applicable laws of either of the Contracting Parties;

(c) "territory" means:

(i) with respect to the Ethiopian Federal Democratic Republic, the territory over which Ethiopia may exercise sovereign rights or jurisdiction in accordance with international law;

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

(d) "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 namely London, New York and Tokyo.

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, regulations and national policies 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 in its territory and shall admit such investment in accordance with its laws, regulations and national policies.

2. Once an investment is admitted 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 Treatment

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

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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;

(b) subject to a due process of law;

(c) the measures are non-discriminatory;

(d) 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 expropriation and nationalization became public knowledge, and it shall be freely transferable in a freely usable currency 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

Transfers

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 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 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; and

   (d) the net earnings and other compensations of national 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 transfer.

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. Disputes which might arise between one of the Contracting Parties and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall, whenever possible, be settled amicable between the parties concerned.

2. If the dispute has not been settled within a period of six months from the date either party to the dispute requested amicable settlement, the dispute shall at the request of the national concerned be submitted to:

   a) the competent court of the Contracting Party in the territory of which the investment has been made; or

   b) the International Center for Settlement of Investment Disputes, for settlement by arbitration of conciliation under the convention on the settlement of Investment Disputes between States and Nationals of other states entered into force on October 14th, 1996 after accession by Contracting Parties; or

   (c) the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules), if one of the Contracting Parties is not a Contracting state of the Convention as mentioned in Paragraph 2(b) of this Article; or

(d) an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purpose of this Convention as a company of the other Contracting Party.

4. The arbitral award shall be final and binding on both parties to the dispute and shall be executed according to the national laws of the Contracting Party where the dispute arises.

5. Each Contracting Party hereby consents to submit investment disputes for resolution to the alternative dispute settlement mechanisms, and shall be executed in accordance with the preceding paragraphs.

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 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 use majority of votes to reach its decisions on the basis of generally recognized principles of International Law. 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

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognize the transfer of any right or title of such investors to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any right or title.

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 and national policies by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement. It shall, however, not be applicable to claims arising out of disputes which occurred prior to its entry into force.

ARTICLE 11
Amendment

This agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this agreement shall be done without prejudice to the rights and obligations arising from this Agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

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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 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 Kuala Lumpur, Malaysia this twenty second day of October, 1998 in the English Language and Bahasa Malaysia, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
THE FEDERAL DEMOCRATIC
REPUBLIC OF ETHIOPIA

FOR THE GOVERNMENT OF
MALAYSIA