

SCIENTIFIC COOPERATION

**Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and MALAYSIA**

Signed at Putrajaya November 2, 2010

with

Annex



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MALAYSIA

Scientific Cooperation

*Memorandum of understanding signed
at Putrajaya November 2, 2010;
Entered into force November 2, 2010.
With annex.*

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF MALAYSIA
ON SCIENCE AND TECHNOLOGY COOPERATION**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF MALAYSIA** (hereinafter referred to singularly
as "the Party" and collectively as "the Parties"),

RECOGNIZING the existing friendly relations between the two countries;

FURTHER RECOGNIZING the importance of science and technology in
the development of the economies of both countries;

DESIRING to strengthen and further develop cooperation between the
two countries in the field of science and technology; and

BELIEVING that such cooperation would serve their common interests
and contribute to the development of science and technology in both
countries,

HAVE AGREED as follows:

ARTICLE I
OBJECTIVE

1. The purposes of this Memorandum of Understanding (MOU) are to strengthen scientific and technological capabilities of the Parties, to broaden and expand relations between the extensive scientific and technological communities of both countries, and to promote scientific and technological cooperation in areas of mutual benefit for peaceful purposes.

2. The Parties, subject to the terms of this MOU and the laws, rules, regulations and national policies in force in each country, agree to strengthen, promote and develop cooperation in the field of science and technology between the two countries on the basis of equality and mutual benefit.

ARTICLE II
AREAS OF COOPERATION

Each Party shall, subject to the laws, rules, regulations and national policies in force in each country, endeavor to encourage and promote cooperation in the following areas:

- (a) joint research, development and design projects, including mutual exchange of research findings, scientific and technical information and documentation;
- (b) exchange of personnel, scientists, specialists and researchers taking part in joint projects;
- (c) organizing joint science and technology conferences, symposia, courses and seminars;
- (d) common use of research devices, facilities and equipment in the joint projects; and
- (e) any other areas of cooperation in the field of science and technology to be mutually agreed upon by the Parties.

ARTICLE III
DESIGNATED AUTHORITY

The designated authority responsible for the implementation of this MOU on behalf of the Government of Malaysia shall be the Ministry of Science, Technology and Innovation and on behalf of the Government of the United States of America shall be the Department of State.

ARTICLE IV
IMPLEMENTATION

1. In implementing this MOU, the Parties, through the designated authorities, shall encourage and facilitate, where appropriate, cooperation between their respective government agencies, universities,

research centers, technological institutions and organizations, businesses and other entities of both countries.

2. Government agencies of the Parties may conclude under this MOU implementing agreements or arrangements, as appropriate, in specific areas of science and technology. These implementing agreements or arrangements may, inter alia, specify:

- (a) the purpose and scope of the cooperation;
- (b) procedures for personnel exchanges or program participation;
- (c) the participating institutions responsible for the implementation of such agreements or arrangements;
- (d) the financial arrangements and extent of the financing of such cooperation;
- (e) procedures for the transfer and use of materials, equipment and funds;
- (f) the procedure and manner of use of the findings of joint research projects and issues related to intellectual property;
- (g) procedures for the exchange of governmental information; and
- (h) procedures related to the potential need for the temporary suspension of activities.

ARTICLE V
JOINT COMMITTEE

1. A Joint Committee on Science and Technology Cooperation (hereinafter referred to as "Joint Committee") shall be established to implement this MOU. The Parties shall designate:

- (a) a representative each to co-chair the Joint Committee; and
- (b) their respective representatives to be members of the Joint Committee.

2. The Joint Committee shall adopt its own rules of procedure and shall meet as agreed by the Parties, alternating in location between Malaysia and the United States of America.

3. The Joint Committee shall be responsible for the following:

- (a) identifying priorities of cooperation between the two countries and considering proposals for further development of the cooperation;
- (b) drafting executive programs for cooperation in science and technology;
- (c) monitoring and facilitating the cooperation programs; and
- (d) exchanging opinions on the overall cooperation between the Parties under the MOU.

4. In performing its functions, the Joint Committee may, if necessary, create temporary joint sub-committees or working groups to study and make recommendations on specific issues.

ARTICLE VI
FACILITATION OF COOPERATION

1. In furtherance of the terms of this MOU, and in accordance with the applicable laws, rules, regulations and national policies in each country, the Parties shall endeavor to work together to assist each other to facilitate the implementation of this MOU.

2. Each Party shall facilitate, in accordance with its laws, rules, regulations and national policies, entry into and exit from its territory of appropriate personnel and equipment of the other Party, as needed to carry out activities, projects and programs under the MOU.

3. Each Party shall facilitate, in accordance with its laws, rules, regulations and national policies, prompt and efficient access of personnel of the other Party, participating in cooperative activities under this MOU, to its relevant geographic areas, institutions, data, materials and individual scientists, specialists and researchers as needed to carry out activities.

4. Each Party shall work toward duty free entry for necessary materials and equipment of the other Party provided pursuant to this MOU for direct use in joint activities.

5. The Parties do not foresee the provision of foreign assistance under this Agreement. If they decide otherwise with respect to a particular activity, the relevant implementing agreement or arrangement would need to be consistent with the requirements of laws of Malaysia and the United States of America that regulate activities related to foreign assistance.

ARTICLE VII
FINANCIAL ARRANGEMENTS

Cooperative activities under this MOU shall be conducted in accordance with the applicable laws, rules, regulations and national policies in each country. The financial arrangements to cover expenses for the cooperative activities undertaken within the framework of this MOU shall be mutually agreed upon by the respective Parties on a case-by-case basis subject to the availability of funds and resources. This MOU does not constitute any obligation of funds by either Party.

ARTICLE VIII
PARTICIPATION OF THIRD PARTIES

Either Party may invite a third party to take part in the cooperative activities carried out under this MOU upon the agreement of the other Party. In carrying out such cooperative activities, the Parties shall ensure that the third party shall comply with the provisions of this MOU.

ARTICLE IX
DISSEMINATION OF INFORMATION AND PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS

1. Intellectual property rights shall be protected and enforced by each Party in accordance with its national laws, rules and regulations and any international agreements to which it is a party.

2. The use of the logo or official emblem of a Party or its government agencies on any publication created as a result of cooperative activities under this MOU is prohibited without the prior written approval of that Party.

3. Scientific and technological information of a non-proprietary nature resulting from cooperative activities under this MOU, other than information which is not disclosed for commercial or industrial reasons, may be made available, unless otherwise agreed, to the world scientific community through customary channels and in accordance with domestic laws and normal procedures of the participating agencies and entities. No warranty of suitability of information exchanged under the MOU is implied or given.

4. The allocation of intellectual property created or furnished in the course of cooperative activities under this MOU is provided for in Annex I, except as otherwise specifically agreed in an implementing agreement or arrangement. Annex I shall form an integral part of this MOU.

ARTICLE X

PROTECTION OF INFORMATION AND TECHNOLOGY TRANSFER

1. Unless otherwise agreed in a relevant implementing agreement or arrangement, no information or equipment affecting the sovereignty, security, public order or other essential public interests of either Party and classified in accordance with the applicable national laws, rules, regulations and national policies shall be provided under this MOU. In the event that such information or equipment which is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this MOU, it will be brought immediately to the attention of the appropriate officials and designated authorities and the Parties shall consult concerning the need for and level of appropriate protection to be accorded to such information or equipment.

2. The transfer of unclassified export-controlled information or equipment between the two countries for the purpose of implementing this MOU shall be in accordance with the national laws, rules, regulations and national policies of each Party to prevent the unauthorized transfer or retransfer of such information or equipment provided or produced under this MOU. If either Party deems necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment, and any information or equipment derived from such information or equipment, shall be incorporated into the contracts or implementing agreements or arrangements. Parties shall identify export-controlled information and equipment as well as any restrictions on further use or transfer of such information or equipment.

3. Termination or expiration of this MOU shall not affect rights or obligations under this Article.

ARTICLE XI

REVISION, MODIFICATION AND AMENDMENT

1. Either Party may request in writing a revision, modification or amendment of all or any part of this MOU.

2. Any revision, modification or amendment agreed to by the Parties shall be in writing and shall form an integral part of this MOU.

4. Such revision, modification or amendment shall come into force on such date as may be determined by the Parties.

5. Any revision, modification or amendment shall not prejudice the rights and obligations arising from or based on this MOU before or up to the date of such revision, modification or amendment.

ARTICLE XII

CONSULTATION AND SETTLEMENT OF DISPUTES

1. The Parties agree to consult periodically and at the request of either Party concerning the implementation of this MOU and the development of their cooperation in science and technology.

2. Without prejudice to the procedure provided in Annex I for disputes relating to intellectual property, any difference or dispute between the Parties arising out of the interpretation, implementation or application of any of the provisions of this MOU shall be settled amicably through mutual consultation or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.

ARTICLE XIII

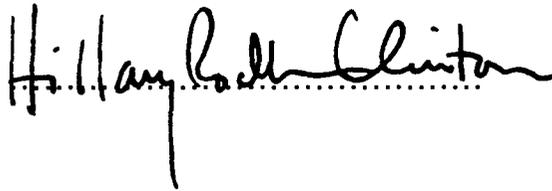
ENTRY INTO FORCE, DURATION AND TERMINATION

1. This MOU shall come into force on the date of signing and shall remain in force for a period of five (5) years.
2. Thereafter, it shall be automatically extended for a further period of five (5) years.
3. Notwithstanding anything in this Article, either Party may terminate this MOU by notifying the other Party in writing through diplomatic channels at least three (3) months prior to its intention to do so.
4. Unless otherwise agreed by the Parties in writing, the termination of this MOU shall not affect the implementation of any cooperative activity undertaken under this MOU and not yet completed at the time of the termination of this MOU.

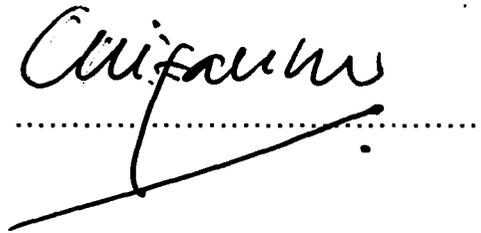
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Memorandum of Understanding between the Government of Malaysia and the Government of the United States of America on Science and Technology Cooperation.

DONE at Putrajaya on this 2nd day of **November** in the year **2010** in duplicate originals, in the English language.

**FOR THE GOVERNMENT
OF THE UNITED STATES OF
AMERICA**

Handwritten signature of Hillary Rodham Clinton in cursive script, written over a horizontal dotted line.

**FOR THE GOVERNMENT OF
MALAYSIA**

Handwritten signature in cursive script, written over a horizontal dotted line. The signature is partially obscured by a diagonal line drawn across the bottom of the signature area.

ANNEX I

Intellectual Property Rights

I. General Obligation

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this MOU and relevant implementing agreements or arrangements. Rights to such intellectual property shall be allocated as provided in this Annex.

II. Scope

- A. This Annex is applicable to all cooperative activities undertaken pursuant to this MOU, except as otherwise specifically agreed by the Parties or their designees in an implementing agreement or arrangement.
- B. For purposes of this MOU, "intellectual property" shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.
- C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex. This Annex does not otherwise alter or prejudice

the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Except as otherwise provided in this MOU, disputes concerning intellectual property arising under this MOU shall be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.

E. Termination or expiration of this MOU shall not affect rights or obligations under this Annex.

III. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and publicly distribute scientific and technical journal articles, reports and books directly arising from cooperation under this MOU. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in paragraph III.A above, shall be allocated as follows:

- (1) Visiting researchers shall receive rights, awards, bonuses and royalties in accordance with the policies of the host institution.
- (2)
 - (a) Any intellectual property created by persons employed or sponsored by one Party under cooperative activities other than those covered by paragraph III.(B)(1) shall be owned by that Party. In addition, each creator shall be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.
 - (b) Intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties. In addition, each creator shall be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.
 - (c) Unless otherwise agreed in an implementing agreement or arrangement, each Party shall have within its territory a right to exploit or license intellectual property created in the course of the cooperative activities.

- (d) The rights of a Party outside its territory shall be determined by mutual agreement considering the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property and such other factors deemed appropriate.

- (e) Notwithstanding paragraphs III.B(2)(a-c) above, if either Party believes that a particular project is likely to lead or has led to the creation of intellectual property not protected by the laws of the other Party, the allocation of rights of the Parties to the intellectual property shall be determined by mutual agreement. If an agreement cannot be reached within six months of the date of the initiation of such discussions, cooperation on the project in question may be terminated upon request by either Party, unless otherwise specifically agreed in an implementing agreement or arrangement. Creators of intellectual property shall nonetheless be entitled to awards, bonuses and royalties as provided in paragraph III.B(2)(a) and (b).

- (f) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor or inventors shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the other Party to

establish any rights to which it may be entitled. Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

IV. Business-confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this MOU, each Party and its participants shall protect such information in accordance with applicable laws, regulations and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.