AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of India and the Government of the Republic of Korea (hereinafter referred to as "the Contracting Parties),

Desiring to intensify economic cooperation between the two States,

Intending to encourage and create favourable conditions for investments by investors of one Contracting Party In the territory of the other Contracting Party on the basis of equality and mutual benefit and,

Recognising that the promotion and protection of Investments on the basis of this Agreement stimulates business initiative In this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. investments" means every kind of asset invested In accordance with the national laws of the Contracting Party, by investors of one Contracting Party in the territory of the others Contracting Party and in particular, though not exclusively, Includes:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges:

(b) shares in, stocks and debentures of, and any other forms of participation in a company or any business enterprises;

(c) rights to money or to any performance under contract having a financial value;

(d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill in accordance with the relevant law of the respective Contracting Party;

(e) business concessions and any other rights required to conduct economic activities and having economic value conferred by law or under contract, including rights to search for, extract and utilise oil, gas and other minerals;

(f) goods that, under a leasing contract, are placed at the disposal of a lessee in the territory of a Contracting Party in accordance with its laws and regulations.

Any change of the form in which assets are invested or reinvested, in accordance with the national law of the respective Contracting Party, shall not affect their character as an Investment.

2. "Returns" means the monetary amounts yielded by Investments such as profit, interest, capital gains, dividends, royalties and fees.

3. "Investors" means any national or company of one Contracting Party investing In the territory of the other Contracting Party.

(a) "nationals" means;

(i) in respect of India, natural persons deriving their status as Indian nationals from the law in force in India,

(ii) in respect of Korea, natural persons having the nationality of the Republic of Korea in accordance with its laws.

(b) “companies” means;

(i) in respect of India, corporations, firms and associations incorporated or constituted under the law in force in any part of India,

(ii) in respect of Korea, any legal persons such as firms, organisations, corporations or associations incorporated or constituted in accordance with its laws and regulations.

4. “Territory” means;

(i) in respect of India, the territory of the Republic of India including its territorial waters and the airspace above It and other maritime zones including the exclusive economic zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or jurisdiction in accordance with its laws in force, and Public International Law including the 1982 United Nations Convention on the Law of the Sea,

(ii) in respect of Korea, the territory of the Republic of Korea, as well as those maritime areas, including the exclusive economic zone and continental shelf adjacent to the outer limit of the territorial sea of the Republic of Korea, over which the Republic of Korea exercises or will exercise sovereign rights, jurisdiction and other rights in accordance with international law including the 1982 United Nations Convention on the Law of the Sea.

5. “Freely convertible currency” means the currency that Is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

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 make investments in its territory and shall admit such investments in accordance with its laws and regulations, if any, in this regard.

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

Article 3. National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall in Its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which shall not be less favourable than that accorded either to investments of Its own Investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own Investors or to investments of investors of any third State, whichever is more favourable to the investors concerned.

3. In addition each Contracting Party shall accord to investors of the other Contracting Party treatment which shall not be less favourable than that accorded to investors of any third State.

4. The provisions of paragraph 1, 2 and 3 of this Article shall not be construed so as to oblige one contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any International agreement or any domestic legislation relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, civil disturbances or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable without undue delay.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by its forces or authorities; or

(b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation no less favourable than that would be accorded by the latter Contracting Party under the same circumstances to its own investors or to investors of any other State. Resulting payments shall be freely transferable without undue delay.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be nationalised, expropriated or otherwise subjected to any other measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except where this is done for a public purpose authorities by laws of that Contracting Party, on a non-discriminatory basis, in accordance with its laws and against compensation that is adequate, effective and paid without undue delay.

2. Such compensation shall amount to the fair market value of the expropriated Investments immediately before expropriation was taken or before Impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable commercial rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realisable and be freely transfereable.

3. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a Judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their Investments In accordance with the principles set out In this Article.

4. Where a Contracting Party expropriates assets of a company Incorporated or constituted under Its laws and regulations, and In which investors of the other Contracting Party have made Investments by way of owning shares or other forms of participation, the provisions of this Articles shall apply.

Article 6. Transfers

1. Each Contracting Party shall grant and ensure to the Investors of the other Contracting Party the free transfers of payments related to Investments and returns. Such transfers shall include, in particular, though not exclusively:

(a) net profit, capital gains, dividends, Interest, royalties and fees;

(b) proceeds accruing from the sale or the total or partial liquidation of investments;

(c) funds In repayments of loans related to investments;

(d) earnings of nationals of the other Contracting Party who are allowed to work In connection with investments in its territory;

(e) additional funds necessary for the maintenance or development of the existing investments; and

(f) compensation pursuant to Article 4 and 5.

2. Transfers shall be effected without delay In a freely convertible currency. Unless otherwise agreed by the investors, transfers shall be made at the rate of exchange applicable on the date of transfers pursuant to the exchange regulations in force.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under an indemnity against non-commercial risks given In respect of investments In the territory of the other Contracting Party, the latter Contracting Party shall recognise:

(a) the assignment, whether under the law or pursuant to a legal transaction in that State, of any right or claim from investors to the former Contracting Party or its designated agency; and

(b) that the former Contracting Party or its designated agency is entitled by virture of subrogation to exercise the rights and enforce the claims of those investors.

2. The subrogated rights or claims under paragraph 1 shall not exceed the original rights or claims of such investors.

Article 8. 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 made under this Agreement including that concerning expropriation of investments shall, as far as possible, be settled

(a) amicably through negotiations between the parties to the dispute, or

(b) through recourse to any other local remedy, save that provided under paragraph 2 of this Article, available under the laws and regulations of the Contracting Party in the territory of which the investment has been made.

2. Any such dispute which has not been settled under paragraph I of this Article within a period of six months from written notification of a claim may, if both parties agree, be submitted for resolution, in accordance with the law of the Contracting Party which has admitted investment to that Contracting Party's competent judicial authority.

3. Should the parties fail to agree on a dispute settlement procedure provided under paragraph 2 of this Article, the dispute shall be referred to International Arbitration upon the request of either party. The Arbitration procedure shall be as follows

(a) to the International Centre for Settlement of Investment Disputes (ICSID), if the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and National of other States, 1965;

(b) to the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or

(c) to an ad hoc. arbitral tribunal In accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

(i) The appointing authority under Article 7 of the Rules shall be the President, the Vice President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

(ii) The parties shall appoint their respective arbitrators within two months.

(iii) The arbitral award shall be made in accordance with the provisions of this Agreement.

(iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(v) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining cost of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, In Its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

Article 9. 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 negotiation.

2. If any dispute cannot be settled within six months, it shall, at the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way: within two (2) months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State, who on approval of 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, a request may be made by either Contracting Party to the President of the International Court of Justice to make such appointments. If the President is a national of either Contracting Party or otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also is a national of either Contracting Party or 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

6. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by both 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.

7. The Arbitral Tribunal shall determine its own procedure.

Article 10. Applicable Laws

1. All investments shall be consistent with this Agreement and be in accordance with the laws in force in the territory of the Contracting Party in which such investments are made.

2. The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions or take action in accordance with its laws normally and reasonably applied in good faith, on a non-discriminatory basis and to the extent necessary for the prevention of the spread of diseases and pests in animals or plants.

Article 11. Application of other Rules

1. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

2. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party, provided that dispute resolution under Article 8 of this Agreement shall only be applicable in the absence of a normal, local, judicial remedy being available.

Article 12. Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force.

Article 13. Entry Into Force

This Agreement shall enter into force on the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

Article 14. Duration and Termination

1. This Agreement shall remain in force for a period of ten (10) years and shall remain in force thereafter indefinitely unless either Contracting Parties notifies the other Contracting Party in writing one year in advance of its intention to terminate this Agreement.

2. In respect of investments made prior to the termination of this Agreement, the provisions of Article 1 to 12 of this Agreement shall remain in force for further period of fifteen (15) years from the date of termination.

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

DONE in two originals each at New Delhi on the 26th day of February, 1996, In the Korean, Hindi and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India

For the Government of the Republic of Korea