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

The Government of the Italian Republic and the Government of the Republic of India (hereafter referred to as the Contracting Parties),

Desiring to create conditions favourable for fostering greater investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

And

Recognising that reciprocal protection of such investments under an agreement will subserve the aforesaid objective and will be conducive to the stimulation of individual business initiative and will increase prosperity in both Countries,

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "Investment" means every kind of asset invested, before or after the entry into force of this Agreement, by an investor of a Contracting Party in the territory of the other Contracting Party, in accordance with the national laws of the latter Contracting Party and in particular, though not exclusively, includes:

a) Movable and immovable property, including rights in rem on property of a third Party, such as mortgages, liens or pledges;

b) Shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities in general on the basis of respective national laws and regulations;

c) Right to money or to any performance under contract having a financial value, as well as reinvested income related to the initial investment;

d) Intellectual and industrial property rights such as copyright, commercial trade marks, patents, industrial designs, know-how, trade secrets, trade names and goodwill, in accordance with the relevant laws of the respective Contracting Party;

e) Any economic right accruing by law or by contract and any licence and franchise, including concessions to prospect for, extract and commercialize oil and other minerals.

2. The term "returns" means the monetary amounts yielded by investments, profits, interests, dividends, royalties and fees, including technical know-how and service fees as well as other lawful considerations;

3 . The term "nationals" means persons deriving their status as Indian or Italian nationals from the law in force in India or Italy;

4. The term "companies" means, in reference to either Contracting Party, corporations, foundations, firms and associations incorporated or constituted under the law in force in either Contracting Parties and regardless of whether their liability is limited or otherwise;

5. The term "investors" means any national or company of a Contracting Party investing in the territory of the other Contracting Party;

6. The term "territory" means:

a) In respect of India, the territory of the Republic of India including the territorial sea and airspace above it, as well as any other maritime zone in which India exercises sovereignty, sovereign or jurisdictional rights, according to the Indian Law and in accordance with International Law;

b) In respect of Italy, in addition to the territory of the Italian Republic including the zones contained within the land boundaries, the "maritime zones". The latter also comprise the marine and submarine zones over which the Contracting Party exercises sovereignty, and sovereign or jurisdictional rights, according to the Italian Law and in accordance with International Law.

Article 2. Scope of the Agreement

1. This Agreement shall apply to all investments made by investors of either Contracting Party in accordance with the laws and regulations of the Contracting Party in whose territory the investment is effected.

2. The provisions of this Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investments

1. Each of the Contracting Parties shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory in accordance with its laws and policy.

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 and shall in no way be subject to unjustified or discriminatory measures.

3. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or specific investment agreements, is more favourable than that provided under this agreement, the most favourable treatment shall apply with respect to that specific investments.

Article 4. National Treatment and Most Favoured Nation Clause

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, 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.

2. In addition each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

3. The provisions of paragraph 1 and 2 shall not apply to advantages which either Contracting Party accords to its own investors or to investors of third States by virtue of an agreement, legislation, or arrangements consequent to such legislation regarding matters of taxation, including an agreement on the avoidance of double taxation and cross border trade.

4. The Contracting Parties shall accord, in respect of activities relating to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any related operation under this Agreement, treatment no less favourable than that accorded to investments of its own investors or investors of a third Country.

5. Each Contracting Party shall endeavour to facilitate according to its laws and regulations, the entry, stay, work and movement in its territory of nationals of the other Contracting Party performing activities related to investments under this Agreement and their family members.

Article 5. Nationalization or Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to any measures having an equivalent effect in the territory of the other Contracting Party except for any non discriminatory measure of general application which Governments normally take for the purpose of regulating economic activity in their territories, or any public purpose authorized by laws of that Party on a non discriminatory basis, handed down by the competent authorities, and against compensation which shall be expeditious, full and effectively realizable without undue delay, and shall be freely convertible and transferable.

2. The just compensation shall be equivalent to the genuine market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public. Whenever that value cannot be readily ascertained, the compensation shall be determined in accordance with general internationally recognized criteria of evaluation, such as the capital invested, depreciation, capital already repatriated, replacement value, and other relevant factors.

3. The affected investor shall have a right, under the law of the Contracting Party making the expropriation, to seek review, by a judicial or other independent authority of that Party, of his or its case and of valuation of his or its investment in accordance with the principles set out in this paragraph. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

5. Compensation shall include interest calculated on a six-month LIBOR basis accruing from the date of nationalization or expropriation to the date of payment.

6. The provisions of paragraph 1 of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

7. The investor of a Contracting Party, acting in the territory of the other Contracting Party, shall not be granted any right, in respect of repossession of an expropriated asset, which is not granted to the investor of the other Contracting Party under the same circumstances.

Article 6. Compensation for Losses and Damages

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses or damages due to war or other forms of armed conflict, a state of national emergency or civil disturbances shall be accorded by the latter Contracting Party treatment, as regards compensation, restitution, indemnification or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State. Any payments made under this Article shall be freely transferable in any convertible currency.

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. Resulting payments shall be freely transferable in any convertible currency.

Article 7. Repatriation of Investment and Returns

1. Each of the Contracting Parties shall, in accordance with its laws and regulations, grant to investors of the other Contracting Party on a non-discriminatory basis, the transfer of:

a) Capital and additional capital, including reinvested income, used to maintain and increase investments;

b) Net operating profits including dividends, interests, capital gains and any other profits in proportion to their share-holding;

c) Repayments of any loan, including interest thereon, relating to the investments;

d) Payment of royalties and services fees as far as it is related to the investment;

e) Proceeds from total or partial sales of their shares;

f) Proceeds received by investors in case of liquidation;

g) The earnings of the nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

2. Nothing in paragraph 1 of this Article shall affect the transfer of compensation under Article 6 of this Agreement.

3. After fiscal obligations have been met, the transfers referred to in Articles 5, 6, 7 and 8 shall be effected without undue delay and, at all events, within six months, and shall be made in any convertible currency. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer.Articles 5, 6, 7 and 8 shall be effected without undue delay and, at all events, within six months, and shall be made in any convertible currency. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer.

4. The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the requirements under the law of the Contracting Party on the territory of which the investment has been carried out.

Article 8. Subrogation

1. In the event that one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the Contracting Party recognizes that the former Contracting Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated right or claim shall not exceed the original rights or claim of such investors.

In relation to the transfer of payments to the Contracting Party or its Institutions by virtue of this assignment, the provisions of Article 7 of this Agreement shall apply.

2. Any payment made by one Contracting Party or its designated agency to its investors shall not affect the right of such investors to make their claims against the other Contracting Party in accordance with Article 9 of this Agreement.Article 9 of this Agreement.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1. Any disputes which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments under this Agreement, including disputes relating to the amount of compensation, shall, as far as possible, be settled amicably through negotiations between the Parties to the dispute. The Party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.

2. If the dispute cannot be thus resolved as provided in paragraph 1. of this Article within 6 months from the date of notice given thereunder, the investor may at his choice either submit the dispute for settlement to:

a) The Contracting Party's Court having territorial jurisdiction; or

b) The International Centre for Settlement of Investment Disputes, for the implementation of the Arbitration Procedures under the Washington Convention of 18 March, 1965, on the Settlement of Investment Disputes between States and Nationals of other States, as soon as both the Contracting Parties have acceded to it, or to the Additional facility for the Administration of Conciliation, Arbitration and Fact finding Proceedings, in case only one of the two Contracting Parties has joined the ICSID and if the Parties have so agreed.

Or

c) An ad hoc Conciliation or Arbitration Tribunal, in compliance with the Conciliation or Arbitration Rules of the UN Commission on the International Trade Law (UNCITRAL).Conciliation or Arbitration Rules of the UN Commission on the International Trade Law (UNCITRAL).

3. In respect of arbitration proceedings, the following shall apply:

a) The Arbitration Tribunal shall consist of three arbitrators. Each Party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a third arbitrator, the Chairman, who shall be a national of a third State. The arbitrators shall be appointed within two months from the date when one of the Parties to the dispute informs the other of its intention to submit the dispute to arbitration within the period of the six months mentioned earlier in paragraph 2 of this Article;

b) If the necessary appointments are not made within the specified period, either Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments;

c) The arbitral award shall be made in accordance with the provisions of this Agreement, as well as the principles of international law recognized by the two Contracting Parties. Such decision shall be binding on both Contracting Parties.

The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislations, in compliance with the relevant international Conventions they are parties to.

4. Both Contracting Parties shall refrain from negotiating through diplomatic channels on any matter relating to any arbitration procedure or judicial procedures that may have been instituted until these procedures have been concluded, and if one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the judgment of the Court of Law within the terms prescribed by the ruling or the judgment, or any other terms that may derive from international or domestic law applicable to the case at issue.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably through negotiations.

2. If a dispute between the Contracting Parties cannot be settled within six months, it shall upon the request of either Contracting Party be submitted to an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall consist of three arbitrators. Within two months of receipt of the request for arbitration, each of the two Contracting Parties shall appoint one arbitrator and within two months from then the two Contracting Parties shall appoint a third arbitrator who shall be the Chairman of the Tribunal.

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, ask the President of the International Court of Justice to make the appointments. If the President is a national of one of the Contracting Parties 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 one of the Contracting Parties or if he 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 Arbitration Tribunal shall reach its decision by a majority vote. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall pay the costs of its own arbitrator and of its representative at the hearings. The cost of the Chairman and any other costs shall be divided equally between the Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

Article 11. Application of other Laws and Rules

1. If the provisions of law of either Contracting Party or obbligations 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 that is provided for by the present agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

2. All investment shall be governed by the provisions of this Agreement and by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 12. Exceptions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions in circumstances of war or other forms of armed conflict, national emergency or civil disturbances or to prevent diseases of pests and animals or plants in accordance with its laws normally and reasonably applied on a non discriminatory basis.

Article 13. Entry Into Force

This Agreement shall enter into force from the date on which the two Contracting Parties notify each other that their respective constitutional procedures have been completed.

Article 14. Duration and Termination

1. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue to be in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.

2. In case of investments effected prior to the date of termination under this Article, the provisions of this Agreement shall remain effective for a further period of 15 years from the date of such termination.

DONE AT Rome, this 23rd the day of November one thousand nine hundred and ninety five, in three copies, in Italian, in Hindi and in English, all texts being equally authentic.

In case of any divergence, the English text shall prevail.

For the Government of Italian Republic

For the Government of the Republic of India