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

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

Desiring to further promote investment in order to strengthen economic and trade cooperation between the two States;

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party by according favourable treatment and protection to such investments and business activities in connection therewith;

Recognizing that the encouragement and reciprocal protection of investment will stimulate exchanges in economic, trade, and technological fields between the two States; and

In accordance with the spirit of the Korea-China Joint Statement of July 8th, 2003, in which both States committed to enhancing the Korea-China Comprehensive Cooperative Partnership;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1. The term "investments" means every kind of asset, used as investment by investors of one Contracting Party within the territory of the other Contracting Party, in accordance with the applicable laws and regulations of that other Contracting Party at the time of investment and shall include, in particular, though not exclusively:

(a) movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

(b) shares, stocks, bonds and debentures or any other forms of participation in a company, business enterprise or joint venture;

(c) claims to money or to any performance having an economic value associated with an investment;

(d) intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets and trade names, and goodwill;

(e) any right conferred by law or under contract and any licences and permits pursuant to law, including the right to search for, extract, cultivate or exploit natural resources.

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

2. The term "investor" means any natural person or legal entity of one Contracting Party who invests in the territory of the other Contracting Party:

(a) the term "natural person" means a natural person having the nationality of one Contracting Party in accordance with its laws; and

(b) the term "legal entity" means any entity incorporated or constituted in accordance with the laws and regulations of one Contracting Party, including a company, public institution, foundation, partnership, firm, organisation, corporation or association.

3. The term "returns" means the amounts yielded by an investment, and, in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees. Returns from investments and, in the case of their reinvestment, returns from those reinvestments shall enjoy the same protection as investments.

4. The term "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.

5. The term "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington, on March 18, 1965.

6. The term "the Centre" means the International Centre for Settlement of Investment Disputes established by the ICSID Convention.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall accord to investments in its territory of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

3. Neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party, nor impose unreasonable or discriminatory measures on investments by investors of the other Contracting Party concerning local content, technology transfer or export performance requirements.

4. Nationals of one Contracting Party who wish to enter the territory of the other Contracting Party and to remain therein for the purpose of making investments and carrying on business activities in connection therewith, shall be given sympathetic consideration to their applications for entry, sojourn and residence, as well as applications for licenses and permits to conduct business activities, in the territory of that other Contracting Party in accordance to its national legislation.

Article 3. Treatment of Investment

1. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to its own investors and their investments (hereinafter referred to as "national treatment") with respect to the expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments (hereinafter referred to as "investment and business activities").

2. The paragraph 3 of Article 2 and the paragraph 1 of the Article 3 do not apply to any existing non-conforming measure maintained within its territory of the Peoples Republic of China or any future amendment thereto provided that the amendment does not increase the non-conforming effect of such a measure from what it was immediately before the amendment took effect.

Treatment granted to investments once admitted shall in no case be made restrictive than the treatment granted at the time when the original investment was made.

The Peoples Republic of China will take all appropriate measures to progressively remove all non-conforming measures.

3. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and to their investments and activities associated with such investments by the investors of the other Contracting Party treatment no less favourable than that accorded in like circumstances to the investors and investments and associated activities by the investors of any third State(hereinafter referred to as "most-favoured-nation treatment") with respect to investments and business activities, including the admission of investment.

4. The provisions of Paragraph 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

(a) any customs union, free trade zone, economic union and any international agreement resulting in such unions, or similar institutions;

(b) any international agreement or arrangement relating wholly or mainly to taxation;

(c) any arrangements for facilitating small scale frontier trade in border areas.

5. Treatment accorded to investors of one Contracting Party within the territory of the other Contracting Party with respect to access to the courts of justice and administrative tribunals and authorities both in pursuit and in defence of their rights shall not be less favourable than that accorded to investors of the latter Contracting Party or to investors of any third State.

Article 4. Expropriation

1. Neither Contracting Party shall expropriate, nationalize or take other similar measures, directly or indirectly, (hereinafter referred to as expropriation) against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met:

(a) for the public interests;

(b) in accordance with domestic law and international standard of due process of law;

(c) without discrimination;

(d) against compensation in accordance with paragraph 2.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay and shall carry appropriate interest from the date of expropriation until the date of payment. It shall be effectively realisable, freely transferable and freely convertible into the currency of the Contracting Party of the investors concerned and into freely usable currencies as defined in the Articles of the Agreement of the International Monetary Fund, at the market exchange rate prevailing on the date of expropriation.

3. Without prejudice to the provisions of Article 9, the investors affected shall have a right of access to the courts of justice or administrative tribunals according to its legal procedure of the Contracting Party making the expropriation for a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

Article 5. Compensation for Damages and Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to any kind of armed conflict, a state of national emergency or civil disturbances 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 its own investors or investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party, who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) requisition of their property by forces or authorities of that other Contracting Party; 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 fair and reasonable compensation for the damage or loss sustained during the period of the requisition or as a result of the destruction of the property.

3. The resulting payments of compensation set out in paragraphs 1 and 2 of this Article shall be made without delay and shall be freely transferable at the market exchange rate prevailing on the date of determining the amount of compensation.

Article 6. Transfers

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

(a) amounts necessary for establishing, maintaining or expanding the investment;

(b) profits, interest, dividends, capital gains, royalties or other fees;

(c) payments made under a contract including those pursuant to a loan agreement;

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

(e) payments made in accordance with Articles 4 and 5;

(f) payments arising out of the settlement of a dispute under Article 9; and

(g) earnings and remuneration of nationals of the other Contracting Party employed in connection with an investment.

2. Neither Contracting Party shall prevent transfers from being made without delay in freely convertible currencies at the market exchange rate prevailing on the date of the transfer, unless

Otherwise provided in this Agreement.

3. Notwithstanding paragraphs 1 and 2 above, one Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences; or ensuring compliance with orders or judgements in adjudicatory proceedings;

(d) reports of transfers of currency or other monetary instruments.

4. Notwithstanding other provisions of this Agreement, each Contracting Party may, in accordance with its laws and regulations, adopt or maintain measures inconsistent with its obligations under this Article: (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or (b) where, in exceptional circumstances, movements of capital cause, or threaten to cause, serious difficulties for macroeconomic managements, in particular monetary and exchange rate policies.

5. Measures referred to in paragraph 4 above: (a) shall be consistent with the Articles of the Agreement of the International Monetary Fund other than those the Contracting Parties made reservations; (b) shall not exceed those necessary to deal with the circumstances described in paragraph 4 above; (c) shall be temporary and shall be eliminated as soon as conditions permit;

(d) shall be promptly notified to the other Contracting Party.

6. The transfers referred to in paragraphs of this Article shall comply with relevant formalities stipulated by the current laws and regulations relating to exchange administration. These formalities refer to, including but not limited to:

a) overseas investment;

b) liquidation, transfer of ownership and registered capital reduction (including reclaiming investment) of foreign direct investment enterprise;

c) the repayment of principal and interest of registered external debts (including loans from foreign investors); or

d) external guarantee provided by domestic guarantors.

The period required for the completion of transfer formalities shall commence on the day on which a written request with necessary supportive documentation is submitted to the foreign

Exchange authorities. The necessary authorizations should be granted in a period of one month but shall in no case exceed two months.

7. The formalities referred to this Article shall not be used as a means of avoiding the contracting partys commitments and obligations under this Agreement. Transfer formalities relating to an investment shall in no case be made more restrictive than formalities required at the time when the original investment was made.

Article 7. Subrogation

1. If one Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency, as well as,

(b) that the former Contracting Party or to its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

2. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, the provision of Article 4 and Article 6 shall apply mutatis mutandis.

Article 8. Settlement of Disputes between Contracting Parties

1. The Contracting Parties shall consult promptly through diplomatic channel, upon request by either Contracting Party, to resolve any dispute in connection with this Agreement, or to discuss any matter relating to the interpretation or application of this Agreement or to the realisation of

The objectives of this Agreement.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The arbitral tribunal shall reach its decision by a majority of votes. The arbitration decision shall be made within ten months from the date of constitution of the arbitral tribunal. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Contracting Parties.

Article 9. Settlement of Disputes between Investors and One Contracting Party

1. For the purposes of this Article, an investment dispute is a dispute between one Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of this Agreement with respect to an investment of an investor of that other Contracting Party.

2. In the event of an investment dispute, the investment dispute shall, if possible, be settled by consultation or negotiation. If it is not so settled, the investor may submit the investment dispute for resolution under one of the following alternatives:

(a) a competent court of the state where the investment was made;

(b) international arbitration after four months from the date the dispute has been raised for consultation by either party

3. In case of international arbitration, the dispute shall be submitted, at the option of the investor, to:

(a) International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965;or

(b) an ad hoc arbitration tribunal es-ta-blished under UNCITRAL Arbitration Rules or any other arbitration rules agreed upon by both parties;

Provided that the Contracting Party involved in the dispute may require the investor concerned to go through the domestic

administrative review procedures specified by the laws and regulations of that Contracting Party before the submission to international arbitration.

The domestic administrative review procedures shall not exceed four months from the date an application for the review is first filed including the time required for documentation. If the procedures are not completed by the end of the four months, it shall be considered that the procedures are complete and the investor may proceed to an international arbitration. The investor may file an application for the review during the four months consultation or negotiation period as provided in paragraph 2 of this Article.

Each Contracting Party hereby gives its consent for submission by the investor concerned of the

Investment dispute for settlement by binding international arbitration.

4. Once the investor has submitted the dispute to the competent court of the State where the investment was made, to the ICSID, or to the ad hoc arbitration tribunal referred to in Paragraph 3 of this Article, the choice of one of the three procedures shall be final.

5. An investor submitting an investment dispute pursuant to paragraph 3 of this Article shall give to the Contracting Party in dispute a written notice of intent to do so at least ninety days before the claim is submitted. The notice of intent shall specify:

(a) the name and address of the investors concerned;

(b) the specific measures at issue of such Contracting Party in dispute and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the provisions of this Agreement alleged to have been breached;

(c) the relief sought including, as necessary, the approximate amount of damages claimed; and

(d) the dispute-settlement procedures set forth in paragraph 3 (a) to (b) of this Article which the investor concerned will seek.

6. The arbitration award shall be based on the law of the Contracting Party to the dispute including its rules on the conflict of laws, the provisions of this Agreement as well as the principles of international law accepted by both Contracting Parties.

7. Notwithstanding the provisions of paragraph 3 of this Article, an investor may not make a claim pursuant to paragraph 3 of this Article if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge that the investor had incurred loss or damage.

8. The arbitration award shall be final and binding upon both parties to the dispute. Each Contracting Party shall commit itself to the enforcement of the award in accordance with its relevant laws and regulations.

Article 10. Other Obligations

1. If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by

The Agreement, such position shall not be affected by this Agreement.

2. Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards to their investments.

3. Nothing in this Agreement shall be construed so as to derogate from the rights and obligations under international agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, and other international agreements concluded under the auspices of the World Intellectual Property Organization.

4. In fulfilling the obligations under this Agreement, each Contracting Party shall take such reasonable measures as may be available to it to ensure the observance of this Agreement by provincial governments in its territory.

Article 11. Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and

administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

Article 12. Application

This Agreement shall apply to investment made prior to or after its entry into force by investors

Of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party concerned, but not apply to the dispute arose before its entry into force.

Article 13. Consultations

1. The representatives of the Contracting Parties shall hold meetings from time to time for the purpose of:

(a) reviewing the implementation of this Agreement;

(b) exchanging legal information and investment opportunities;

(c) forwarding proposals on promotion of investment;

(d) studying other issues in connection with investment.

2. Where either Contracting Party requests consultation on any matter of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternatively in Beijing and Seoul.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures necessary therefor have been fulfilled and remain in force for a period of ten years. Unless either Contracting Party gives a written notice to the other Contracting Party to terminate this Agreement one year before the expiration of this period, this Agreement shall be automatically prolonged for another period of ten years, and shall thereafter be renewable accordingly.

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

3. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for entry into force of the present Agreement.

4. The Agreement on the Encouragement and Reciprocal Protection on Investments between the Government of the Republic of Korea and the Government of the People's Republic of China, signed on September 30, 1992, shall be terminated when this Agreement enters into force, and be replaced by this Agreement.

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

Done in duplicate in Sydney on Sep 7th 2007 in the Korean, Chinese and English languages, all texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF THE PEOPLES REPUBLIC OF CHINA THE REPUBLIC OF KOREA