AGREEMENT BETWEEN THE GOVERNMENT O THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to create conditions favourable for fostering greater investments by investors of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) "investments" mean every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes: (I) Movable and immovable property as well as any other property rights, such as mortgages, liens, leases or pledges;

(II) Shares in and stock and debentures of a company and any other similar forms of participation in a company;

(III) Rights to money or to any performance under contract having a financial value;

(IV) Intellectual property rights, goodwill, technical processes an know how in accordance with the relevant laws of the respective Contracting Party;

(V) Business concessions and other rights required to conduct economic activity conferred by law or under contract, including concessions to search for and extract oil and other minerals;

(b) "investors" mean any national or company of a Contracting Party;

(c) "nationals" mean any person who is a national of a Contracting Party in accordance with its laws;

(d) "companies" mean any corporations, firms and associations incorporated or constituted under the law in force in the territory of either Contracting Party, or in a third country if at least 51 percent of the equity interest is owned by investors of that Contracting Party, or in which investors of that Contracting Party control at least 51 percent of the voting rights in respect of shares owned by them.

(e) "returns" mean the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(f) "territory" means the territory of a Contracting Party including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Contracting Party has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force and International Law, including the 1982 United Nations Convention on the Law of the Sea.

Article 2. Scope of the Agreement

This Agreement shall apply to any investment by investors of either Contracting Party in the territory of the other

Contracting Party admitted in accordance with its laws and regulations, whether made before or after coming into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim which was settled, before its entry into force.

Article 3. Promotion and Protection of Investments

1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and established policy.

2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party and shall enjoy full protection and security under this Agreement.

Article 4. National Treatment and Most-favoured-nation Treatment

1) Each Contracting Party shall accord to investments of investors of the other Contracting Party, 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) above 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, common market or free trade area or similar international agreement to which it is or may become a party, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation

1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in the public interest in accordance with law on an nondiscriminatory basis and against compensation which shall be equivalent to the fair market value of the expropriated investment immediately before the date on which such expropriation became publicly known, shall be made expeditiously, be effectively realizable and be freely transferable.

2) Without prejudice to the investors rights under Article 9 of this Agreement, the investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review by a judicial or other independent authority of that Party, of his or its case and of the valuation of his 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.

3) 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 Paragraphs 1) and 2) of this Article are applied in the same manner to provide compensation in respect of the investment of such investors of the other Contracting Party who are owners of those shares.

Article 6. Compensation for Losses

1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other 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 to investors of any third State. Resulting payments shall be freely transferable.

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.

Article 7. Repatriation of Investments and Returns

1) Each Contracting Party shall permit all funds related to an investment of an investor of the other Contracting Party in its territory to be freely transferred, on an expeditious and non-discriminatory basis. Such funds may include:

(a) Capital and additional capital amounts used to maintain and increase investments;

(b) Net operating profits including dividends and interest in proportion to their shareholding;

(c) Repayments of any loan, including interest thereon;

(d) Payment of royalties and services fees;

(e) Proceeds from sales of their shares;

(f) Proceeds received by investors in case of sale or partial sale or liquidation;

(g) Compensation received under Articles 5) and 6); and

(h) The earnings of nationals of one Contracting Party or of a third state, who work in connection with investment in the territory of the other Contracting Party.

2) Unless otherwise agreed between the parties, currency transfer under Paragraph 1) of this Article shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

3) A transfer shall be deemed to have been made expeditiously if effected within such period as is normally required for the completion of transfer formalities. This period shall commence on the day on which the relevant request has been made, with full documentation and information as prescribed by law and regulations.

Article 8. Subrogation

If the Contracting Party or its designated agency makes a payment under an indemnity or guarantee against non-commercial risks given in respect of an investment of its investors in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of the investors in respect of such investments. The subrogated rights or claims shall not exceed the original rights or claims in respect of an investment.

Article 9. Disputes between an Investor and a Contracting Party

1) Any dispute between an Investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2) If such a dispute has not been amicably settled within a period of six months the Investor that is party to the dispute may submit the dispute for resolution according to the following options:

(a) To the courts or administrative tribunals of the Contracting Party that is party to the dispute; or

(b) In accordance with any applicable, previously agreed dispute-settlement procedure; or

(c) To international conciliation under the Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL").

3. Should the investor fail to exercise the options in paragraph 2 (a) and (b) of this Article or where the conciliation proceedings under Article 2 (c) of this paragraph are terminated other than by the signing of a settlement agreement, the

dispute shall be referred to binding international arbitration according to the following provisions:

(a) To the International Centre of Settlement of Investment Disputes (hereinafter referred to as the Centre), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the ICSID Convention) when both Contracting Parties become parties to the said Convention, subject to the investors written consent; or

(b) To the Centre under the rules governing the Additional Facility for Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as "the Additional Facility Rules"), subject to the consent of both parties to the dispute; or

(c) To an ad hoc arbitral tribunal established under the rules of UNCITRAL, subject to the following modifications or other modifications mutually agreed between the parties to the dispute;

The appointing authority under Article 7 of the UNCITRAL Arbitration 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 parties to the dispute shall appoint their respective arbitrators within two months.

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

The Arbitral Tribunal shall state the basis of its decision and give reasons upon request of either party to the dispute.

4) Any arbitration under this Article shall be held in a State that is party to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as "the New York Convention"). Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article 1 of that Convention.

5) For the purpose of this Article and Article 25 (2) (b) of the ICSID Convention a Company which is incorporated or constituted under the law of one Contracting Party and which, before a dispute arises, was controlled by investors of the other Contracting Party shall be treated as a Company of the other Contracting Party.

6) In any proceedings involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation, in full, or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract against non-commercial risks.

7) Any arbitral award shall be final and binding upon the parties to the dispute. Each Contracting Party shall provide in its territory for the enforcement of such awards in accordance with its laws.

Article 10. 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 through negotiations.

2) If the dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose it shall at the request of either Contracting Party be submitted to an arbitral tribunal.

3) Such 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. These two members shall then select a national of a third State who upon approval by the two Contracting Parties shall be appointed chairman of the tribunal. The Chairman shall be appointed within two 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 any necessary 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 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 reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of the member of the tribunal and of its representation in the arbitral proceedings; the costs 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 Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-nationals, permit natural persons of the other Contracting Party and other personnel employed in connection with the investment by an investor of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments, as well as members of their families.

Article 12. Applicable Laws

1) Subject to the provisions of this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2) Notwithstanding Paragraph 1) of this Article nothing in this Agreement precludes the host Contracting Party from taking action necessary for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.

Article 13. Application of other Rules

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.

Article 14. Entry Into Force

The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

Article 15. Duration and Termination

1) This Agreement shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

2) Notwithstanding termination of this Agreement pursuant to Paragraph 1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement:

Done at New Delhi on 4 July, 2000 in two originals each in the Swedish, the Hindi and the English language, all texts are being, equally authoritative. In case of divergence of interpretation, however, the English text shall prevail.

For the Government of the Kingdom of Sweden

For the Government of the Republic of India