Agreement between the Government of the Italian Republic and the Government of the State of Eritrea on the Promotion and Protection of Investments

The Government of the Italian Republic and the Government of the State of Eritrea, hereinafter referred to as the Contracting Parties;

Desiring to intensify economic co-operation between the two Countries on the basis of equity and mutual benefits;

Intending to establish favourable conditions and promote greater economic co-operation between them, with respect to investment by natural and legal persons of one Party in the territory of the other Party;

Agreeing that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investments and maximum effective use of economic resources;

Acknowledging that encouragement is apt to stimulate investments and increase the prosperity of the Contracting Parties;

Therefore, the Contracting Parties have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" shall be construed to mean any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in conformity with the legislation of that Party, in any legal form. This term comprises, in particular, but not exclusively:

a) Movable and immovable property and any ownership rights in rem including real guarantee rights on property of a Third Party, to the extent that it can be invested, in accordance with the laws and regulations of the Contracting Parties;

b) Shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities in general;

c) Credits for sums of money or any service right having an economic value connected with an investment, as well as reinvested incomes and capital gains;

d) Copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) Any economic right accruing by law or by contract and any licence and franchise granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources;

f) Any increase in value of the original investment.

Any modification in the form of the investment does not imply a change in the nature thereof.

2. The term "investor" shall be construed to mean any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries, affiliates and branches controlled in any way by the above natural or legal persons.

3. The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that State in accordance with its laws.

4. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity having its head office in the territory of one of the Contracting Parties and recognised by it, such as public institutions, corporations,

partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money accruing to an investment, including in particular profits or interests, interest income, capital gains, dividends, royalties or payments for assistance, technical services as well as any payment in kind as defined by the relevant laws of the Contracting Party in whose territory the investment is effected.

6. The term "territory" shall be construed to mean the territory (and the territorial sea) over which the Contracting Parties exercise sovereignty, sovereign or jurisdictional rights performed in compliance with the existing international laws and internationally recognised customary rules.

7. "Investment agreement" means an agreement between a Party — or its Agencies or Instrumentalities — and an investor of the other Party concerning an investment, effected in consonance with the present Agreement.

Article 2. Promotion

1. Each Contracting Party shall in its territory encourage and promote, as far as possible, investments by investors of the other Contracting Party and permit such investments in accordance with its laws and regulations.

2. When a Contracting Party shall have permitted investment on its territory, it shall grant the related facilities in connection with such an investment.

Article 3. Protection

1. Each Contracting Party, shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. In any case each Contracting Party shall accord to the investor of the other Contracting Party not less favourable treatment than that accorded to investment effected by its own nationals or investors of a Third State in accordance with its laws and regulations.

2. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investment.

3. In all events of such investment, employment priorities shall, to all extent practicable, be granted to nationals of the Party where the investment is effected in accordance with its laws and regualtions.

4. The provisions under points 1), 2) and 3) of this article do not refer to the advantages and privileges which one Contracting Party may grant to an investor of a Third State by virtue of their membership of an Economic Union, a Free Trade Area, a Customs Union, a Common Market or by virtue of an agreement to facilitate cross border trade.

Article 4. Remittance of Foreign Exchange

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party, without undue delay, in any convertible currency at the prevailing or current rate applicable on the date on which the investor applies for the related transfer, once fiscal obligations are made in accordance to the rules and regulations of the Country where investment is effected, the transfer of the following, in particular but not exclusively:

a) Initial and additional capital, including reinvested income;

b) Any returns accruing from the investment;

c) Proceeds deriving from the sale or liquidation of the investment;

d) Debt-servicing payments for foreign loan contracted from external sources with the prior knowledge of the Contracting Party, in concordance with the laws and regulations where the investment is invested;

e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party.

Article 5. Guarantee

1. Investments shall at all times be accorded fair and equitable treatment, enjoy full protection and security and shall not be nationalised, expropriated, requisitioned or subjected to any measure having an equivalent effect in the territory of the

other Contracting Party, except for public purposes or national interest and in exchange for immediate, full and effective compensation, and on condition that these, measures are taken on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation. The amount of compensation shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereto without regard to its residence or domicile and the valuation of said compensation shall be conducted in accordance with prevailing fair market values where investment has been effected. The said amount of compensation shall be calculated immediately prior the date on which the actual nationalisation, expropriation or sequestration has been announced or made public.

2. Compensation will be considered as actual if it has been paid in the same currency in which the investment has been made by the foreign investor, in as much as such currency is — or remains — convertible or, otherwise, in any other currency accepted by the investor.

3. Compensation will be considered as timely if it takes place without undue delay, and at all events, within nine months, in the currency in which the investment capital was contributed or in a freely convertible currency including accrued interest payable on current commercial lending rate from the date of nationalisation or expropriation to the date of payment.

4. The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which nationalisation or expropriation has been announced or made pubblic.

5. An investor of either Party that asserts that all or part of his investment has been expropriated shall have a right to prompt review by appropriate judicial or administrative Authorities of the Party where the investment has been effected, to determine whether any such expropriation has occurred and, if so, whether such expropriation and any compensation thereof, conforms to the principles of international rules and regulations and to decide all the matters relating thereto.

6. Should investors of one of the Contracting Parties incur losses or damages on their investments on the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer adequate compensation in respect of such losses or damages, irrespective whether such losses or damages have been caused by governmental forces or other subjects. Compensation payments shall be freely transferable without undue delay. The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable than investors of a Third State.

Article 6. Subrogation

1. Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognise the rights of the first Contracting Party by the virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

2. With regard to the transfer of payments referred in Sub Article 1 of this provision, the provisions of Article 4 and with regard to the right and value of compensation the provisions of Article 5 of this Agreement shall apply.Article 1 of this provision, the provisions of Article 4 and with regard to the right and value of compensation the provisions of Article 5 of this Agreement shall apply.

Article 7. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and an investor of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2. In case the investor and one entity of one of the Parties have stipulated an investment agreement, the procedure foreseen in such investment agreement shall apply.

3. In the event that such dispute cannot be settled amicably within six months from the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

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

b) An ad hoc Arbitral Tribunal, in compliance with the arbitration regulations of UN Commission on the International Trade Law (UNCITRAL) and the host Contracting Party undertakes hereby to accept the reference to said arbitration.arbitration regulations of UN Commission on the International Trade Law (UNCITRAL) and the host Contracting Party undertakes hereby to accept the reference to said arbitration.

4. Under Article 7(3)(b), arbitration shall be conducted in accordance with the arbitration standards of the United Nations Commission on International Trade Law (UNCITRAL) as well as pursuant to the following provisions:

a) The Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either Contracting Party, they shall be nationals of States having diplomatic relations with both Contracting Parties. The appointment of arbitrators, when necessary pursuant to the UNCITRAL Rules, will be made by the President of the Arbitration Institute of the Stockholm Chamber, in his capacity as Appointing Authority. The arbitration will take place in Stockholm, unless the two parties in the arbitration have agreed otherwise.

b) When delivering its decision, the Arbitration Tribunal shall in any case apply also the provisions contained in this Agreement, as well as the principles of international law recognised by the two contracting Parties. The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislation, in compliance with the relevant international Conventions they are parties to.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute which may arise between the Contracting Parties to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute can not be settled within six months on the date on which one of the Contracting Party notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constitued in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The two members shall then choose a national of a Third State to serve as a President. The President shall be appointed within three months from the date on which the other two members are appointed.

4. If, within the period specified in paragraph 3 of this Article, the appointments have not been made, each of two Contracting Parties can, in default of other arrangements, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote and its decision shall be binding. Both Contracting Parties shall pay the costs of their own arbitration and of their representative at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties. The Arbitration Tribunal shall lay down its own procedures.

Article 9. Relations between Governments

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the two Contracting Parties.

Article 10. Application of other Provisions

1. If a matter is governed both by this Agreement and by another international agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and their investors.

2. Whenever the treatment accorded by one Contracting Party to investors of the other Contracting Party, according to its laws and regulations or other provisions or specific contract or investment permissions or agreement, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.

3. This agreement shall not derogate from obligations assumed by either Party, including those contained in an investment agreement or an investment permission, that entitle investments or associated activities to a treatment more favourable than that accorded by this Agreement in like situations.

4. Without prejudice to Article 5 of this Agreement, whenever after the entry into force of the present Agreement, a modification should take place in the actual legislation of both Contracting Parties, on whose territory the investment has been carried out, which is incompatible with the provisions of the present Agreement, the present Agreement shall remain

in force for a period of five years and the acquired rights of the investors under previous legislation shall not be affected.

Article 11. Application of the Agreement

The provisions of this Agreement shall apply to all investments effected by investors of one Contracting Party in the territory of the other Contracting Party since the entry into force of the Investment Proclamation No. 18/1991 of 31st December 1991, of the State of Eritrea.

Article 12. Entry Into Force

This Agreement shall enter into force on the day when both Contracting Parties have notified each other that they have complied with their respective internal or constitutional procedures for the conclusion and entry into force of this Agreement.

Article 13. Duration

1. This Agreement shall remain binding for a period of 10 (ten) years. Unless written notice of termination is given 6 (six) months before the expiration of this period, this Agreement shall be considered as renewed on the same terms for a further period of 5 (five) years, and so forth.

2. In case of official notice as to the termination of the present Agreement, the investment laws of the Contracting Party and investment related conventions the concerned Parties acceded to shall apply.

3. In case of investments effected prior to the expiring date, as provided under paragraph 1 of this Article, the provisions of Articles 1 to 10 shall remain effective for a further period of five years after the aforementioned date.

Done in Rome (Italy), this 6th February, 1996, in two originals, in Italian and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE STATE OF ERITREA

Protocol

On signing the Agreement between the Government of the Italian Republic and the Government of the State of Eritrea on the Promotion and Protection of Investments, the Contracting Parties also agreed on the following clauses, which shall be deemed to form an integral part of the Agreement

1. General Provision

This Agreement and all provisions thereof referred to "Investments", provided they are made in accordance with the legislation of the Contracting Party in whose territory the investment is made, apply as wall to the following associated activities:

The organisation, control , operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making and performance of contracts; the acquisition, use, protection and disposition of property of all kind including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of currency for imports.

"Associated activities" also include, inter alia:

I. The granting of franchises or rights under licenses;

II. The receipt of registrations, licenses, permits and other approvals necessary for tha conduct of commercial activity which shall in any event be issued expeditiously, as provided for in the legislation of the Contracting Party;

III. Access to financial institutions in any currency and to credits and currency markets;

IV. Access to funds held in financial institutions;

V. The importation end installation of equipment necessary for the normal conduct of business affairs, including, but not limited to office equipment and automobiles, and the export of any equipment and automobiles so imported;

VI. The dissemination of commercial information;

VII. The conduct of market studies;

VIII. the appointment of commercial representatives, including agents consultants and distributore and their participation in trade fairs and othar promotional events;

IX. The marketing of goods and services produced by the investor, including through internal distribution and marketing systems, as well as by advertising and direct contact with natural and legal persons of the host Contracting Party;

X. Payment for goods and services in local currency;

XI. Leasing services.

2. Other Provisions

a) A Contracting Party (or its agencies or instrumentalities) may stipulate with investors of the other Contracting Party, who carry out investment of national interest in the territory of the Contracting Parties, an investment agreement which will govern the specific legal relationship related to said investment.

b) Neither of the Contracting Parties will set any condition for the creation, expansion or the continuation of investments, which may imply the taking over or the imposing of any limitation to the sale of the products and services on domestic and international markets, or which specifies thet goods must be procured locally, or similar conditions in accordance to the laws and regulations of the Contracting Parties.

c) Each Contracting Party will provide effective means of asserting claims and enforcing rights with respect to investments and investment agreements.

d) The nationals of either Contracting Party authorised to work in the territory of the other Contecting Party in connection with an investment as per this Agreement, shall have the right to adequate working conditions for the carrying out of their professional activities, in accordance with the laws and regulations of the host Contracting Party.

e) According to its laws and regulations, each Contracting Party shall govern as favourably as possible the problems connected with the entry, stay, work and movement in its territory of nationals of the other Contracting Party, and members of their families, performing activities related to investments under this Agreement.

f) Legal persons constituted under the applicable laws or regulations of ona Contracting Party, which are owned or controlled by investors of the other Contracting Party, shall be permitted to engage managerial personnel of their choice, regardless of nationality, in accordance with the laws and regulations of the host Contracting Party.

g) All the activities relating to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any other kind of operation related to them and somehow linked to entrepreneurial activities under this Agreement, shall be accorded, in the territory of each Contracting Party, no less favourable treatment than the one accorded to similar activities and initiatives taken by investors of the host Contracting Party or investors of Third States.

In WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done in Rome (Italy), this 6th day of February, one thousand nine hundred and ninety six, in two originals, one in Italian and one in English, the two texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMEN OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF ERITREA