AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF INDIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Portuguese Republic and the Republic of India, hereinafter referred to as the "Contracting Parties":

Desiring to intensify the economic co-operation between the two States;

Intending to encourage and create favorable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit;

Recognizing that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1) "Investments" means 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:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

b) Shares, stocks, debentures, or other forms of interest in the equity of a company;

c) Claims to money or to any performance under contract having financial value;

d) Intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;

e) Business concessions conferred by law, under a contract, or an administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources;

2) "Returns" means amounts yielded by investments such as profits, interest, capital, gains, dividends, royalties and fees;

3) The term "investors" means:

a) Natural persons having the nationality of a Contracting Party, in accordance with its laws; and

b) Legal persons, including corporations, commercial companies or other companies or associations, incorporated or constituted in accordance, with the laws of a Contracting Party and engaged in substantive business operations in the territory of that Contracting Party;

4) "Territory" means:

a) In respect of the Portuguese Republic: the territory of the Portuguese Republic, as defined by its respective laws, over which the Portuguese Republic exercises, in accordance with international law, sovereignty, sovereign rights or jurisdiction;

b) In respect of India: the territory of the Republic of India including its territorial waters and the air space 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 exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments, made by investors of either Contracting Party in the territory of the other Contracting Party accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

Article 3. Promotion and Protection of Investments

1 — Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and admit such investments into its territory in accordance with its laws and regulations. It shall accord such investments fair and equitable treatment.

2 — Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

Article 4. National and Most Favoured Nation Treatment

1 — Each Contracting Party shall accord to investments of investors of he other Contracting Party in the territory of the first Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own investors or 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 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 resulting from:

a) Any existing or future free, trade area, customs union, common market or other similar international agreements including other forms of regional economic cooperation to which either of the Contracting Parties is or may become a Party; and

b) Any matter pertaining wholly or mainly to taxation.

Article 5. Expropriation

1 — Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measure with effects equivalent to expropriation or nationalization (hereinafter referred to as expropriation) except by virtue of law, for a public purpose, on a non-discriminatory basis and against prompt compensation.

2 — Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation became publicly known. The compensation shall be paid without undue delay, shall include interest at normal market rate from the date of expropriation until the date of payment and shall be effectively realisable.

3 — The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other competent authority of that Contracting Party of his or its case and of valuation of his or its investments in accordance with the principles set out in this article.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party, owing to war or armed conflict, revolution, a state of national emergency, civil disturbances or other similar events considered as such by international law, shall be accorded treatment no less favourable by the latter Contracting Party than that Contracting Party accords to the investments of its own investors, or to investors of any third State, whichever is more favourable, as regards restitution, indemnification, compensation or other settlement.

Article 7. Transfers

1 — Each Contracting Party shall assure to the investors of the other Contracting Party the free transfer of all funds related to their investments, in particular, though not exclusively:

a) Capital and additional amounts necessary to maintain or increase the investments;

b) The returns defined in paragraph 2, article 1, of this Agreement;

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

d) They proceeds obtained from the sale or from the total or partial liquidation of the investment;

e) Any compensation or other payment referred to in articles 5 and 6 of this Agreement;

f) Any preliminary payments that may be made in the name of the investor in accordance with article 8 of this Agreement; or

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

2 — The transfers referred to in this article shall be made in convertible currency without undue delay at the exchange rate applicable on the date of the transfer.

Article 8. Sub-rogation

Where one Contracting Party or its designated agency has granted any indemnity against non commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made any payments to such investors in respect of their claims under this agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of sub-rogation to exercise the rights and assert the claims of those investors. The sub-rogated rights or claims shall nor exceed the original rights or claims of such investors.

Article 9. Disputes between the Contracting Parties

1 — Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations.

2 — If the Contracting Parties fail to reach such settlement within six months after the beginning of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this article.

3 — The Arbitral Tribunal shall be constituted in each individual case as follows: each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State, with which both Contracting Parties maintain diplomatic relations, as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two months and the chairman shall be appointed within three months from the date on which either Contracting Party notifies, the other that it wishes to submit the dispute to an arbitral tribunal.

4 — If the deadlines specified in paragraph 3 of this article are not complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from doing so, or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is also a national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a national of either Contracting Party.

5 — The Arbitral Tribunal shall rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the expenses incurred on the chairman, as well as any other expenses. The tribunal may however in its decision direct that a higher proportion of cost shall be borne by one of the two Contracting Parties. In all other respects, the tribunal court shall define its own rules of procedure.

Article 10. Disputes between a Contracting Party and an Investor of the other Contracting Party

1 — Disputes that may arise between a Contracting Party and an investor of the other Contracting Party with regard to an

investment under the present Agreement, shall be notified in writing including detailed information, by the investor to host Contracting Party of the investment. As far as possible, the Parties concerned shall endeavour to settle these differences amicably, through negotiations or conciliation.

2 — If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:

a) The competent judicial, administrative or arbitral bodies of the Contracting Party in whose territory the investment was made; or

b) To international arbitration.

3 — In the case of international arbitration, the dispute maybe submitted as follows:

a) To the International Center for the settlement of Investment Disputes, 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 nationals of other States, opened for signature at Washington D. C. on 18th March 1965 (ICSID Convention); or

b) To the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings if both parties to the dispute so agree; 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 arbitral tribunal shall consist of three arbitrators, one arbitrator each to be, appointed by the respective parties within two months and the third arbitrator to be elected by the above two arbitrators, who shall act as chairman of the tribunal. The third arbitrator shall be a national of a third State with which both Contracting Parties maintain diplomatic relations;

ii) Should the two arbitrators fail to elect the third arbitrator, the parties to the dispute shall invite the President of the International Court of Justice if he is not a national of either of the Contracting Parties to the dispute, to appoint the third arbitrator. In case the President is a national of the two Contracting Parties or is otherwise prevented or unable to discharge this functions, the parties to dispute shall invite the Vice-President of the International Court of Justice for making the necessary appointment. If the Vice-President is also a national of either of the Contracting Parties or is prevented or unable to discharge his duties, the parties shall approach the next senior judge of this International Court of Justice, who is not a national of either Contracting Parties, for making the necessary, appointment.

4 — The arbitration shall be based on:

a) The provisions of this agreement and of other agreements in force between the Contracting Parties;

b) The rules and the universally accepted principles of International Law;

c) The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflict of laws.

5 — A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damage has been received or will be received by the investor pursuant to a guarantee or insurance contract.

6 — Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the international arbitration.

7 — The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 11. Entry and Sojourn of Personnel

For the purpose of the present Agreement, the entry and sojourn of natural persons and personnel employed by investors or in connection with investments shall be made in accordance with the laws and regulations of the Contracting Party in which territory the investment is made.

Article 12. Applicable Laws

1 — All investments shall, subject to this Agreement, 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 for the protection of its essential security interests, public order or in circumstances of extreme emergency in accordance with its laws applied in 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 this Agreement contain rules, whether, general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

Article 14. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

Article 15. Entry Into Force and Duration

1 — This Agreement shall enter into force 30 days after the Contracting Parties notify each other in writing that their respective internal constitutional procedures have been fulfilled.

2 — This Agreement shall remain in force for a period of 10 years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date on receipt of such written notice.

3 — Notwithstanding termination of this Agreement pursuant to paragraph 2 of this aticle, the Agreement shall continue to be effective for a further period of 15 years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

Done in duplicate in Lisbon at this 28 day of June 2000 in the Portuguese, Hindi and English languages, all texts being equally authentic.

In case of any divergence the English text shall prevail.

For the Portuguese Republic:

For the Republic ofIndia:

On the occasion of the signing of the Agreement between the Portuguese Republic and the Republic of India on the Mutual Promotion and Protection of the Investments, the undersigned duly authorised to this effect, have agreed also on the following provisions, which constitute an integral part of the said Agreement:

With reference to article 3 of this Agreement

The Contracting Parties consider that provisions of article 3 of the Agreement shall be without prejudice to the right of either Contracting Party to apply their tax laws.

Done in duplicate in Lisbon at this 28 day of June 2000 in the Portuguese, Hindi and English languages, all texts being equally authentic.

In case of any divergence the English text shall prevail.