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

The Portuguese Republic and the Arab Republic of Egypt, hereafter referred to as the "Contracting Parties":

Desiring to intensify the economic cooperation between the two States;

Intending to encourage and create favourable 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;

Recognising 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—The term"investments" shall mean every kind of assets invested by investors of one Contracting Party in accordance with the laws and regulations of the latter in the territory of the other Contracting Party including, in particular, though not exclusively:

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

b) Shares, stocks, debentures or other forms of interest in the equity of companies and or economic interests from the respective activity;

c) Claims to money or to any performance having an economic value;

d) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trade marks, trade names, trade and business secrets, technical processes, know-how and good will;

e) 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;

f) Goods that, under a leasing agreement, are placed at the disposal of a lessee in the territory of a Contracting Party in conformity with its laws and regulations.

Any alteration of the form in which assets are invested shall not affect their character as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

2—The term "returns" shall mean the amount yielded by investments, over a given period, in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investments including technical assistance fees.

In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments.

3—The term "investors" means:

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

b) Legal persons, including corporations, commercial companies or other companies or associations, which have a main office in the territory of either Contracting Party and are incorporated or constituted in accordance with the law of that Contracting Party.

4—The term "territory" means the territory of either of the Contracting Parties, as defined by their respective laws, over which the Contracting Party concerned exercises, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2
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 shall admit such investments into its territory in accordance with its laws and regulations. It shall in all cases accord such investments fair and equitable treatment.

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

Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3—This article should be applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors. Such investments shall be considered as new ones and, to that extent, shall be made in accordance with the rules on the admission of investments.

Article 3
National and most favoured nation treatment

1—Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as well as the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to the investments and returns of investors of any third State.

2—Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to its own investors or to investors of any third State.

3—The provisions of this article shall be without prejudice to the right of either Contracting Party to apply the relevant provisions of their tax law which distinguish between tax-payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

4—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 which may be extended by the former Contracting Party by virtue of:

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

b) Any international agreement relating wholly or mainly to taxation.

Article 4
Expropriation

1—Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure with effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) except by virtue of law for a public interest, 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 delay, shall include the usual commercial interest until the date of payment and shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation.

3—The investor whose investments are expropriated shall have the right under the law of expropriating Contracting Party to a 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 5
Compensation for losses

Investors of either 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 or other 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 of any other means of compensation. All payments made under this article shall be, without delay, freely transferable in convertible currency.

Article 6
Transfers

1—Pursuant to its own legislation, each Contracting Party shall guarentee investors of the other Contracting Party the free transfers of sums 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 of article 1 of this Agreement;

c) Funds in service, repayment and amortisation of loans, recognised by both Contracting Parties to be an investment;

d) The 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 4 and 5 of this Agreement; or

f) Any preliminary payments that may be made in the name of the investor in accordance with article 7 of this Agreement.

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

Article 7
Subrogation

If either Contracting Party or its designated agency makes any payments to one of its investors as a result of a guarantee in respect of an investment made in the territory of the other Contracting Party, the former Contracting Party shall be subrogated to the rights and shares of this investor, and may exercise them according to the same terms and conditions as the original holder.

Article 8
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 by negotiations through diplomatic channels.

2—If the Contracting Parties fail to reach such settlement within six (6) 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 ad hoc, as follows: each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two (2) months and the chairman shall be appointed within three (3) months from the date on which either Contracting Party notifies the other of its wish 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 obsence 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.

5—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.

6—The chairman of the Arbitral Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

7—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 by the chairman, as well as any other expenses. In all other respects, the tribunal court shall define its own rules of procedure.

Article 9
Disputes between a Contracting Party and an investor of the other Contracting Party

1—Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.

2—If such a dispute cannot be settled within a period of six (6) months from the date of the request for settlement, the investor concerned may submit the dispute to:

a) The competent court of the Contracting Party for decision; or

b) The International Centre for Settlement of Investment Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D. C., on March 18, 1965.

3—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 Centre for Settlement of Investment Disputes.

4—The award shall be enforceable on the parties and shall not be subject to any appeal or remedy other than that provided for in said Convention. The award shall be enforceable in accordance with the domestic law of the Contracting Party in whose territory the investment in question is situated.

Article 10
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 a regulation, 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 provisions shall prevail over this Agreement.

Article 11
Application of the Agreement

This Agreement shall apply to all investments made by investors from one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

Article 12
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 13
Entry into force and duration

1—This Agreement shall enter into force thirty (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 ten (10) years and continue in force thereafter for subsequent five (5) years periods unless, twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3—In respect of investment made prior to the date of termination of this Agreement the provisions of articles 1 to 12 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

Done in duplicate in Cairo, this 28 day of April 1999 in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Portuguese Republic:

For the Arab Republic of Egypt: