AGREEMENT

BETWEEN

THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF
THE ARAB REPUBLIC OF EGYPT

FOR THE
PROMOTION AND RECIPROCAL
PROTECTION OF INVESTMENTS

The Government of the Republic of South Africa and The Government of The Arab Republic of Egypt, (hereinafter jointly referred to as the "Contracting Parties", and each in the singular as a "Contracting Party");

DESIRING to create favourable conditions for greater investment by investors of one Contracting Party; and

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Contracting Parties;

HEREBY AGREE as follows:

ARTICLE 1
Definitions

(1)In this Agreement, unless the context otherwise indicates -

(a) **"investment"** means every kind of asset and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other form of participation in a company;

(iii) claims to money, or to any performance under contract having an economic value;

(iv) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill;

(v) rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) **"returns"** means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) **"investor"** means in respect to either Contracting Party:

(i) the "nationals" of a Contracting Party, being those natural persons deriving their status as nationals of a Contracting Party from the law of that Contracting Party; and

(ii) the "companies" of a Contracting Party, being any legal person, corporation, firm or association incorporated or constituted in accordance with the law of that Contracting Party;

(e) **"territory"** means the territory of a Contracting Party, including the territorial sea and any maritime area situated beyond the territorial sea of that Contracting Party, which has been or might in the future be designated under the national law of the Contracting Party concerned, in accordance with international law, as an area within which the Contracting Party may exercise sovereign rights and jurisdiction.

(2) Any change in the form in which assets are invested does not affect their character as investments.

ARTICLE 2
Promotion of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage investments in its territory by investors of the other Contracting Party, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) Each Contracting Party shall grant, in accordance with its laws, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

(3) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Contracting Party, that Contracting Party shall - notwithstanding its own requirements for bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his or its national requirements or according to internationally accepted standards (such as International Accountancy Standards (IAS) drawn up by the International Accountancy Standards Committee (IASA)). The results of such accountancy and audit shall be freely transferable to the investor.

ARTICLE 3
Treatment of Investments

(1) Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

(2) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(3) Each Contracting Party shall in its territory accord to investors of the other Contracting Party treatment not less favourable than that which it accords to its own investors or to investors of any third State.

(4) The provisions to paragraphs (2) and (3) 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 customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either of the Contracting Parties 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.

(5) If a Contracting Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Contracting Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Contracting Party.

ARTICLE 4
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, revolution, a state of national emergency, revolt, insurrection or riot 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, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

(2) Without derogating from the provisions of 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 the forces or authorities of the latter Contracting Party, or

(b) destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation.

ARTICLE 5
Expropriation

(1) Investments of investors of either Contracting Party shall not be

nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for public interests, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be at least equal to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, and be effectively realizable.

(2) The investor affected by the expropriation shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a court of law of other independent and impartial forum of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles referred to in paragraph (1).

ARTICLE 6
Transfers of Investments and Returns

(1) Each Contracting Party shall allow investors of the other Contracting Party the free transfer of payments relating to their investments and returns, including compensation paid pursuant to articles 4 and 5.

(2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Transfers shall be done in accordance with the laws pertaining thereto. Such laws shall not, however, regarding either the requirements or the application thereof, impair or derogate from the free and undelayed transfer allowed in terms of paragraphs (1) and (2).

(4) The provisions relating to transfers under Article 6 shall not be applicable to nationals of the Arab Republic of Egypt to the extent that such provisions are incompatible with the foreign exchange restrictions on foreign nationals with permanent residence in and having immigrated to the Republic of South Africa in force on the date of entry into force of the Agreement. The exemptions provided for in this sub-Article shall automatically terminate for each restriction upon removal of such restriction.

ARTICLE 7
Settlement of Disputes between an Investor and a Contracting Party

(1) Any legal dispute between an investor of one Contracting Party and the other Contracting Party relating to an investment of the former which has not been amicably settled shall, after a period of six months from written notification of a claim, be submitted to international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965, when each Contracting Party has become a party to said Convention.

As long as this requirement is not met, each Contracting Party agrees that the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID; or

(b) an international arbitrator or ad hoc arbitration tribunal to be established by agreement between the parties to the dispute; or

(c) arbitration under the Cairo Regional Centre for International Commercial Arbitration.

(3) If after a period of three months from written notification of the investor's decision to refer the dispute to international arbitration there is no agreement on one of the alternative procedures referred to in paragraph (2), the dispute shall, at the request in writing of the investor concerned, be dealt with in terms of the procedure preferred by the investor.

(4) The decision in resolution of the dispute shall be derived by application of the national law, including the rules relating to conflicts of law, of the Contracting Party involved in the dispute in whose territory the investment has been made, the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment as well as the principles of international law.

(5) The award made by the arbitrator concerned in terms of paragraphs (2) or (3) shall be final and binding on the parties to the dispute. Each Contracting Party shall give effect to the award under its national law.

ARTICLE 8
Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within a period of sixth months, following the date on which such negotiations were requested by either Contracting Party, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an 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. Those two members shall then select a national of a third State who on 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 if he is 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 decide the dispute according to this Agreement and the principles of international law. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining cost 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 two Contracting Parties. The tribunal shall determine its own procedures, unless the Contracting Parties agree otherwise.

ARTICLE 9
Subrogation

If a Contracting Party or its designated Agency makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment, whether by law or by legal transaction, to the former Contracting Party of all the rights and claims of the indemnified investor, and shall recognize that the former Contracting Party or its designate agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

ARTICLE 10
Application of other Rules

(1) If the provisions of the law of either Contracting Party or obligations under international law existing at present of established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to 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.

(2) Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 11
Scope of the Agreement

This Agreement shall apply to all investment, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute which arose before entry into force of this Agreement.

ARTICLE 12
Final Clauses

(1) The Contracting Parties shall notify each other when the legal requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of the last notification.

(2) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.

(3) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 11 remain in force with respect to such investments for a further period of ten years from that date.

(4) The terms of this agreement may be amended by negotiated agreement between the Contracting Parties, and any such amendment shall be effected by exchange of Notes between them.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement in two originals in the English and Arabic languages, all texts being equally authentic. In the event of any divergence, the English texts shall prevail.

Done at ..Cairo.......... this ..28...... day of October 1998 .

J. Radebe.	Ahmed A. Gr...
FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	**FOR THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT**