AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENT

The Government of the Republic of Korea and the Government of the Federal Republic of Nigeria (hereinafter referred to as "the Contracting Parties");

Convinced that the encouragement and reciprocal protection of such investment under existing international agreement to which both Contracting Parties are signatories will be conducive to the stimulation of individual business initiative and increase prosperity in both States;

Desiring to create favourable conditions for greater economic cooperation between the Contracting Parties and in particular to encourage investments by nationals and companies of one State in the territory of the other State;

Have agreed as follows-

Article 1. Definitions

For the purposes of this Agreement:

(1) "investments" means every kind of asset and, in particular, though not exclusively, includes:

(a) movable and immovable property and any other property rights such as leases, mortgages, liens or pledges;

(b) shares, stocks and debentures of companies or interests in the property of such companies and joint ventures;

(c) claims to money or to any performance under contract having a financial value;

(d) intellectual property rights and goodwill;

(e) any business concessions which have been, or may be granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit 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.

(2) "returns" means the amount yielded by an investment and, in particular,

though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(3) "national" means, with regard to either Contracting Party, natural person having the nationality of that Contracting Party.

(4) "companies" means, with regard to either Contracting Party, corporations, firms and associations incorporated or constituted under the law of, and in the territory of that Contracting Party.

(5) "territory" means the territory of the Republic of Korea and the territory of the Federal Republic of Nigeria respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of either State over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction.

(6) "freely convertible currency" means any currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to make investments in its territory, and subject to its rights to exercise powers conferred by its laws, shall admit such investments.

(2) Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Such treatment shall not be less favourable than that accorded either to investments of its own nationals and companies or to investments of nationals and companies of any third State. 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 nationals or companies of the other Contracting Party. In particular, each Contracting Party shall, subject to its laws, grant the necessary permits in connection with such investment and with the carrying out of contracts of license and technical, commercial or administrative assistance, as well as with the activities of consultants and other qualified persons of foreign nationality.

(3) Each Contracting Party shall observe, in addition to this Agreement, any other obligation it may have entered into with regard to investments of nationals or companies of the other

Contracting Party.

(4) Where 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 by nationals and companies of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

Article 3. National Treatment and Most-Favoured-Nation Provisions

(1) Each Contracting Party shall accord in its territory to the investments or returns of nationals or companies of the other Contracting Party, treatment that is not less favourable than that which it accords to the investments or returns of its own nationals or companies or to the investments or returns of nationals or companies of any third State.

(2) Each Contracting Party shall also ensure that the nationals or companies of the other Contracting Party are accorded treatment not less favourable than that which it accords to its own nationals or companies or to the nationals or companies of any third State in regard to the management, use, enjoyment or disposal of their investments including management and control over business activities and other ancillary functions in respect of the investment.

Article 4. Compensation for Losses

(1) Nationals or companies of a 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 nationals or companies or to nationals or companies of any third State.

(2) Without prejudice to paragraph(l) of this Article, nationals and companies of one Contracting Party who in any of the situation 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,

shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 5. Nationalization or Expropriation

(1) Investments of nationals or companies 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 for a public purpose related to the internal needs of that Party and against prompt, adequate and effective compensation provided that such measures are taken on a non-discriminatory basis and in accordance with its laws.

(2) Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest until the date of payment, at a prevailing commercial rate, and shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of Ms or its investment in accordance with the principles set out in this paragraph.

(3) Where one 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 nationals or companies of the other Contracting Party own shares or debentures, it shall ensure that the provisions of paragraph (1) and (2) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares or debentures.

Article 6. Transfers

(1) Each Contracting Party shall, in respect of investments, guarantee to nationals or companies of the other Contracting Party the free transfer and facilities in repatriation of investments and returns therefrom including emoluments and earnings accruing from or in relation to such investment and proceeds in the event of sale and liquidation of the objects invested. Such transfers include, in particular, though not exclusively:

(a) profits, interests, dividends and other income;

(b) funds necessary;

(i) for the acquisition of raw or auxiliary materials, semi-fabricated or finished products; or

(ii) to replace capital assets in order to safeguard the continuity of an investment; or

(iii) for expansion and/or improvement of an investment;

(c) funds in repayment of loans;

(d) royalties or fees;

(e) earnings of nationals;

(f) the proceeds of sale or liquidation of the investment; and

(g) compensation pursuant to Articles 4 and 5 of this Agreement.

(2) All transfers under this Agreement shall be made in a freely convertible currency, without undue restriction and delay, at the market rate of exchange in force on the date of the transfers.

Article 7. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State, shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies 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, or common external tariff area or a monetary union or similar international agreement 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.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the Other Contracting Party

(1) Each Contracting Party shall consent to submit any disputes or differences that may arise out of or in relation to investments made by a national or a company of the other Contracting Party to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States open for signature at Washington, D.C., on 18th March 1965, at the request of such national or company.

(2) A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

(3) If any such dispute should arise and agreement cannot be reached or the dispute cannot be finally disposed of within six(6) months between the parties to this dispute through pursuit of local remedies or otherwise, then, the national or company affected having also consented in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention.

(4) In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the national or company affected shall have the right to choose.

(5) The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(6) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

(a) the Secretary-General of the Centre or a Conciliation Commission or an Arbitral Tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or

(b) the other Contracting Party should fail to abide by or to comply with any award rendered by an Arbitral Tribunal.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If such disputes cannot thus be settled within six(6) months, 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(2) months from the date of appointment of the other two members.

(4) If, within the period 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 appointment. 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 Tribunal shall determine its own procedure.

(6) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be 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 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 two Contracting Parties.

Article 10. Subrogation

(1) If either Contracting Party or its designated Agency makes payment under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified to the former Contracting Party or its designated Agency; and

(b) that the former Contracting Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party.

(2) The former Contracting Party or its designated Agency shall accordingly, if it so desires, be entitled to assert any such right or claim to the same extent as its predecessor in title either before a Court or tribunal in the territory of the latter Contracting Party or in any other

circumstances. If the former Contracting Party or its designated Agency acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party or its designated Agency shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of nationals or companies of the latter Contracting Party or of any third State deriving from investment activities similar to those in which the party indemnified was engaged. Such amounts and credits shall be freely available to the former Contracting Party or its designated Agency for the purpose of meeting its expenditure in the territory of the other Contracting Party.

Article 11. Entry into Force

This Agreement shall enter into force from the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required thereto in their respective countries have been complied with.

Article 12. Application

This Agreement shall apply to all investments, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which was settled before its entry into force.

Article 13. Amendment or Revision

The provisions of this Agreement may be amended by an Exchange of Notes between the Contracting Parties and such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

Article 14. Duration and Termination

(1) This Agreement shall remain in force for a period of ten(10) years. Thereafter, it shall continue in force until the expiration of twelve(12) months from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party.

(2) In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 10 shall continue to be effective for a further period of fifteen(15) years from the date of termination of this Agreement.

In Witness Whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Seoul on this twenty-seventh day of March 1998, in the Korean and English languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For The Government of The Republic of Korea :

For the Government of the Federal Republic of Nigeria :