**AGREEMENT ON SOCIAL SECURITY BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF KOREA AND**

**THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL**

The Government of the Republic of Korea and the Government of the Federative Republic of Brazil (hereinafter referred to as the "Parties"),

Being desirous of regulating their relationship between the two countries in the field of Social Security,

Have agreed as follows:

**Part Ⅰ**

**General Provisions**

**Article 1**

**Definitions**

1. For the purpose of this Agreement;

(a) "Korea" means the Republic of Korea, and "Brazil" means the Federative Republic of Brazil;

(b) "national" means,

as regards Korea, a national of Korea as defined in the Nationality Law, and as regards Brazil, a Brazilian according to Brazilian Federal Constitution and the laws of the Federative Republic of Brazil;

(c) "legislation" means the laws and regulations mentioned in Article 2 of this Agreement;

(d) "Competent Authority" means,

as regards Korea, the Minister of Health and Welfare, and as regards Brazil, the Minister of Social Security;

(e) "Competent Institution" means,

as regards Korea, the National Pension Service, and as regards Brazil, the National Institute of Social Security;

(f) "Liaison Agency" means the organizations established as such by the Competent Institution;

(g) "period of coverage" means any period recognized as period of contribution or insurance by the legislation under which such period has been completed, as well as any period recognized by that legislation as equivalent to a period of coverage;

(h) "benefit" means any benefit provided for in the legislation specified in Article 2 of this Agreement;

(i) "refugee" means a person as defined by the Convention Relating to the Status of Refugees of 28 July 1951 and Protocol of 31 January 1967 to that Convention;

(j) "stateless person" means a person as defined by the Convention Relating to the Status of Stateless Persons of 28 September 1954; and

(k) "dependents", means any person defined or accepted as such by the legislation referred to in the Agreement.

2. Any term not defined in this Article shall have the meaning assigned to it in the applicable legislation.

**Article 2**

**Material Scope of Application**

1. This Agreement shall apply to the following legislation:

(a) as regards Korea, the National Pension Act:

(b) as regards Brazil, the laws governing the General Regime of Social Security and the Civil Servants Social Security Regimes regarding old age pension, survivors and disability insurance programs.

2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on Social Security concluded between one Party and a third State, or legislation promulgated for their specific implementation.

3. This Agreement shall also apply to legislation which amends, supplements, consolidates, or replaces the legislation specified in paragraph 1 of this Article.

4. This Agreement shall apply to future legislation and regulations of a Party which create new categories of beneficiaries or new benefits under the legislation of that Party.

5. Paragraphs 3 and 4 of this Article shall not apply if the Competent Authority of the Party which altered its legislation notifies the Competent Authority of the other Party in written notice within six months of the date of the official publication of the new legislation that no such extension of the Agreement is intended.

**Article 3**

**Personal Scope of Application**

This Agreement shall apply to persons who are or have been subject to the legislation of one or both Parties and to persons with respect to the rights derived from the persons first mentioned in this Article according to the applicable legislation of the Parties.

**Article 4**

**Equality of Treatment and Payment of Benefits Abroad**

1. Pursuant to Article 3 and in subparagraphs (i) and (j) of paragraph 1 of Article 1, a person who resides in the territory of a Party shall receive equal treatment with nationals of that Party in the application of its legislation regarding entitlement to or payment of benefits. However, the Korean lump-sum refunds shall be paid to nationals of a third State in accordance with the Korean legislation.

2. Any provision of the legislation of one Party which restricts entitlement to or payment of benefits solely because the person resides outside or is absent from the territory of that Party shall not be applicable to the persons who reside in the territory of the other Party.

3. The benefits granted under the legislation of either Party, under this Agreement, shall be paid to the persons living outside the territories of the Parties under the same conditions as nationals residing outside the territories of the Parties.

4. The benefits granted under the legislation of one Party shall not be reduced, modified, suspended, ceased or canceled, exclusively due to the fact that the persons mentioned in Article 3 reside in the territory of the other Party.

**Part Ⅱ**

**Provisions Concerning Applicable Legislation**

**Article 5**

**General Provisions**

1. Except as otherwise provided in this Agreement, a person employed within the territory of one of the Parties shall, with respect to that employment, be subject only to the legislation of that Party.

2. A self-employed person who resides in the territory of one Party and works in the territory of the other Party shall, with respect to that work, be subject only to the legislation of the other Party, even if the work is rendered remotely.

**Article 6**

**Detached Workers**

1. Where a worker who is regularly employed in the territory of one Party by an employer located in that territory is sent by that employer to the territory of the other Party for a temporary period, the worker shall be subject only to the legislation of the first Party as if the worker were employed in the territory of the first Party, provided that the period of employment in the territory of the other Party is not expected to exceed five years even if the period is in fractions.

2. The paragraph 1 shall also apply where an employer in the territory of the Party of destination is an affiliated or subsidiary company of the employer of origin.

3. If, due to unforeseen circumstances, the duration of the detachment referred to in paragraph 1 exceeds five years, the worker shall remain subject to the legislation of the first Party for a further period that does not exceed three years, under the condition that the Competent Authorities or Competent Institutions of both Parties agree, even if the period is in fractions.

**Article 7**

**Workers in Maritime and Air Transportation**

1. Where a person works as an employee on board a vessel flying the flag of a Party and would otherwise be subject to the legislation of both Parties, that person is subject only to the legislation of that Party. Notwithstanding the foregoing, that person shall be subject only to the legislation of the other Party, if that person is employed by an employer with a place of business in the territory of that other Party.

2. Workers employed on loading, unloading, ship repairing and port monitoring services shall be subject to the legislation of the Party where their working port is located.

3. Crew members of air transportation companies who work in the territories of both Parties shall be subject only to the legislation of the Party whose territory the company headquarters is located. However, if this company has a subsidiary, a permanent representative or a branch in the territory of the other Party, the person hired by that subsidiary, representative or branch, and who is not relocated, as per Article 6, shall be subject to the legislation of the Party where the subsidiary, representative or branch is located.

**Article 8**

**Member of Diplomatic Mission and Consular Offices**

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Subject to Paragraph 1 of this Article, the administrative, technical and auxiliary service staff, hired locally by the Diplomatic Missions or Consular Offices of each Party, as well as the people working for members of those representations, shall be subject to the legislation of the Party in which the Mission is held.

**Article 9**

**Civil Servants**

The civil servants of one Party that are sent to the other Party shall be subject to the legislation of the Party on which the employer administration relies.

**Article 10**

**Expansion of Exceptions**

The Competent Authorities or the Competent Institutions of the two Parties may agree to grant an exception to the provisions of Part II of the Agreement with respect to particular persons or categories of persons, provided that the persons shall be subject to the legislation of one Party.

**Part Ⅲ**

**Provisions on Benefits**

**Article 11**

**Totalization of Periods of Coverage and Calculation of Benefits**

1. When the legislation of one Party requires the completion of certain periods of coverage for acquiring, maintaining or recovering entitlement to the benefits provided in Article 2, the periods of coverage completed under the legislation of the other Party shall be added, if necessary, to the periods of coverage completed under the legislation of the first Party, provided that they do not coincide.

2. If a person is not eligible for a benefit on the basis of the periods of coverage completed under the legislation of both Parties, even after the periods of coverage have been totalized as provided in paragraph 1 of this Article, the eligibility of that person for that benefit shall be determined by totalizing those periods and periods of coverage completed under the legislation of a third State with which both Parties are bound by a social security agreement which guarantees the totalization of periods, provided those periods do not coincide.

3. Subject to Articles 2 and 3, where the legislation of one Party makes the granting of certain benefits conditional upon the periods of coverage having been completed in an occupation which is subject to a special scheme, or the entitlement to benefits is subject to the condition of the periods of coverage having been completed in specific occupations or employment, periods completed under the legislation of the other Party shall only be taken into account for the granting of these benefits if these were completed under a corresponding scheme or, failing that, in a similar occupation. If the totalization of periods of coverage does not create eligibility to a benefit within the specific scheme, these periods of coverage shall be totalized within the general scheme of insurance.

4. The calculation of the benefit shall be determined by the relevant legislation of the respective Party, unless otherwise provided in this Agreement.

5. In the case that the periods of coverage are completed simultaneously in both Parties, the following rule is applied for totalization: each Party shall consider the legally fulfilled coverage periods according to their legislation and totalize them with the coverage periods completed in the other Party, provided that they do not coincide.

**Article 12**

**Common Provisions on Benefits**

If the legislation of one Party subordinates the grant of benefits provided in Article 2 to the condition that a person is subject to that legislation at the time that the fact generating the benefit occurs, that condition shall be considered fulfilled if at that time the person is subject to the legislation of the other Party.

**Article 13**

**Calculation of Benefits**

Persons who have been subject to the legislation of one of the Parties shall be entitled to the benefits regulated in Article 2, in the following conditions:

(a) the Competent Institution of each Party shall determine the right and calculate the benefit, considering only the periods of coverage fulfilled in that Party, and

(b) if there is no entitlement to the benefit, considering only the periods of coverage fulfilled in one Party, the entitlement to the benefit shall be determined by totalizing the periods of coverage completed under the legislation of both Parties and, if necessary, a third State as provided in paragraph 2 of Article 11, up to the minimum period necessary to reach eligibility for the benefit. When the totalization is performed, if the entitlement to the benefit is obtained, the following rules shall apply in order to calculate the amount to be paid:

(i) the amount of the benefit (theoretical amount) to which the interested party would be entitled shall be determined, as if the totalized periods of coverage, up to the minimum period necessary to reach eligibility for the benefit, were completed under its own legislation, considering the income that has been used as the basis for the calculation of contribution by the Party entitling to the benefits during the insured period in the territory of that Party. Under no circumstances, the theoretical amount of the payment shall be less than the minimum amount guaranteed by national legislation and

(ii) the benefit amount shall be established based on the theoretical amount in proportion between the periods of coverage completed in this Party and the periods of coverage completed in both Parties and, if necessary, the third State (pro rated benefit), up to the minimum period necessary to reach eligibility for the benefit.

**PART IV**

**Miscellaneous Provisions**

**Article 14**

**Administrative Measures**

1. The Competent Authorities of both Parties shall:

(a) conclude an Administrative Arrangement and take all necessary administrative measures for the implementation of this Agreement;

(b) communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) communicate to each other, as soon as possible, information concerning all changes in their respective legislation which may affect the application of this Agreement.

2. Upon common agreement, the Competent Institutions may establish an electronic system to control the number of deceased people, which shall waive the submission of death certificate.

**Article 15**

**Provisions Specific to Disability Benefits**

1. To determine the reduction of work capacity or disability condition for purposes of conceding the benefits related to disability, the Competent Institution of each Party shall make its evaluation in accordance to the applicable legislation.

2. For purposes of the implementation of the provisions of paragraph 1 above, the Competent Institution of the Party where the applicant resides shall provide the Competent Institution of the other Party, upon request from this Party and without charge, with reports and medical documents available, in accordance with respective domestic law relating to medical confidentiality.

3. At the request of the Competent Institution of one Party, the Competent Institution of the other Party where the applicant resides shall perform additional medical tests required to assess the health condition of the applicant. Those medical exams that are of the exclusive interest of the requesting Institution shall be fully financed by the requesting Competent Institution, as referred in the Administrative Arrangement.

**Article 16**

**Mutual Assistance**

1. The Competent Authorities and the Competent Institutions of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon between the Competent Authorities and the Competent Institutions of both Parties.

2. The Competent Authorities and the Competent Institutions of the Parties may establish institutional partnerships in order to share experiences regarding the administrative management of the social security systems.

**Article 17**

**Confidentiality of Exchanged Personal Data**

Unless otherwise required by the national statutes of a Party, information about an individual which is transmitted in accordance with this Agreement to the Competent Authority or Competent Institution of that Party by the Competent Authority or Competent Institution of the other Party shall be used exclusively for the purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a Competent Authority or Competent Institution of a Party shall be governed by the national statutes of that Party for the protection of privacy and confidentiality of personal data.

**Article 18**

**Documents and Certification**

1. Where the legislation of one Party provides that any document which is submitted to the Competent Authority or the Competent Institution of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or the Competent Institution of the other Party in the application of this Agreement.

2. Documents and certificates which are presented for the purpose of this Agreement shall not require legalization or any other similar formality by diplomatic or consular authorities when exchanged directly between Competent Institutions or Liaison Agencies.

3. Copies of documents which are certified as true and exact copies by the Competent Institution of one Party shall be accepted as true and exact copies by the Competent Institution of the other Party, without further certification. The Competent Institution of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

**Article 19**

**Correspondence and Language**

1. The Competent Authorities and the Competent Institutions of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement.

2. An application or document may not be rejected by the Competent Authority or the Competent Institution of one Party solely because it is in the language of the other Party.

3. The Parties may establish exceptions to paragraph 2 of this Article in the Administrative Arrangement.

**Article 20**

**Application for Benefits**

If a beneficiary has filed a written application for benefits with a Competent Institution of one Party and has not explicitly requested that the application be restricted to benefits under the legislation of that Party, the application shall also protect the rights of the claimants under the legislation of the other Party if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the legislation of the other Party.

**Article 21**

**Submission of Applications, Notices or Appeals**

1. A written appeal of a determination made by a Competent Institution of one Party may be validly filed with a Competent Institution of either Party. The appeal shall be judged according to the procedure and legislation of the Party whose decision is being appealed.

2. Any application, notice, or written appeal which, under the legislation of one Party, should have been filed within a prescribed period with the Competent Institution of that Party, but which is instead filed within the same period with the Competent Institution of the other Party, shall be considered to have been filed on time.

3. The Competent Institution of one Party to which an application, notice or written appeal has been submitted under the provisions of Article 20 and paragraphs 1 and 2 of this Article shall transmit it without delay to the Competent Institution of the other Party, indicating the date of receipt on the document.

**Article 22**

**Currency of Payment of the Benefits**

1. Cash payments shall be performed in the currency of the Party making the payments.

2. The Competent Institutions of the Parties shall establish mechanisms for transferring foreign currency for the payment of cash benefits of workers or dependents living within the territory of the other Party.

3. If any provisions designated to restrict the exchange or export of currencies are introduced by either Party, both Parties shall immediately take the necessary actions to ensure the transfer of sums owed by either Party under this Agreement.

**Article 23**

**Resolution of Disputes**

Any dispute regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities of both Parties.

**PART V**

**Transitional and Final Provisions**

**Article 24**

**Transitional Provisions**

1. This Agreement shall not establish any claim to payment of a benefit for any period before the date of entry into force of this Agreement, or to a lump-sum death benefit if the person died before the entry into force of this Agreement.

2. Subject to Paragraph 1, any period of coverage completed under the legislation of either Party and other events which occurred before the entry into force of this Agreement shall be considered in determining the entitlement to benefits under this Agreement.

3. The Competent Institutions, observing their own legislation, may not be required to take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under their legislation.

4. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

5. The application of this Agreement shall not result in any reduction in the amount of a benefit to which entitlement was established prior to the entry into force of this Agreement.

6. In applying Article 6, in the case of persons who were sent to the territory of one Party prior to the date of entry into force of this Agreement, the period of detachment referred to in that Article shall be considered to begin on the date of issuing the certificate.

7. Subject to paragraph 1, the payment of the benefit shall begin in the month of the year that the necessary conditions were fulfilled, if the application for calculating a Brazilian benefit, as per the provisions of this Agreement, is submitted within 12 months after the entry into force of this Agreement.

8. The proof of detachment mentioned on Article 6 shall be provided by the certificate as referred in the Administrative Arrangement.

**Article 25**

**Entry into Force**

This Agreement shall enter into force on the first day of the third month following the month in which each Party shall have received from the other Party a written notification through the diplomatic channel that it has fulfilled all the requirements for the entry into force of this Agreement.

**Article 26**

**Duration and Termination**

1. This Agreement shall remain in force for an indefinite period. Either Party can terminate this Agreement through diplomatic channels by written notice. In that event, this Agreement shall remain in force until the last day of the twelfth month following the month in which the termination was notified.

2. If this Agreement is terminated in accordance with paragraph 1 of this Article, the rights acquired regarding eligibility or payments of benefits under this Agreement shall be maintained. The Parties shall make arrangements dealing with rights in the process of being acquired.

In witness whereof, the Parties duly represented by their Authorities, have signed this Agreement.

Done at Brasilia, on 22 November 2012, in duplicate, in Korean, Portuguese and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

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| FOR THE GOVERNMENT OF  THE REPUBLIC OF KOREA | FOR THE GOVERNMENT OF  THE FEDERATIVE REPUBLIC OF  BRAZIL |