AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE CABINENT MINISTERS OF THE UKRAINE ON THE ENCOURAGEMENT AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Russian Federation and the Cabinet of Ministers of the Ukraine, hereinafter referred to as the "Contracting Parties", seeking to develop the basic provisions of the Agreement On Cooperation in the Sphere of Investment Activity of December 24, 1993,

- In pursuance of their intention to create and maintain favorable conditions for mutual investments,

- In the desire to create favorable conditions for the expansion of economic cooperation between the Contracting Parties,

Have agreed on the following:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investments" shall denote all kinds of property and intellectual values, which are put in by the investor of one Contracting Party on the territory of the other Contracting Party in conformity with the latter's legislation, and in particular:

a) Movable and immovable property and any other rights of property therein;

b) Monetary funds and also securities, liabilities, deposits and other forms of participation;

c) Rights to objects of intellectual property, including authors' copyrights and related rights, trade marks, the rights to inventions, industrial samples, models and also technological processes and know-how;

d) Rights to perform commercial activity, including rights to prospecting, development and exploitation of natural resources.

No alteration of the type of investments, which the funds are put in, shall affect their nature as investments, unless such alteration is contrary to the laws of a Contracting Party on whose territory the investments were made.

2. "Investor of a Contracting Party" shall imply:

a) Any natural person, who is a citizen of the state of a Contracting Party, and who is legally capable under its respective legislation to carry out investments on the territory of the other Contracting Party;

b) Any legal entity, set up or instituted in conformity with the legislation prevailing on the territory of the given Contracting Party, under the condition that the said legal entity is legally capable, under the legislation of its respective Contracting Party, to carry out investments on the territory of the other Contracting Party.

3. "Incomes" shall stand for the amounts obtained as a result of investments and shall include, in particular: profits, dividends, interest, royalties and commission fees and also other remunerations.

4. "Territory" shall denote the territory of the Russian Federation or the territory of the Ukraine and also their respective exclusive economic zone and the continental shelf as defined in conformity with the international law.

5. "Legislation of the Contracting Party" shall mean the laws of either the Russian Federation or the Ukraine.

Article 2. Encouragement and Protection of Investments

1. Each Contracting Party shall encourage the investors of the other Contracting Party to make investments on its territory and shall allow such investments in so far as it is in conformity with its respective legislation

2. Each Contracting Party shall guarantee, in conformity with its legislation, the complete and unconditional legal protection of investments of investors of the other Contracting Party.

Article 3. National Regime and Most Favored Nation Treatment

1. Each Contracting Party shall provide on its respective territory a regime for the investments made by investors of the other Contracting Party, and also with respect to the activity involved in making such investments which regime shall be no less favorable than the one granted to its own investors or investors of any third state, precluding the use of discriminatory measures, which could interfere with the management and disposal of those investments.

2. Each Contracting Party shall reserve the right to determine branches of economy and spheres of activity, in which the activity of foreign investors is excluded or restricted.

3. The most favored nation treatment, granted in accordance with Item 1 of this Article, shall not encompass privileges, which the Contracting Party is granting, or shall be granting, in future:

a) In connection with the participation in a free trade zone, or in a customs or economic union, a monetary union or an international agreement providing for similar associations, or in other forms of regional cooperation in which any Contracting Party is or may become a participant;

b) By virtue of an agreement on the avoidance of double taxation, or of other agreements on taxation.

Article 4. Open and Available Legislation

Each Contracting Party shall, seeking to facilitate the comprehension of its laws pertaining to or affecting the investments made by investors of the other Contracting Party, on its respective territory, provide for the openness and availability of those laws.

Article 5. Expropriation

1. The investments of investors of either Contracting Party, carried out on the territory of the other Contracting Party, shall not be subject to expropriation, nationalization or other measures, equated by its consequences to expropriation (hereinafter referred to as expropriation), with the exception of cases, when such measures are not of a discriminatory nature and entail prompt, adequate and effective compensation.

2. The compensation shall correspond to the market value of the expropriated investments, prevailing immediately before the date of expropriation or when the fact of expropriation has become officially known. The compensation shall be paid without delay with due regard for the interest, to be charged as of the date of expropriation till the date of payment, at the interest rate for three months' deposits in US Dollars prevailing at the London interbank market (LIBOR) plus 1%, and shall be efficiently realizable and freely transferable.

Article 6. Compensation for Losses

The investors of one Contracting Party whose investments suffered damage on the territory of the other Contracting Party as a result of war, civil disturbances or other similar circumstances, shall be granted a regime no less favorable than the one which the latter Contracting Party is granting to investors of any third state with respect to any measures which it undertakes in connection with such damage.

Article 7. Transfer of Payments

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party, after they have honored their respective tax obligations in full in conformity with the legislation of either Contracting Party, an unimpeded transfer for abroad of payments associated with the investments, and, in particular:

a) Of amounts of initial investments and any extra amounts to support and increase the investments;

b) Of incomes;

c) Of amounts to be paid in redemption of loans pertaining to the investments;

d) Of amounts received by the investor in connection with either partial or complete liquidation or the sale of investments;

e) Of the compensation, stipulated in Article 5 of this Agreement;

2. Transfer of payments shall be effected without delay in freely convertible currency at the exchange rate existing on the date of the transfer in accordance with the applicable currency regulation of the Contracting Party on whose territory the investments were made.

Article 8. Subrogation

The Contracting Party or an agency duly authorized by it which has made a payment to the investor on the basis of a guarantee against non-commercial risks in connection with its investments on the territory of the other Contracting Party, shall be entitled to exercise by way of subrogation, the investor's rights in the same scope as the investor itself. Such rights shall be exercised in accordance with the legislation of the latter Contracting Party.

Article 9. Resolution of Disputes between Contracting Party and the Investor of the other Contracting Party

1. In case of any dispute between either Contracting Party and the investor of the other Contracting Party, which may arise in connection with the investments, including disputes, which concern the amount, terms of and procedure for payment of compensation provided for in Article 5 hereof or with the procedure for effecting a transfer of payments provided for in Article 7 hereof, a notification in writing shall be handed in, accompanied with detailed comments which the investor shall forward to the Contracting Party involved in the dispute. The parties to the dispute shall exert their best efforts to settle that dispute by way of negotiations.

2. In the event the dispute cannot be resolved through negotiations within six months as of the date of the written notification as mentioned in Item 1 hereof above, then the dispute shall be passed over for consideration to:

a) A competent court or an arbitration court of the Contracting Party, on whose territory the investments were carried out;

b) The Arbitration Institute of the Chamber of Commerce in Stockholm,

c) An "ad hoc" arbitration tribunal, in conformity with the Arbitration Regulations of the United Nations Commission for International Trade Law (UNCITRAL).

3. The award of arbitration shall be final and binding upon both parties to the dispute. Each Contracting Party shall undertake to execute such an award in conformity with its respective legislation.

Article 10. Resolution of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties as to the interpretation and application of this Agreement, shall be resolved by way of negotiations.

2. In the event a dispute cannot be resolved through negotiations within six months as of the notification in writing of the origin of a dispute, then at the request of either Contracting Party, it shall be passed over for consideration, to the arbitration tribunal.

3. A arbitration tribunal shall be set up on a case-by-case basis according to the following procedure. The Contracting Parties, each of them, shall appoint one member of the arbitration tribunal within two months as of the receipt of notification of hearing to be held by an arbitration tribunal. Then, those two members of the tribunal shall select a citizen of a third country who, given the consent thereto of both Contracting Parties shall be appointed to act as a chairperson of the tribunal within one month as of the appointment of the two other members of the tribunal.

4. In the event the required appointments have not been made within the dates specified in Item 3 of this Article, then, unless the parties have agreed otherwise, either of the Contracting Parties may turn to the Chairman of the International Court of Justice with a request to make such appointments. If the Chairman is a citizen of the state of either Contracting Party, or if he is in no position, for whatever reason to perform that function, then the Vice-Chairman of the International Court of Justice shall be asked to make said appointments. If the Vice-Chairman is also a citizen of the state of either Contracting Party or if he is for any other reason in no position to discharge the said function, then the necessary appointments shall be made by a member of the International Court of Justice who comes next in seniority who is not a citizen of either Contracting Party.

5. The arbitration tribunal shall take a decision by a majority vote. The decision shall be final and binding upon either of the Contracting Parties. The arbitration tribunal shall determine the procedure of its own work as it deems it fit.

6. Each Contracting Party shall bear the costs involved in the activity of the member of the tribunal appointed by it and in its representation in the arbitration hearing; the outlays connected with the activity of the Chairman of the arbitration tribunal, and also other expenditures shall be shared equally by the Contracting Parties. The court, however, shall have the right to envisage in its decision that one of the Contracting Parties shall bear a greater portion of expenditures and that decision shall be binding upon both Contracting Parties.

Article 11. Consultations

The representatives of the Contracting Parties shall hold consultations, in case of need, on issues concerning the interpretation or application of this Agreement. The consultations shall be held at the suggestion of either Contracting Party, while the time and place of their convocation shall be coordinated through diplomatic channels.

Article 12. Application of the Agreement

This Agreement shall apply to all investments carried out by the investors of one Contracting Party on the territory of the other Contracting Party, as of January 1, 1992.

Article 13. Amendments

Given the mutual consent thereto, the Contracting Parties shall have the right to make necessary amendments and addenda to this Agreement, which shall be the subject of relevant Protocols and shall be an integral part of this Agreement, after which each of the Contracting Parties has notified the other of the fulfilment of the procedures inside the state required for the Protocol to take effect.

Article 14. Effective Date and Term of Effectiveness

1. This Agreement shall take effect as of the date of the latest notification in writing of the fulfilment by the Contracting Parties of a procedure inside each state required for this Agreement to become effective.

The Russian Federation ratified this Agreement by its Federal Law No. 21-FZ of January 2, 2000

The Agreement came into force on January 27, 2000

2. This Agreement shall be valid for a term of ten years and shall be automatically extended each time for another five years' term until such time when either Contracting Party notifies the other Contracting Party not later than twelve months prior to the expiration of that effective term of its intention to terminate this Agreement.

3. With respect to the investments which were carried out before the termination of this Agreement and are subject to it, the provisions of all other Articles of this Agreement shall remain valid within the next ten years after that date of termination.

Done in Moscow in November 27, 1998 in duplicate, each one in the Russian and the Ukrainian languages, both texts being equally valid.

For the Government of the Russian Federation

For the Cabinent of Ministers of the Ukraine