Agreement on the Promotion and Mutual Protection of Investments between the Government of the Kyrgyz Republic and the Government of Georgia

The Government of the Kyrgyz Republic and the Government of Georgia, hereinafter referred to as the "Contracting Parties",

Willing to strengthen economic cooperation between each other, namely, with regard to investments made by investors of either Contracting Party in the state territory of the other Contracting Party;

Recognizing that the Agreement on the treatment to be granted to such investments will facilitate capital and technology inflow, as well as economic development between the two countries;

Agreeing that creation of a stable base for investments will contribute to maximizing efficient and sustainable use of economic resources and improve living standards; and

Being convinced that these goals can be achieved without prejudice to generally accepted measures on healthcare, safety and environmental protection, as well as internationally recognized labor rights;

Keeping in mind that foreign direct investment is a vital complement to national and international development efforts;

Have agreed on the following:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investor of a Contracting Party" means:

(a) A natural person, who has the nationality of either State of the Contracting Parties, in accordance with their national legislation, or

(b) Any legal entity established or created in accordance with the national legislation of either State of the Contracting Parties and implementing its main entrepreneurial activities in the territory of either State of the Contracting Parties.

2. "Investment made by investors of either Contracting Party" means any kind of investments made by investors of either Contracting Party in the state territory of the other Contracting Party in accordance with the laws and regulations of the latter and having specific features, such as transfer of capital and other resources, expectation of benefit and profit, as well as risk awareness, and includes:

(a) Shares, securities, a company and other forms of equity participation in the enterprise and the rights arising therefrom;

(b) Debt obligations, bonds, loans and other forms of debt obligations and the rights arising therefrom;

(c) Any right or claim for monetary funds or activities in accordance with the legislation or contract, including turnkey works, construction, management or income distribution contracts, as well as concessions, licenses, accreditations or permits for economic activity;

(d) The rights to intellectual property and intangible forms of property with economic value, including industrial property rights, copyright, trademark, product design, patents, geographical designations, industrial designs and technical processes, trade secrets, product names, "know-how" and "goodwill" that are directly related to investments;

(e) Any other forms of the tangible or intangible property, movable or immovable property or the related property rights, such as lease, mortgage, pledge, lien or usufruct.

The final arbitration decision or any Order or court decision on the above investments shall not be considered as

investments for the purposes of this Agreement.

3. "Income" means funds received from investment and, in particular, profit, interests, capital gains, dividends, royalties, license fees and management fees.

4. "Territory" means:

(a) In relation to the Kyrgyz Republic: the territory of the Kyrgyz Republic, including lands, internal waters and airspace over them, including its subsoil, over which the Kyrgyz Republic exercises sovereign rights and jurisdiction in accordance with international law and national legislation of the Kyrgyz Republic.

(b) In relation to Georgia: the territory defined in accordance with the legislation of Georgia, including lands, subsoil and airspace over them, internal and territorial waters, its seabed and subsoil, and airspace over them, as well as the adjacent zones of territorial waters, special economic zones and continental shelf, over which Georgia is entitled to exercise sovereign rights and/or jurisdiction in accordance with the provisions of international law.

Article 2. Investment Promotion and Protection

1. In accordance with the national legislation of its State each Contracting Party shall, whenever possible, encourage investments by investors of the other Contracting Party.

2. Investments made by investors of either Party in the state territory of the other Contracting Party shall at any times be provided with fair and equal treatment, full protection and security in accordance with generally accepted international law. None of the Contracting Parties shall in any way hinder the management, maintenance, use, operation, possession, expansion, sale, liquidation or placement of these investments through unreasonable or discriminatory measures.

Article 3. Investment Treatment

1. Each Contracting Party shall provide investors of the other Contracting Party and their investments with the treatment not less favorable than that to its own investors and their investments or investors of any third country and their investments with regard to the management, operation, maintenance, use, possession, sale and liquidation of these investments, regardless of which one is more favorable for the investor.

2. None of the provisions of this Agreement shall be construed as:

(a) Preventing the Contracting Party from any action aimed to perform its obligations under the UN Charter for the maintenance of international peace and security; or

(b) An obligation of either Contracting Party to extend to investors of the other Contracting Party and their investments the current or future benefits of any treatment, preference or privileges based on its participation in a similar agreement or any other multilateral investment agreement; or

(c) An obligation of either Contracting Party to extend to investors of the other Contracting Party and to their investments the current or future benefits of any treatment, preferences or privileges arising from the obligations of the Contracting Party under international agreement and international tax legislation.

3. For greater accuracy, the treatment specified in paragraph 1 shall not include any dispute resolution mechanisms or any activities with respect to the host country's contractual obligations that are provided for under the existing or other international agreements.

Article 4. General Exceptions

1. Nothing in this Agreement shall be construed as preventing either Contracting Party from adoption, maintenance or enforcement of non-discriminatory legal measures:

a) Designed and applied to protect humanity, animal or plant life, health or the environment;

b) Related to conservation of living or non-living non-renewable natural resources.

2. Nothing in this Agreement shall be construed as:

a) The requirement to either Contracting Party to provide or allow access to any information, the disclosure of which contradicts to its essential security interests;

b) Preventing either Contracting Party from taking necessary measures aimed to protect its essential security interests:

(i) Related to the trafficking arms, ammunition and other weapons for war, as well as such trade and transactions with other goods, materials, services and technology used directly or indirectly to supply the armed forces or other security services;

(ii) Used during war or other emergency situations in international relations; or

(iii) Related to the implementation of the national policies or international agreements on non-proliferation of nuclear weapons or other nuclear explosives; or

c) Preventing either Contracting Party from performing any of its obligations under the Charter of the United Nations Organization for the maintenance of international peace and security.

5. The adoption, maintenance or enforcement of these measures shall neither be applied in an arbitrary or unjustified manner, nor shall constitute latent restriction on the investments by investors of the other Contracting Party.

Article 5. Expropriation and Compensation

1. None of the Contracting Parties shall expropriate or nationalize, directly or indirectly, the investments made by investors of the other Contracting Party or take any other measures having equivalent effect (hereinafter referred to as expropriation), except for:

a) Those aimed to protect public interests;

b) On a non-discriminatory basis;

c) In accordance with the established legal procedure;

d) Measures accompanied by prompt payment of appropriate and effective compensation in accordance with the paragraphs (2) and (3) of this Article below.

2. Compensation referred to in paragraph (1) of this Article shall be equivalent to the fair market value of the seized investment immediately before the expropriation occurred or before the date, when the forthcoming expropriation became publicly known, depending on whichever is earlier. Compensation shall be effectively paid, freely transferrable and made without delay.

3. Non-discriminatory measures of the Contracting Parties that are designed and applied to protect legitimate public welfare related objectives, such as health, safety and the environment, or that are deemed necessary in order to control the use of property in accordance with the general interest or to secure payment of taxes and other fees or penalties shall not constitute indirect expropriation.

Article 6. Indemnification

1. An investor of either Contracting Party, whose investments incurred losses in the territory of the other Contracting Party due to war or other armed conflicts, state of emergency in the country, revolution, uprising, civil unrest or other similar events, or force majeure on the territory of the latter Contracting Party, shall be granted the treatment by the latter Contracting Party in relation to restitution, reimbursement and compensation not less favorable than that provided to the national or third country investors, whichever is most favorable for the investor.

2. An investor of either Contracting Party, who in any of the events referred to in paragraph (1) of this Article incurred losses as a result of:

a) Confiscation of its investments or part thereof by the authorities or law enforcement agencies acting in the territory of the other Contracting Party, or

b) Destruction of its investments or part thereof by the authorities or law enforcement agencies of the State of the other Contracting Party that have not been necessary in this situation; in any case, prompt, adequate and effective reimbursement or compensation shall be provided.

Article 7. Transfers

1. Each Contracting Party shall guarantee that all investment related payments of the investor of the other Contracting Party may be freely transferred out of and into the territory of its State without delay. The above transfers include in particular:

a) Initial capital and additional funds to maintain or increase investments;

b) Income;

c) Revenue from sale and liquidation of all investments or part thereof;

d) Payments of compensation under Articles 6 and 7 of this Agreement;

e) Payments arising from settlement of disputes;

f) Salary and other remuneration of employees hired from abroad in connection with the investment.

2. Each Contracting Party shall further guarantee that such funds will be transferable in a freely convertible currency at the market exchange rate effective on the day of transfer to the territory of the Contracting Party, from which the transfer originates.

3. Notwithstanding paragraphs 1 to 2 of this Article and without prejudice to measures adopted by the Contracting Party for fulfilling its international obligations, as mentioned in paragraph (2) of Article 3 of this Agreement, a Contracting Party may also prevent funds transfer through equitable, non-discriminatory and bona fide application of the national legislation on bankruptcy, insolvency, taxation or protection of creditors' rights, issuance, trade and circulation of securities, futures, options and derivatives, transfer related reports or records, prevention of money laundering or terrorism financing or in connection with criminal offenses or court decisions in administrative or judicial proceedings, if such measures and their application will not be used in an attempt of either Contracting Party to avoid fulfillment of its obligations under this Agreement.

Article 8. Subrogation

If a Contracting Party or its designated body makes payment under the guarantee or non-commercial risk insurance contract for the investments made by an investor in the territory of the other Contracting Party's State, the latter Contracting Party shall recognize assignment of all investor's right or claim to the former Contracting Party or its designated body and the right of the former Contracting Party or its designated body to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor.

Article 9. Other Obligations

If the national legislation of the State of either Contracting Party or current obligations under international law or obligations subsequently established between the Contracting Parties and in addition to this Agreement, contain general or specific rules that entitle investments of natural persons and legal entities of the State of the other Contracting Party to treatment more favorable than that provided by this Agreement, such rules shall prevail over this Agreement, to the extent they are more favorable.

Article 10. Denial of Benefits

1. Either Contracting Party may refuse to provide benefits availed under this Agreement to the investor of the other Contracting Party, who is the company of the other Contracting Party, and to investments made by this investor, if the company is owned or controlled by persons of a non-Contracting Party, as well as when the refusing Contracting Party has no diplomatic relations with this non-Contracting Party.

2. The Contracting Party may refuse to provide protection under this Agreement to the investor of the other Contracting Party, who is a legal entity of that other Contracting Party, and to investments made by this investor, if this legal entity does not implement its core business activities in the state territory of the other Contracting Party, as well as to natural or legal persons of a non-Contracting Party state or refusing to a Contracting Party, which owns or controls the legal entity.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

Articles 11-14 of this Agreement apply to disputes between a Contracting Party and an investor of the other Contracting Party with regards to alleged violation of the obligations of the former Contracting Party under this Agreement, which may result in losses or damage to the investor or his investment.

Article 12. Means of Settlement. Timeframe

1. To the extent possible, disputes between the Contracting Party and an investor of the other Contracting Party shall be settled through negotiations or consultations. If the dispute is not settled, the investor may submit it:

a) To the competent judicial authority of the Contracting Party - that is a party to the dispute;

b) In accordance with any previously agreed dispute resolution procedure, or

c) In accordance with this Article:

(i) To the International Center for Settlement of Investment Disputes ("Center"), established in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed in Washington on March 18, 1965 ("ICSID Convention"), where the State of the investor's Contracting Party and the State of the Contracting Parties being parties to the dispute are also parties to the ICSID Convention;

(ii) To a sole arbitrator or to a temporary arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(iii) To a sole arbitrator in the International Chamber of Commerce under its arbitration rules.

2. In case of initiation of the dispute settlement proceedings under either procedure referred to in paragraph 1 of this Article, the selected procedure shall be used by the parties in the dispute, while excluding the other two procedures for the same or identical subject matter.

3. The dispute can be submitted for consideration in accordance with paragraph 1 (c) of this Article sixty (60) days from the date of receiving a notification of the intention of either Contracting Party, a party to the dispute, to start this procedure, but not later than 5 years from the date when the information was first received or should be received about the events that led to the dispute, losses or damage that have allegedly occurred.

Article 13. Applicable Law

Arbitration established under Articles 11-14 of this Agreement shall resolve disputes in accordance with this Agreement and the applicable rules and principles of international law.

Article 14. Awards and Enforcement

Decisions of the Arbitral Tribunal shall be final and binding on each Contracting Party.

Article 15. Settlement of Disputes between Contracting Parties

1. As far as possible, disputes between the Contracting Parties regarding the interpretation or application of this Agreement shall be resolved through consultations or other diplomatic channels.

2. If the Contracting Parties fail to reach an agreement within 6 (six) months following the date, on which consultations or negotiations were requested on the initiative of either Contracting Party, at the request of that Contracting Party the dispute shall be referred to arbitration. Unless otherwise agreed by the Contracting Parties, arbitration shall be conducted in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, except as provided for by the amendments made by the Contracting Parties or this Agreement.

3. Unless otherwise agreed by the Parties, the dispute shall be resolved by the Arbitral Tribunal consisting of three members. Each Contracting Party shall appoint one arbitrator within two months from the date, when either Contracting Party receives a notification on arbitration from the other Contracting Party. The two arbitrators thus selected shall within the next two months jointly select a third arbitrator, who is a citizen of a third State. The third arbitrator, once approved by both Contracting Parties, shall act as the Chairperson of the Arbitral Tribunal.

4. If a member of the Arbitral Tribunal is not selected within the period specified in paragraph 3 of this Article, at the request of either Party the Secretary General of the Permanent Court of Arbitration shall appoint the arbitrator or arbitrators at his discretion.

5. The place of arbitration shall be The Hague, the Netherlands.

6. The Arbitral Tribunal shall adopt its decisions by a majority vote. Decisions shall be final and binding on each of the Contracting Parties.

7. Costs incurred by arbitrators and other costs of litigation shall be equally borne by the Parties. The Arbitral Tribunal may, however, at its discretion, decide that a bigger portion of the costs shall be paid by either Contracting Party.

Article 16. Scope of Application of the Agreement

This Agreement shall apply to the investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its legislation, both before and after entry of this Agreement into force, but shall not apply to any claims or disputes arising from events that occurred prior to the entry of this Agreement into force.

Article 17. Consultation

Each Contracting Party may propose to the other Contracting Party consultation on any matter relating to this Agreement. The consultation shall be at a place and time determined through diplomatic channels.

Article 18. Changes and Amendments

By mutual agreement of the Contracting Parties, changes and amendments can be made to this Agreement through a separate Protocol, which shall enter into force in accordance with the Article 19 of this Agreement and shall form an integral part of this Agreement.

Article 19. Entry Into Force and Validity

1. This Agreement is subject to ratification and enters into force on the first day of the third (3) month following the month in which the ratification instruments took place were exchanged.

2. This Agreement shall be valid for ten (10) years and remain in force until either Contracting Party notifies the other Contracting Party of its intention to terminate this Agreement in writing one (1) year in advance before expiration of the initial ten-year period or at any time thereafter.

3. With regard to investments made prior to the expiration date of this Agreement, the provisions of Articles 1 to 19 of this Agreement shall remain in force for a period of the next ten (10) years from the date of termination of this Agreement.

4. This Agreement replaces the Agreement between the Government of the Kyrgyz Republic and the Government of Georgia on the Protection and Mutual Promotion of Investments signed on April 22, 1997, which shall cease to be effective from the date of entry of this Agreement into force.

Done in Tbilisi, oon 13 October 2016, in two original copies in the Kyrgyz, Georgian, Russian and English languages; all versions have equal force. In the event of disagreement on the interpretation, the English version shall prevail.

For the Government of the Kyrgyz Republic

For the Government of Georgia