# AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE DEMOCRATIC REPUBLIC OF TIMOR LESTE ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS.

The Portuguese Republic and the Democratic Republic of East Timor, hereinafter referred to as the Parties:

Encouraged by the desire to intensify economic cooperation between the two States;

Desiring to create favorable conditions for investment by investors of one Party in the territory of the other Party on the basis of equality and mutual benefit;

Recognizing that the promotion and reciprocal protection of investments under this Agreement will contribute to stimulating private initiative;

Agree as follows:

## Chapter I. Scope and Subject

### Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" includes all kinds of assets and rights invested by investors of one Party in the territory of the other Party under the legislation of the other Party, including in particular but not exclusively:

a) Property over furniture and real estate, as well as any other rights in rem, such as mortgages, guarantees, pledges and similar rights;

b) Shares, quotas or other shares representing the capital of companies or any other form of participation and / or economic interests resulting from their activity;

c) Credit rights or any other rights with economic value;

d) Intellectual property rights, such as copyrights, patents, utility models and industrial designs, trademarks, trade names, trade and industrial secrets, technical processes, know-how and clientele;

e) Concessions granted by law, pursuant to a contract or administrative act issued by a competent public authority, including concessions for exploration, research and exploitation of natural resources;

f) Goods which, under and in accordance with the law and their lease agreements, are made available to a lessor in the territory of a Party in accordance with its legislation.

Any change in the form of realization of investments shall not affect their qualification as investments provided that such change is made in accordance with the law of the Party in whose territory the investments were made.

2. The term "income" means income generated by investments in a given period, including but not limited to profits, dividends, interest, royalties, payments for technical assistance or other forms of investment-related gains.

If the investment income in the definition given above is reinvested, the income from this reinvestment will also be treated as income from the first investment. Investment income shall enjoy the same protection as investments.

3. The term “investors” means:

a) Natural persons, with the nationality of either Party, in accordance with their legislation; and

b) Legal persons, including companies, commercial companies or other companies or associations which have their headquarters in the territory of one of the Parties, are incorporated and operate in accordance with the law of that Party.

4. The term "territory" includes the territory of each Party, its internal waters, the territorial sea or any other area over which the Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

### Article 2. Scope

This Agreement shall apply to all investments made by investors of one Party in the territory of the other Party, before and after its entry into force, in accordance with their respective legal provisions, with the exception of disputes relating to investments emerging before Entry into force.

## Chapter II. General Provisions

### Article 3. Promotion and Protection of Investments

1. Both Parties shall promote and encourage, as far as possible, investment by investors of the other Party in their territory, admitting such investments in accordance with their respective legislation. In any case, they will grant investments fair and equitable treatment.

2. Investments made by investors of one Party in the territory of the other Party, in accordance with the legal provisions in force in that territory, shall enjoy full protection and security in the territory of the other Party.

3. The Parties shall not subject the management, maintenance, use, enjoyment or disposal of investments in their territory by investors of another Party to unjustified, arbitrary or discriminatory measures.

### Article 4. National and Most-favored Nation Treatment

1. Investments made by investors of one Party in the territory of the other Party, as well as the income derived therefrom, shall be treated fairly and equitably and not less favorably than that granted by the latter Party to investments of its own investors or to investments Investors from third States.

2. Both Parties shall grant to investors of the other Party, with respect to the management, maintenance, use, enjoyment or disposition of the investments made in their territory, fair and equitable treatment and no less favorable than that accorded to their own investors or Investors from third States.

3. The provisions of this article do not imply the granting of preferential treatment or privilege by either Party to investors of the other Party that may be awarded by virtue of:

a) Participation in free trade areas, customs unions, existing or emerging common markets and other similar international agreements, including other forms of economic cooperation to which either Party has acceded or acceded; and

b) Bilateral, multilateral, regional or non-regional agreements of a wholly or partly fiscal nature.

4. The Parties consider that the provisions of this Article shall be without prejudice to the right of either Party to apply the relevant provisions of its tax law which, in accordance with its legislation, establish a distinction between taxpayers who are not in the same situation as regards To his place of residence or to the place where the capital is invested.

### Article 5. Application of other Rules

1. If, in addition to this Agreement, the provisions of the domestic law of one of the Parties or the obligations under international law in force or which enter into force between the two Parties establish a general or special regime, which confers on the investments made by Investors of the other Party more favorable treatment than provided for in this Agreement, the more favorable regime shall prevail over it.

2. Both Parties shall comply with any obligations not included in this Agreement with respect to investments made by investors of the other Party in their territory.

### Article 6. Expropriation

1. Investments made by investors of one Party in the territory of the other Party may not be expropriated, nationalized or

subject to other measures having equivalent effect to expropriation or nationalization (hereinafter referred to as "expropriation"), except by law, in the interest Without discriminatory nature and with prompt compensation.

2. The compensation must correspond to the market value that the expropriated investments had at the date immediately prior to the moment the expropriation occurred or at the time the future expropriation becomes public knowledge, counting for the first time. The compensation must be paid without delay, bears interest at the usual bank rate, from the date of expropriation to the date of its liquidation, and must be prompt, effective, adequate and freely transferable.

3. An investor whose investments have been expropriated shall be entitled, in accordance with the law of the Party in whose territory the property has been expropriated, to the prompt review of his or her case, in judicial or other proceedings, and to the evaluation of his investments, Accordance with the principles defined in this article.

## Article 7. Compensation for Losses

1. Investors of one of the Parties who suffer losses in investments made in the territory of the other Party as a result of war or other armed conflict, revolution, national state of emergency or other events considered equivalent by international law shall receive from that Party treatment no less favorable Than that granted by that Party to the investments of its own investors or investors from third States, whichever is the more favorable, as regards restitution, damages or other relevant factors.

2. The compensations provided for in the preceding paragraph must be transferable freely and without delay in convertible currency.

## Article 8. Downloads

1. Both Parties shall, in accordance with their legislation, guarantee to the investors of the other Party the free transfer of the amounts related to the investments, in particular, but not exclusively:

a) The capital and additional amounts required to maintain or expand investments;

b) Of the income defined in Article 1 (2) of this Agreement;

c) Of the amounts necessary for the service, repayment and amortization of loans recognized by both Parties as investments;

d) The proceeds from the sale or the total or partial liquidation of the investments;

e) Compensation or other payments provided for in Articles 4 and 7 of this Agreement;

f) Any preliminary payments which may have been made on behalf of the investor in accordance with Article 9 of this Agreement;

g) Wages of foreign workers authorized to work in connection with the investment in the territory of the other Party.

2. Transfers referred to in this Article shall be made without delay, in convertible currency, at the rate of exchange applicable on the date of transfer.

3. For the purposes of this Article, a transfer shall be deemed to have taken place 'without delay' where it is effected within the period normally necessary for completion of the requisite formalities, which may in no case exceed 30 days from the Date of submission of the transfer request.

## Article 9. Subrogation

In the case of one of the Parties or the agency designated by it to make payments to one of its investors by virtue of a guarantee given to an investment made in the territory of the other Party, it shall be subrogated to that investor's rights and actions. Exercise them in the same terms and conditions as the original holder.

## Article 10. Disputes between the Parties

1. Any disputes arising between the Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiations through diplomatic channels.

2. If the Parties do not reach agreement within six months after the start of negotiations, the dispute shall be submitted, at

the request of either Party, to an arbitral tribunal to be established in accordance with the following paragraphs.

3. The arbitral tribunal shall be constituted ad hoc, as follows:

a) Each Party shall appoint one member and both members shall nominate a third-country national as president, who shall be appointed by both Parties;

b) Members shall be appointed within a period of two months and the Chairman within three months of the date on which one of the Parties has notified the other of the intention to refer the dispute to an arbitral tribunal;

c) The President of the arbitral tribunal must be a national of a State with which both Parties have diplomatic relations.

4. If the time limits laid down in paragraph 3 of this Article are not met, either Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments.

5. If the President is prevented or is a national of one of the Parties, appointments shall be made to the Vice-President. If he is also prevented or is a national of one of the Parties, appointments shall be made to the member of the court who is in the hierarchy, provided that such member is not a national of either Party.

6. The arbitral tribunal decides by majority vote. Its decisions shall be final and binding on both Parties.

7. Each Party shall bear the expenses of its arbitrator and of its representation in the proceedings before the arbitral tribunal. Both Parties shall bear the costs of the President as well as the other expenses in equal parts.

8. The arbitral tribunal may adopt a different regulation as to costs. In all other matters, the arbitral tribunal shall define its own rules of procedure.

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

1. Disputes between an investor of one Party and the other Party relating to an investment of the former in the territory of the latter shall be amicably settled through negotiations.

2. If disputes can not be settled in accordance with paragraph 1 of this Article within a period of six months from the date on which one of the parties to the dispute gives rise to it, either party may submit the dispute:

a) The competent courts of the Party in whose territory the investment is located; or

b) The International Center for Settlement of Investment Disputes, for conciliation or arbitration, under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington, DC, on 18 March 1965; or

c) To an ad hoc arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on Trade and Development (UNCTAD).

3. The decision to submit the dispute to one of the procedures referred to in the previous number is irreversible.

4. The judgment shall be binding on both parties and shall not be subject to any type of appeal other than those provided for in national legislation, in the case of paragraph a) of the preceding paragraph or in those Conventions. The judgment shall be binding in accordance with the domestic law of the Party in whose territory the investment in question is situated.

5. Upon completion of the judicial or arbitral proceedings and in case of non-compliance with the judgment rendered pursuant to this article, the Parties may, by way of exception, use the diplomatic channel in order to ensure compliance with that judgment.

## Chapter III. Final Provisions

### Article 12. Inquiries

Representatives of the Parties shall, whenever necessary, hold consultations on any matter relating to the interpretation and application of this Agreement. These consultations shall be held on a proposal from either Party, which may, if necessary, propose the holding of meetings at a place and date to be agreed through diplomatic channels.

### Article 13. Implementation

This Agreement shall enter into force 30 days after the date (receipt) of the last written notification and through diplomatic

channels that all constitutional and / or legal formalities required by both Parties have been complied with.

## Article 14. Duration

This Agreement shall remain in force for a period of 10 years, which shall be renewable for equal periods.

## Article 15. Complaint

1. This Agreement may be terminated by either Party by written and diplomatic notification, and shall cease to be valid 12 months after the date of receipt of such notification by the other Party.

2. The provisions of Articles 1 to 12 shall remain in force for a period of 10 years from the date of termination of this Agreement in respect of the investments made.

Done in duplicate at Dili on 20 May 2002, in the Portuguese language, both texts being equally authentic.