# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BULGARIA AND THE GOVERNMENT OF UKRAINE ON MUTUAL PROTECTION AND PROMOTION INVESTMENTS

The Government of the Republic of Bulgaria and the Government of Ukraine (hereinafter referred to as "Contracting Parties"),

Desiring to strengthen mutually beneficial economic cooperation,

Striving to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of investments under this Agreement promote business initiative in this field,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any property values, and in particular:

a) movable and immovable property and other property rights;

b) shares, stocks and other forms of participation in companies;

c) claims and other rights having economic value;

d) intellectual property rights (copyrights, inventions, industrial designs, trademarks and appellations of origin), technological processes, know-how and goodwill;

e) rights to engage in economic activities, conferred by law or contract, including, in particular, the right to exploration, development and exploitation of natural resources.

No change in the form of asset investment does not affect their character as investments provided that such change does not contradict the legislation of the Contracting Party in whose territory the investments were made.

2. The term "investor" means in respect of each of the Contracting Parties:

a) any natural person who is a citizen of that Contracting Party in accordance with its legislation;

b) any company, firm, society, company, organization or association, having or those with no legal personality, set up in accordance with the legislation of each of the Contracting Party and located in its territory;

3. The term "returns" shall mean profits, dividends, interest and other legal amounts received as a result of the investment.

4. The term "territory" means the territory of each Contracting Party, as well as the exclusive economic zone and continental shelf over which the Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

## Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.

2. Each Contracting Party shall ensure, in accordance with its legislation unconditional protection of investments by investors of the other Contracting Party.

3. Income from investments and, in the case of re-investment, re-investment of income enjoy the same protection as the investment.

## Article 3. National Treatment and Most Favored Nation Treatment

1. Each Contracting Party shall ensure in its territory investments by investors of the other Contracting Party and activities in connection with investments fair and equitable treatment.

2. The regime referred to in paragraph 1 of this Article, shall not be less favorable than the treatment accorded to investments and activities in connection with investments of its own investors or investors of any third state.

3. Each Contracting Party reserves the right to determine the sectors and spheres of activity, which may be limited to the activities of foreign investors. Any new exemption, to be ascertained by a Contracting Party, shall not be applicable to investments made in its territory by investors of the other Contracting Party prior to the entry into force of withdrawal.

4. Most favored nation treatment granted in accordance with paragraph 2 of Article shall not apply to the advantages which the Contracting Party is providing or will provide in the future:

a) In connection with participation in a free trade area, customs or economic union, and other similar institutions;

b) On the basis of agreements to avoid double taxation or other agreements on taxation.

## Article 4. Expropriation, Nationalization and Compensation for Losses

1. Investments of investors of either Contracting Party made in the territory of another Contracting Party shall not be expropriated, nationalized or subjected to measures equal to expropriation or nationalization (hereinafter referred to as "the nationalization"), except in cases where such measures are taken in the public interests, as prescribed by law, are not discriminatory and are accompanied by payment of prompt, adequate and effective compensation.

2. The compensation shall correspond to the market value of the nationalized investment immediately before the nationalization of a certain moment. Compensation shall be paid in freely convertible currency in which the investment was originally made or in another currency acceptable to the investor. Since the inception of the right to be compensated and until it is paid in the amount of compensation accrued interest in accordance with the LIBOR rate.

3. The victim investor will be entitled to an immediate review of the judicial or other independent authority of the Contracting Party of his case and an assessment of its investments in accordance with the principles set out in this article.

## Article 5. Other Losses

1. The Contracting Party in whose territory the investment was harmed investors of the other Contracting Party owing to war or other armed conflict, civil unrest, state of emergency or other similar circumstances, thus providing investors with regard to the recovery of property, compensation and other forms of settlement are not mode less favorable than that it accords to investors of any third state.

## Article 6. Transfers

1. Each Contracting Party shall permit investors of another Contracting Party after performing them all tax obligation, free transfer of payments in connection with investments, and in particular:

a) the amount of the original investment and additional amounts to maintain or increase investments;

b) income, as defined in Article 1 of this Agreement;

c) the amounts received by the investor from the sale or total or partial liquidation of investments;

d) amounts required for the payment of costs arising from the operation of the investment;

e) compensation in accordance with Articles 4 and 5 of this Agreement;

f) wages and other remuneration received by nationals of the other Contracting Party for work and services performed in

connection with the investments made in the territory of the first Contracting Party to the extent and in the manner provided for in its law.

2. Transfer of payments referred to in paragraph 1 of this Article shall be made without delay in a freely convertible currency at the date of transfer of the exchange rate of the Contracting Party in whose territory the investments are made.

## Article 7. Subrogation

1. If a Contracting Party makes payments to its investor under a contract of insurance or guarantee, concluded in connection with the investment, the other Contracting Party acknowledges the transfer of the first Contracting Party of the rights belonging to the investor. Contracting Party to whom the rights of the investor has the same rights as an investor, with reservation in respect of investor commitments related to the insured so that investment.

2. In the case of subrogation provided for in paragraph 1 of this Article, the investor cannot make a claim unless he is authorized by the Contracting Party.

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

1. Any dispute between an investor of one Contracting Party and the other Contracting Party, arising out of the implementation of the investment allowed for the possibility of a negotiated.

2. If so the dispute is not resolved within six months from the date of its occurrence, it can be referred to the competent court or tribunal of the Contracting Party in whose territory the investments are made.

3. The dispute on the size of the issues, conditions, or order the payment of compensation on the basis of Articles 4 and 5 of this Agreement, as well as the order of transfer payments under Article 6 of this Agreement may be brought before the Court of Arbitration "ab hoc' in accordance with the Arbitration Rules of Procedure of the Commission United international trade law Nations (UNCITRAL), provided that the investor does not exercise the right to bring a claim in accordance with paragraph 2 of this Article. The decision of the arbitral tribunal shall be final and binding on both parties to the dispute.

## Article 9. Consultations

The Contracting Parties on the proposal of any of them may be consulted on matters relating to the interpretation or application of this Agreement.

## Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute between the Contracting Parties can not thus be settled within six months from the start of negotiations, at the request of either Contracting Party, he referred to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: Within three months of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Two members shall elect a national of a third state, which, after approval by both Contracting Parties shall be appointed Chairman of the tribunal. The Chairman of the arbitral tribunal shall be appointed within two months from the date of appointment of the other two members of the court.

4. If within the terms specified in Paragraph 3 of this Article the necessary appointments have not been made, in the absence of any other agreement, either Contracting Party may request the President of the International Court of Justice to make such appointments. If the President is a citizen of either Contracting Party or is otherwise unable to discharge the said function, please make the necessary appointments may be addressed to the Vice-President of the International Court. If the vice-President is a national of one of the Contracting Parties, or also can not perform the specified function, please make the necessary appointments may be addressed to the member of the International Court next in seniority, which is not a national of either Contracting Party.

5. The arbitral tribunal shall make its decision on the basis of the provisions of this Agreement, as well as generally recognized principles and norms of international law. He shall render its decision by majority vote. This decision is final and binding on both Contracting Parties. The Court shall determine its own work procedure.

6. Each Contracting Party shall bear the costs associated with the activities of its own appointed member of the tribunal and of its representation in the arbitration process. Costs associated with the activities of the chairman of the court and other costs, the Contracting Parties shall bear in equal shares.

## Article 11. Applicability of other Regulations

1. If one of the Contracting Parties in accordance with its laws or international treaties to which both Contracting Parties shall accord to investments of investors of the other Contracting Party and activities in connection with the investment regime more favorable than that accorded by this Agreement, it applied a more favorable mode.

2. If the treatment accorded by one Contracting Party to investors of the other Contracting Party in accordance with the provisions of contracts is more favorable than that accorded by this Agreement, will be given more favorable treatment.

## Article 12. Application of this Agreement

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party both before and after the entry into force of this Agreement.

## Article 13. Entry Into Force, Period and Termination of this Agreement

1. This Agreement is subject to ratification and shall enter into force thirty days from the date of written notification to the Contracting Parties to each other that their procedures stipulated by the legislation of each Contracting Party, and shall remain in force for fifteen years.

2. This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party of its intention to terminate this Agreement at least twelve months before the expiry date specified in paragraph 1 of this Article.

3. After the expiry of the initial fifteen-year period of validity of each of the Contracting Parties may at any time terminate this Agreement by written notice of its intention to the other Contracting Party. The Agreement shall terminate twelve months after the date of receipt of such notification by the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1-12 of this Agreement shall remain in force for a further period of fifteen years from that date.

Done at Kiev in 1994 in two copies, each in Bulgarian, Ukrainian and Russian languages, all texts being equally authentic.

In case of disputes over the interpretation of this Agreement shall prevail in Russian.

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

FOR THE GOVERNMENT OF UKRAINE