AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Lithuania and the Government of the Republic of Bulgaria, hereinafter referred to as "the Contracting Parties",

- Desiring to intensify economic cooperation between them on mutually advantageous conditions,

- Determined to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

- Recognising that the promotion and protection of such investments will stimulate private business initiative and increase the prosperity of both countries,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the latter Contracting Party, and shall include in particular, though not exclusively:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, and similar rights;

b) Shares, bonds and any form of participation in a company;

c) Claims to money or to any performance having an economic value;

d) Intellectual property rights, as defined inter alia in the multilateral agreements concluded under the auspices of the World Intellectual Property Organisation, in as far as both Contracting Parties are parties to them, including, but not limited to copyrights and related rights, patents, trade marks, trade names, industrial designs and rights in technical processes, rights in plants varieties and know-how;

e) Goodwill;

f) Any right to conduct economic activities conferred by law or under contract, including concessions to search for, extract and exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment, provided such an alteration is made in accordance with the laws and regulations of the host Contracting Party.

2. The term "investor" shall mean:

a) In respect of the Republic of Lithuania:

i) Natural persons who are nationals of the Republic of Lithuania according to its laws and regulations and persons without nationality, permanently residing in the territory of the Republic of Lithuania;

ii) Any entity constituted under the laws and regulations of the Republic of Lithuania;

b) In respect of the Republic of Bulgaria:

i) Natural persons who are nationals of the Republic of Bulgaria in accordance with its laws and regulations, who invests in the territory of the Republic of Lithuania;

ii) Any company, firm, partnership, organization or association with or without juridical personality incorporated or constituted in accordance with the laws and regulations of the Republic of Bulgaria, who invests in the territory of the Republic of Lithuania.

3. The term "returns" shall mean all amounts yielded by an investment and in particular, though not exclusively, includes profits, capital gains, interest, dividends, royalties and fees.

4. The term "territory" shall mean the territory of the Republic of Lithuania, on one hand, and the territory of the Republic of Bulgaria, on the other hand, including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the respective State exercises sovereign rights and jurisdiction in accordance with international law.

5. The term "laws and regulations" shall mean in respect of either Contracting Party the laws and regulations in force in the territory of that Contracting Party.

Article 2. Promotion of Investments

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

Article 3. Protection and Treatment of Investments

1. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments made by investors of the other Contracting Party as well as their full security and protection.

2. Either Contracting Party shall not impair by arbitrary or discriminatory measures the management, maintenance, use or disposal of investments made by investors of the other Contracting Party and shall accord to such investors treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. Each Contracting Party shall accord to the investments made by investors of the other Contracting Party treatment no less favourable than that accorded to the investments made by its own investors or investors of any third State, whichever is more favourable.

4. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege accorded to the investors of any third State by virtue of:

a) Any existing or future customs, economic or monetary union, a common market or a free trade area, other forms of regional economic cooperation or similar international arrangements to which either Contracting Party is or may become a party;

b) Any existing or future agreements relating to avoidance of double taxation or any other arrangement relating to taxation.

5. Each Contracting Party reserves the right to make exceptions from national treatment granted according to paragraphs 2 and 3 of this Article, in compliance with the measures adopted by the European Union. However, any new exception shall only apply to investments made after the entry into force of such exception.

Article 4. Expropriation

1. Neither Contracting Party shall expropriate, nationalise or take measures having equivalent effect (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party, unless:

a) Such expropriation is in public interest and under due process of law;

b) Such expropriation is carried out without discrimination;

c) Prompt, adequate and effective compensation is given.

2. The compensation mentioned in point (c) of the paragraph 1 of this Article shall be equivalent to the market value of the expropriated investment immediately before the expropriation occurred or the impending expropriation became public

knowledge, whichever is the earlier, and shall be paid without undue delay. The compensation shall include interest at the current LIBOR rate from the date of expropriation until the date of full payment.

3. Investors, whose assets are being expropriated shall, without prejudice to their rights under Article 8 of this Agreement, have a right to prompt review by the appropriate judicial or other competent and independent authorities of the expropriating Contracting Party to determine whether such expropriation, and any related compensation conforms to the principles of this Article and the laws and regulations of the expropriating Contracting Party.

Article 5. Compensation for Losses

1. Investors of one Contracting Party who suffer losses relating to their investments in the territory of the other Contracting Party due to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

2. Without prejudice to paragraph 1 of this Article investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) Requisitioning of their property by its forces or authorities, or

b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer into and out of its territory of payments related to an investment, in particular:

a) Initial capital and additional amounts for the maintenance or extension of the investment;

b) Returns;

c) Proceeds from total or partial liquidation of the investment;

d) Funds in repayment of loans directly related to the investment;

e) Compensation provided for in Articles 4 and 5;

f) Payments under a guarantee or insurance contract referred to in Article 7;

g) Earnings of personnel engaged from abroad in connection with an investment in its territory.

2. Without prejudice to measures adopted by the European Union, transfers shall be made in the currency in which the original investment was made or in any freely convertible currency if agreed upon by the investor, at the applicable market rate of exchange prevailing on the date of transfer, and effected without undue delay.

3. The Contracting Parties shall accord to the transfers referred to in paragraphs 1 and 2 of this Article treatment no less favourable than that accorded to transfers related to investments made by investors of any third State.

4. Notwithstanding the foregoing provisions of this Article, either Contracting Party may maintain equitable, non-discriminatory and good faith application of measures, relating to taxation, protection of rights of creditors, or ensuring compliance with other laws and regulations.

Article 7. Subrogation

If one Contracting Party or its designated agency ("the first Contracting Party") makes a payment under a guarantee or contract of insurance given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognise:

a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and

b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the

same extent as the party indemnified.

Article 8. Settlement of Investment Disputes

1. Disputes between a Contracting Party and an investor of the other Contracting Party related to an investment of the latter in the territory of the former shall, if possible, be settled amicably. In the event of a dispute the Contracting Party in whose territory the investment was made shall be notified in writing, including detailed information, by the investor.

2. If such a dispute cannot be settled amicably within six months from the date of the written notification provided in paragraph 1, either party to the dispute, may submit it to:

a) The competent court of the Contracting Party; or/and

b) International arbitration to:

i) The International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, 18 March 1965; or

ii) An ad hoc arbitral tribunal, established in accordance with the Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify those Rules.

For this purpose each Contracting Party herewith declares its consent to the above mentioned international arbitration.

3. If a dispute arises and the parties to the dispute decide to submit it before one of the arbitration bodies, specified in paragraph 2, (b) of this Article, they refrain from their right to apply to the other arbitration.

4. The awards of arbitration shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay any such award recognized in accordance with the laws and regulations of the respective Contracting Party and shall provide for its effective enforcement.

5. Neither Contracting Party shall assert as a defence that indemnification or other compensation for all or part of the alleged damage has been received or will be received pursuant to a guarantee or insurance contract.

Article 9. Settlement of Disputes between the Contracting Parties

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

2. If the Contracting Parties cannot reach an agreement within six months after the beginning of the dispute, the latter shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each case in the following way. Within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall together, within a further two months period, select a third arbitrator who is a national of a third State. The third arbitrator, once approved by the two Contracting Parties, shall be appointed as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of State of either Contracting Party, or is otherwise prevented from discharging this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of State of either Contracting Party or if he also is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of State of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and binding upon each Contracting Party.

6. Each Contracting Party shall bear the costs of its own member of the arbitral tribunal and of its representation in the arbitration proceedings; the costs of the Chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may, however, decide that a higher proportion of costs shall be borne by one of the two Contracting Parties and such award shall be binding on both Contracting Parties.

Article 10. More Favourable Provisions

If the domestic law of the State of either Contracting Party or obligations under international law, existing at present or established hereafter between the Contracting Parties, entitle investments by investors of the other Contracting Party to treatment more favourable than that provided by this Agreement, such more favourable treatment shall prevail.

Article 11. Consultations

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement.

Article 12. Application of the Agreement

1. This Agreement shall apply to the investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose or could have arisen, or any claim which was settled before its entry into force.

2. This Agreement shall also not apply to matters, related to acquisition, use, exploitation or disposition of land. These questions are regulated by the laws and regulations of either Contracting Party.

Article 13. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such a manner as may be agreed in writing between the Contracting Parties. Such amendments shall enter into force on the date of the last notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party that all the respective internal legal procedures for their entry into force have been completed.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date of the last notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party that all the respective internal legal procedures for its entry into force have been completed.

2. This Agreement shall remain in force for a period of fifteen (15) years. It shall continue to be in force thereafter until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other.

3. With respect to investments made prior to the effective date of termination of this Agreement, the provisions of Articles 1 through 12 shall remain in force for a further period of ten (10) years from such date.

Done in duplicate at Sofia on 21 November 2005 in Lithuanian, Bulgarian and English languages, all texts being equally authentic. In case of divergent of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA