Agreement between the Government of the Republic of Belarus and the Government of the Republic of Iraq on the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Belarus and the Government of the Republic of Iraq, hereinafter referred to as the Contracting Parties,

Desiring to deepen economic cooperation for the mutual benefit of both States,

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

Recognizing that the promotion and mutual protection of investments under this Agreement will contribute to the development of business initiatives in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement, the terms listed below shall have the following meanings:

1. Investment – all types of property invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter and including, in particular but not exclusively:

a) movable and immovable property, as well as any rights in rem, such as, in particular but not exclusively, mortgages and pledges;

b) shares, stocks, bonds, or other forms of participation in a legal entity;

c) claims for payment of funds or any performance of obligations under a contract of economic value, including those arising exclusively from:

commercial contracts that are not investments as defined above, the sale of goods and services by investors in the territory of a Contracting Party to natural or legal persons in the territory of the other Contracting Party,

or loans granted in connection with such contracts;

d) intellectual property rights, including copyrights, patents for inventions, trademarks, industrial designs, geographical indications, and technical processes, trade secrets, trade names, know-how, and goodwill, as well as other similar rights recognized by the laws of the Contracting Parties;

e) concessions granted in accordance with the laws of the Contracting Party in whose territory the investment is made, or pursuant to an agreement by a competent authority, including rights to explore, develop, extract, cultivate, or exploit natural resources.

2. Income – amounts received through investments and, in particular but not exclusively, including profits, dividends, interest, royalty payments, capital gains, or any similar payments related to investments.

3. Investor, with respect to each Contracting Party, means any natural or legal person of a Contracting Party making an investment in the territory of the other Contracting Party:

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

b) a legal entity—with respect to either Contracting Party, any legal entity established or incorporated, as well as recognized as such in accordance with the laws of the Contracting Party, and having its head office or conducting its principal business

and economic activities in the territory of that Contracting Party.

4. Territory, with respect to each Contracting Party, means the land, internal waters, and territorial sea of the Contracting Party, as well as the airspace above them, as well as the maritime space beyond the territorial sea, including the seabed and subsoil, over which the State of that Contracting Party, in accordance with applicable national legislation and international law, exercises jurisdiction or sovereign rights for the purpose of exploring and exploiting natural resources in those areas.

5. The laws of each Contracting Party shall be the laws of the State of the relevant Contracting Party.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall facilitate the realization of investments and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall permit such investments in accordance with its laws.

2. Investments by investors of each Contracting Party shall at all times be accorded fair and equitable treatment, as well as full protection and security, in the territory of the other Contracting Party. Each Contracting Party undertakes not to impede, through the adoption of unreasonable or discriminatory measures, the management, maintenance, use, or disposal of investments by investors of the other Contracting Party within its territory.

3. Each Contracting Party undertakes to honor any commitment made with respect to investments of investors of the other Contracting Party.

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

1. Each Contracting Party shall accord, within its territory, to investments of investors of the other Contracting Party, with respect to the management, maintenance, use, ownership, or disposal of such investments, treatment no less favorable than that which it accords, under similar conditions, to investments of its own investors or to investments and returns of investors of any third State, whichever, in the opinion of the investors concerned, is the more favorable.

2. Each Contracting Party undertakes to grant, within its territory, to investors of the other Contracting Party, with respect to the management, maintenance, use, ownership, or disposal of their investments, treatment no less favorable than that which it grants, under similar conditions, to its own investors or to investors of any third State, depending on which, in the opinion of the investors concerned, is the most favorable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be interpreted as obliging one Contracting Party to extend to investors of the other Contracting Party and their investments the benefits of any regime, concessions, or privileges that may be granted by the latter Contracting Party pursuant to:

a) an agreement on free trade, a customs union, a common market, an economic and monetary union, or similar forms of regional economic integration of which a state of the Contracting Party is a member or may become a member in the future;

b) a double taxation agreement or other international agreement relating wholly or mainly to taxation.

Article 4. Expropriation

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to nationalization, expropriation, or, directly or indirectly, to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except in the public interest, on a non-discriminatory basis, in accordance with due process of law, and subject to the provision of timely, adequate, and effective compensation.

2. Non-discriminatory measures adopted and applied in good faith by any Contracting Party in the legitimate interest of the public welfare, such as the protection of public health, safety, and the environment, shall not constitute expropriation.

3. The compensation referred to in paragraph 1 of this Article shall be paid without delay in freely convertible currency, shall be effectively enforceable, and shall be transferable without restrictions. Such compensation shall be the fair market value of the expropriated investment at the time of expropriation or at the time immediately preceding the public announcement of the impending expropriation, whichever occurred earlier, and shall include interest at a commercial rate determined on a market basis, calculated for the period from the date of expropriation to the date of payment, at a rate not lower than LIBOR applicable to the currency in which the investment was made.

4. If one of the Contracting Parties expropriates property or a part thereof from a legal entity established or incorporated in accordance with the applicable laws of the Contracting Party in which investors of the other Contracting Party have made

investments, including equity participation, investors of the other Contracting Party shall be guaranteed the application of the provisions of this Article to the extent necessary to ensure timely, adequate, and effective compensation with respect to their investments.

5. Without prejudice to the provisions of Article 8 of this Agreement, an investor whose investment has been expropriated shall have the right to prompt consideration of his case and valuation of his investment in accordance with the principles set forth in this Article by a judicial or other competent authority of the Contracting Party carrying out the expropriation.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments have suffered losses in the territory of the other Contracting Party as a result of war or other armed conflict, a state of emergency, revolution, insurrection, or rebellion in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, with respect to restitution, indemnification, compensation, or other settlement, treatment no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever, in the opinion of the investor, more favorable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in paragraph 1, suffer losses in the territory of the other Contracting Party as a result of:

a) the requisition of their investment, in whole or in part, by the forces or authorities of the latter; or

b) the destruction of their investment, in whole or in part, by the forces or authorities of the latter, provided that this was not necessitated by the exigencies of the situation, the latter Contracting Party shall provide restitution or compensation, which in any case shall be timely, adequate, and effective, and compensation shall be provided in accordance with paragraphs 2–5 of Article 4 of this Agreement mutatis mutandis.

Article 6. Free Transfer

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after payment of the relevant taxes and fees, the unimpeded transfer of payments related to their investments, in particular, but not exclusively:

a) income, as defined in paragraph 2 of Article 1 of this Agreement;

b) principal and additional contributions necessary to maintain or develop investments;

c) amounts for the repayment of loans related to or arising from investments;

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

e) compensation provided for in Articles 4 and 5 of this Agreement;

f) earnings of individuals hired from abroad in connection with investments in accordance with the laws of the Contracting Party in whose territory the investments were made.

2. Transfers referred to in this Article shall be made without delay in freely convertible currency at the exchange rate in effect on the date of the transfer, in accordance with the applicable provisions of the foreign exchange regulations of the Contracting Party from whose territory the transfer is made.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Contracting Party may delay or prevent a transfer through the good-faith, fair, and non-discriminatory application of its laws relating to:

a) ensuring the integrity and stability of the financial system in accordance with the rights and obligations of the Contracting Parties arising from their membership in the International Monetary Fund (IMF) and under the Articles of Agreement of the International Monetary Fund;

b) bankruptcy, economic insolvency, or the protection of creditors' rights;

c) the issuance, sale, and circulation of securities;

d) criminal offenses, including but not limited to corruption, money laundering, or fraud;

e) social security, state pension programs, and mandatory savings programs;

f) the enforcement of court decisions;

g) financial reporting, where necessary to assist law enforcement or financial oversight authorities.

Article 7. Subrogation

In the event that one of the Contracting Parties or its authorized entity makes a payment under a guarantee or insurance contract in respect of an investment of its investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any right or claim of such investor to the first Contracting Party or its authorized organization and the right of the first Contracting Party or its authorized organization to exercise such rights and claims by virtue of the principle of subrogation to the same extent as the person who transferred the rights.

Article 8. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute directly related to investments between one Contracting Party and an investor of the other Contracting Party shall be settled amicably between the parties to the dispute, including, but not limited to, through negotiation, mediation, good offices, or conciliation.

2. If such a dispute cannot be resolved within six (6) months from the date of the written request for dispute resolution, the investor may refer the dispute, at its option:

a) for resolution to the competent courts of the Contracting Party in whose territory the investment was made, or

b) to the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature on March 18, 1965, in Washington, D.C., provided that both the investor's Contracting Party and the other Contracting Party are parties to said Convention, or

d) for consideration in accordance with the ICSID Additional Rules of Procedure, in the event that either the investor's Contracting Party or the other Contracting Party, but not both, are parties to the ICSID Convention; or

d) to an "ad hoc" arbitral tribunal, established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as may be modified by the parties to the dispute, or

e) to any other ad hoc international arbitral tribunal agreed upon by the parties to the dispute.

3. When an investor submits a dispute for consideration to one of the tribunals specified in subparagraphs (a) through (e) of paragraph 2 of this Article, the decision on the choice of tribunal shall be final.

Subparagraphs (d) and (e) apply only if both Contracting Parties apply the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature on June 10, 1958, in New York (the New York Convention), to arbitral awards relating to investments.

4. Any arbitration under this Article shall be conducted in the territory of a State party to the New York Convention. Arbitration under this Article shall not be conducted in the territories of the Contracting Parties.

5. Each Contracting Party hereby consents to the submission of a dispute with an investor of another Contracting Party to international arbitration in accordance with the provisions of subparagraphs (b) through (d) of paragraph 2 of this Article. Thus, no additional written agreement between a Contracting Party and an investor of the other Contracting Party shall be required hereafter.

6. A Contracting Party that is a party to the dispute shall not, during the arbitration proceedings or the enforcement of the arbitral award, invoke its sovereignty or the fact that an investor of the other Contracting Party has received compensation under an insurance contract covering all or part of the losses incurred.

7. The award shall be final and binding on both parties to the dispute, and each Contracting Party shall recognize it in accordance with its applicable laws.

8. An investor shall not have the right to refer a case to a judicial or arbitral body after the expiration of five (5) years from the date on which the investor became aware or should have become aware of the subject matter of the dispute.

9. For the purposes of this Agreement, an investor who is a national of a Contracting Party, as well as of the host state, shall be deemed a national of the latter state.

10. Neither Contracting Party shall attempt to resolve through diplomatic channels a dispute submitted to international

arbitration, except in cases where the other Contracting Party fails to comply with or enforce a decision rendered by the arbitral tribunal.

11. The provisions of this Article shall not apply to any third State on the basis of the provisions of the most-favored-nation treatment.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation and application of this Agreement shall, whenever possible, be resolved through negotiations, including, but not limited to, negotiations, mediation, good offices, or conciliation.

2. If a dispute cannot be resolved by the aforementioned means within six (6) months from the date of a request by either Contracting Party for such negotiations, the dispute shall, at the request of either Contracting Party, be referred to an arbitral tribunal.

3. An arbitral tribunal shall be established for each specific case as follows. Within two (2) months of receiving a request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall designate a citizen of a third state who, by mutual agreement of the Contracting Parties, shall be appointed as the chairperson of the tribunal. The chairperson shall be appointed within four (4) months of the appointment of the other two members.

4. If the necessary appointments have not been made within the time limits specified in paragraph 3 of this article, and unless the Contracting Parties have agreed otherwise, a request for the necessary appointments may be addressed by any of the Contracting Parties to the President of the International Court of Justice. If the President of the International Court of Justice is a national of a Contracting Party or is unable to perform the aforementioned acts for any other reason, the request for the necessary appointments shall be addressed to the next senior member of the International Court of Justice who is not a national of either Contracting Party and is able to perform the aforementioned acts.

5. The arbitral tribunal shall render its decisions by a majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the expenses of the tribunal member it has appointed and of its representatives at the tribunal's sessions. The expenses of the President, as well as other expenses, shall be shared equally between the Contracting Parties. The tribunal may also decide otherwise regarding expenses. In all other matters, the arbitral tribunal shall determine its own rules of procedure.

Article 10. Application of other Rules

If the provisions of the laws of one of the Contracting Parties or obligations under international law, existing at present or established between the Contracting Parties subsequently in addition to this Agreement, contain general or special rules under which investors of the other Contracting Party or their investments enjoy a more favorable treatment than that provided for in this Agreement, such rules shall prevail over this Agreement to the extent that they are more favorable to the investor.

The provisions of an investment agreement signed between an investor and the host State shall apply if they provide greater guarantees to the investor than those established by this Agreement, provided that such guarantees do not conflict with the national legislation of the host State.

Article 11. General Exceptions

Nothing in this Agreement shall be construed to prevent the Contracting Parties from taking any measures necessary to protect their essential security interests during a war, armed conflict, or other emergency in international relations, in particular:

necessary measures to prevent the commission of crimes;

necessary measures to prevent trade in arms and ammunition, transactions involving military equipment, and technical services for the purpose of direct or indirect supply to military or paramilitary organizations, or security organizations;

activities related to the implementation of national policies or the fulfillment of international treaties in the field of countering the proliferation of nuclear weapons, nuclear or non-nuclear explosive devices;

the fulfillment of their obligations under the UN Charter regarding the maintenance of international peace and security;

measures taken by one of the Contracting Parties to combat environmental pollution.

Nothing in this Agreement shall be construed as preventing the Contracting Parties from taking any measures necessary to maintain public order, provided that such measures do not constitute arbitrary or unjustifiable discrimination or a disguised restriction on investment.

Article 12. Application of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its laws, both before and after the entry into force of this Agreement, but shall not apply to any investment dispute arising prior to the entry into force of this Agreement, or to any claims settled prior to the entry into force of this Agreement.

Article 13. Consultations

If necessary, representatives of the Contracting Parties shall hold consultations on any matter affecting the implementation of this Agreement. Such consultations shall be held at the request of either Contracting Party at a place and time agreed upon through diplomatic channels.

Article 14. Entry Into Force, Duration, and Termination

1. The Contracting Parties shall notify each other in writing of the completion of the internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth (30th) day following the date of receipt of the last of such notifications.

2. This Agreement shall remain in force for a period of ten (10) years and shall be automatically renewed for successive five-year periods until one of the Contracting Parties notifies the other Contracting Party in writing, no later than twelve (12) months prior to the expiration of the relevant term of the Agreement of its intention to terminate this Agreement.

3. This Agreement may be amended by written agreement of the Contracting Parties. The same procedure required for the entry into force of this Agreement shall apply to the entry into force of any such amendments.

4. With respect to investments made prior to the termination of this Agreement, the provisions of Articles 1–13 of this Agreement shall remain in force for a period of five (5) years from the date of termination of this Agreement.

In witness whereof, the representatives, duly authorized thereto, have signed this Agreement.

Done in duplicate at Baghdad on August 23, 2014, in the Russian, Arabic, and English languages, all texts being equally authentic. In the event of any discrepancy in the interpretation of the provisions of this Agreement, the English text shall prevail.

For the Government of the Republic of Belarus

Vladimir Makei

Minister of Foreign Affairs

For the Government of the Republic of Iraq

Dr. Sami Rauf Al-Aragi

Chairman of the National Investment Commission