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

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

Desiring to develop the economic cooperation between the two States,

Preoccupied to encouraging and creating favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Recognizing that the mutual promotion and protection of investments, in accordance with the present Agreement, stimulates the initiatives in this field,

Have agreed as follows:

Article 1.

For the purpose of this Agreement:

1. The term "investments" shall mean every kind of asset and in particular:

(a) Movable and immovable property and any other real rights such as mortgages, liens or pledges;

(b) Shares, stocks or other securities materializing participation in companies;

(c) Outstanding claims to money and any other rights having economic value;

(d) Rights in the field of intellectual property, such as copyrights, patents, licences, industrial designs, trademarks and trade names, technical processes, know-how and goodwill;

(e) Business concessions, conferred by law, or under a contract or an administrative act of a competent state authority and in particular for exploration, processing, extraction or exploitation of natural resources.

The investments should be made in accordance with the laws and regulations in the territory of the respective Contracting Party. No subsequent change of the form in which the investments have been made shall affect their substance as investments, provided that such a change does not contradict the laws of the relevant Contracting Party; 2. The term "returns" shall mean all amounts, yielded by investments such as profits, dividends, interest and other lawful income.

3. The term "investor" shall mean, with respect to either Contracting Parties:

(a) Natural persons having the citizenship of the Republic of Bulgaria or Romania in accordance with their respective national legislation;

(b) Any company, firm, partnership, organization or association with or without juridical personality incorporated or constituted in accordance with the law of the Republic of Bulgaria or of Romania with a seat in their respective territory.

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

Article 2.

1. Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations, and accord them fair and equitable treatment and protection.

2. In case of reinvestment of returns from an investment, these reinvestments and their returns shall enjoy the same protection as the initial investments.

3. Each Contracting Party shall consider favourably and in compliance with its laws and regulations, questions concerning entry, stay, work and movement in its territory of investors of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of the members of their families forming part of their household.

Article 3.

1. Investments, made by investors of one Contracting Party in the territory of the other Contracting Party, shall be accorded treatment no less favourable, than that, accorded to investments, made by investors of any third State.

2. The provisions of paragraph 1 of this Article shall not apply to any advantage, accorded to investors of a third State by the other Contracting Party based on:

(a) Existing or future customs unions, free trade areas, economic communities or similar international institutions or,

(b) Agreements, relating to taxation.

3. If the provisions of law of either Contracting Party or obligations under international treaties, existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such regulation shall, to the extend that it is more favorable, prevail over the present Agreement.

Article 4.

Investors of a Contracting Party, whose investments suffer losses In the territory of the other Contracting Party owing to war, other armed conflict, state of emergency or other similar events, shall be accorded treatment no less favourable than that accorded to investors of any third State, as regards any measures adopted by the latter Contracting Party in relation to such losses. Eventual payments shall be freely transferable.

Article 5.

1. Investments of investors of either Contracting Party shall not be subject to expropriation, nationalization or to any other measures the effect of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except in the public interest, under due process of law, on a non-discriminatory basis and against prompt compensation.

2. The compensation shall amount to the value of the investment concerned immediately before the date of expropriation, shall be paid without delay and shall carry an annual rate of interest equal to 12 months LIBOR quoted for the currency in which the investment has been made until the time of payment. The payment of such compensation shall be effectively realizable and freely transferable.

Article 6.

1. Each Contracting Party shall accord to the investors of the other Contracting Party, after fulfilment of all tax obligations, the free transfer of:

(a) Capital and additional amounts intended to maintain or increase the investment;

(b) Returns from the investment;

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

(d) The amounts required for payment of the expenses, which arise from the operation of the investment, such as: loan repayments, payment of patents or licence fees, payment of other expenses;

(e) Compensation payable in accordance with Article 5;

(f) The remuneration received by natural persons having the citizenship of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its law and regulations.

2. The transfers referred to in the preceding Paragraph shall be made without delay, at the market exchange rate applicable on the date of the transfer in the territory of the Contracting Party where the investment has been made.

3. In accordance with the legal regulations of either Contracting Party all transfers subject to this Article shall be accorded treatment no less favourable than that accorded to the transfers of investments made by an investor of any third State.

Article 7.

A Contracting Party having, by virtue of a guarantee for non commercial risks given for an investment made in the territory of the other Contracting Party, made payment to one of its own investors is, by virtue of subrogation, entitled to exercise the rights and claims as well as to assume the obligations of the said investor. The subrogation in the rights and obligations of the ensured investor shall further extend to the right of transfer, mentioned in the above Article 5. The paying Contracting Party shall not acquire any rights or obligations in excess of those of the ensured investor.

Article 8.

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

2. Should the Contracting Parties fail to reach such a settlement within six months after entering into negotiations, the dispute shall, upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members. 4. If within the periods specified in Paragraph 3 of this Article the necessary appointments have not been made, 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 either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments,

5. The arbitral tribunal shall reach its decision on the basis of the provisions of the present Agreement as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

6. Each Contracting Party shall bear the cost of its own member of the tribunal and of its participation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 9.

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the dispute may be referred to the competent courts of the Contracting Party where the investment has been made.

3. The investor may, instead the procedure provided for in paragraph 2 of this Article herein choose to submit the dispute with regard to Articles 4 and 6 to an ad hoc arbitration established under the Arbitration Rules of UNCITRAL or to the International Center for Settlement of Investment Disputes (ICSID) in case both Contracting Parties are Parties to the Convention on Settlement of Investment Disputes between States and Nationals of Other States, done in Washington, March 18, 1965.

Article 10.

Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning all questions related to the application or interpretation of the present Agreement. The other Contracting Party shall make the necessary steps for holding these consultations.

Article 11.

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not apply to disputes referring to investments made prior to its entry into force.

Article 12.

1. This Agreement shall be ratified and shall enter into force on the day of exchange of instruments of ratification.

2. The present Agreement shall be in force for a period of fifteen years. Its validity shall be extended automatically for every following period of five years unless either Contracting Party notifies in writing at least 6 months prior to its expiry the other Contracting Party of its decision to terminate the Agreement.

3. With respect to investments made prior to the date when the notice of denunciation of this Agreement is received by the other Contracting Party, the provisions of Articles 1 to 11 shall remain in force for a further period of fifteen years from that date.

Done at Bucarest on the day of June 1, 1994 in two originals in the Bulgarian, Romanian and English languages, all texts being equally authentic. In case of divergencies, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

FOR THE GOVERNMENT OF ROMANIA