# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC ON THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Republic of Belarus and the Government of the Lao People's Democratic Republic, hereinafter referred to as the Contracting Parties,

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

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

Recognizing that the promotion and reciprocal protection of investments on the basis of 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. Investments — 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, 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 liens;

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

(c) claims for payment of money or any performance of obligations under a contract having economic value;

(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, or exploit natural resources.

2. Income — amounts derived from investments and, in particular but not exclusively, including profits, dividends, interest, royalty payments, capital gains, or any payments in kind related to investments.

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

(a) a natural person means any natural person who is a national of one of the Contracting Parties in accordance with its laws;

(b) a legal entity — any legal entity established or incorporated, as well as recognized as such under the laws of a 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 areas beyond the territorial sea, including the seabed and subsoil, over which the State of that Contracting Party, in accordance with its laws 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 respective Contracting Party.

## Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote 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 comply with any obligation assumed with respect to investments by 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 their investments, treatment no less favorable than that which it accords, under similar circumstances, to investments of its own investors or to investments and returns of investors of any third country, 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 accords, under similar circumstances, to its own investors or to investors of any third country, whichever, in the opinion of the investors concerned, is the more favorable.

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

(a) a free trade agreement, customs union, common market, economic and monetary union, or similar form of regional economic integration of which a state of a 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 made by investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to nationalization, expropriation, either directly or indirectly through any other measures whose effect is, directly or indirectly, 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. Determining whether a measure or a set of such measures taken by any of the Contracting Parties is equivalent to expropriation requires a detailed examination of the facts in each specific case, taking into account, in particular, the following criteria:

(a) the economic impact of the measure or series of measures, bearing in mind that a decrease in the value of the investment resulting from the application of the measure or series of measures does not, in and of itself, prove the fact of expropriation;

(b) whether the measure or set of measures taken by any of the Contracting Parties constitutes a breach of the Contracting Party’s previously assumed written obligations toward the investor under a contract, license, or other legal document;

(c) the nature of the measure or set of measures being implemented, including the objectives for which they are being implemented, as well as the extent to which they are proportionate to the public interest.

3. Non-discriminatory measures that are formulated and applied by either Contracting Party in good faith in the legitimate

interest of the public welfare, such as the protection of public health, safety, and the environment, do not constitute expropriation.

4. 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 equal to 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 commercially determined market rate 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.

5. 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 that Contracting Party, in which investors of the other Contracting Party have made investments, including equity participation, the 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.

6. Without prejudice to the provisions of Article 8 of this Agreement, an investor whose investment has been expropriated shall be entitled to a prompt review of his case and an assessment of his investment in accordance with the principles set forth in this Article by a court 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 any other armed conflict, a state of emergency, a revolution, an insurrection, or a rebellion in the territory of the other Contracting Party shall, by the latter Contracting Party, with respect to restitution, indemnification, compensation, or other settlement, shall be accorded 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, is 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 this paragraph, suffer losses in the territory of the other Contracting Party as a result of:

(a) the expropriation of their investments, in whole or in part, by the forces or authorities of the latter; or

(b) the destruction of their investments, in whole or in part, by the forces or authorities of the latter, provided that this was not caused by a state of necessity,

the latter Contracting Party shall provide restitution or compensation, which in any case shall be timely, adequate, and effective, and such compensation shall be provided in accordance with paragraphs 4–6 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 Article 1, paragraph 2, of this Agreement:

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

(c) amounts for the repayment of loans;

(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. The 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 legislation 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;

(e) social security, public pension programs, and mandatory savings programs;

(f) the enforcement of court decisions; and

(g) financial reporting, when necessary to assist law enforcement or financial regulatory authorities

## Article 7. Subrogation

If one of the Contracting Parties or its authorized entity makes a payment under a guarantee or insurance contract with respect to an investment by 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 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 a Contracting Party and an investor of the other Contracting Party shall be settled amicably between the parties to the dispute.

2. If such a dispute cannot be resolved within three (3) months from the date of the written request for settlement, the investor may, at its option, refer the dispute:

(a) to the competent courts of the Contracting Party in whose territory the investment was made; or

(b) to arbitration before 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 that Convention; or

(c) for adjudication in accordance with the ICSID Additional Facility Rules, provided that either the investor's Contracting Party or the other Contracting Party, but not both, is a party to the ICSID Convention; or

(d) an ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

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

3. If an investor refers a dispute 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.

4. Any arbitration proceedings under this Article shall be conducted in the territory of a State Party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature on June 10, 1958, in New York. Arbitration proceedings under this Article shall not be conducted in the territories of the Contracting Parties. Claims referred to an arbitral tribunal pursuant to subparagraphs (d) and (e) of paragraph 2 of this Article shall, for the purposes of Article 1 of the New York Convention, be deemed to arise out of commercial activities or transactions.

5. Each Contracting Party consents to the submission of a dispute with an investor of the other Contracting Party to an international arbitral tribunal 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 will be required in the future.

6. A Contracting Party that is a party to the dispute shall not, during the course of 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 as a defense.

7. The arbitral award shall be final and binding on both parties to the dispute. 8. Neither Contracting Party shall attempt to resolve through diplomatic channels a dispute that has been submitted to international arbitration, except in cases where the other Contracting Party fails to comply with the award rendered by the arbitral tribunal.

## Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, whenever possible, be resolved through negotiations.

2. If a dispute cannot be resolved by the aforementioned means within six (6) months from the date any Contracting Party requests such negotiations, the dispute shall, at the request of any 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 national of a third State who, by mutual agreement of the Contracting Parties, shall be appointed as the chairperson of the tribunal. The chairperson must 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 either Contracting Party 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 any of the Contracting Parties and who is able to perform the aforementioned acts.

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

## Article 10. Application of other Rules

1. If the laws of one of the Contracting Parties or obligations under international law, whether currently in force or subsequently established between the Contracting Parties in addition to this Agreement, contain general or specific rules under which investors of the other Contracting Party or their investments enjoy treatment more favorable 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.

## Article 11. General Exceptions

1. 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.

2. Nothing in this Agreement shall be construed to prevent the Contracting Parties from taking any measures necessary to maintain public order, provided that such measures do not constitute a means of 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 one of the Contracting Parties at a place and on dates 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 receipt of the last of such notifications.

2. This Agreement shall remain in force for ten (10) years and shall be automatically renewed for subsequent ten-year periods until one of the Contracting Parties notifies the other Contracting Party in writing at least twelve (12) months prior to the expiration of the relevant term of its intention to terminate this Agreement.

3. This Agreement may be amended or supplemented 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 or supplements.

4. With respect to investments made prior to the termination of this Agreement, the provisions of Articles 1 through 13 of this Agreement shall remain in force for ten (10) 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 Minsk on July 1, 2013 in Russian and English languages, all texts being equally authentic. In case of divergence of interpretation of this Agreement will be given to the English text.

For the Government of the Republic of Belarus

For the Government of the Lao People’s Democratic Republic