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

The Government of the Republic of Belarus and the Government of Turkmenistan, hereinafter referred to as the 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 Party in the territory of the other Party, and

Recognizing that the promotion and mutual protection of investments under this Agreement will contribute to the development of business initiative 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 Party in the territory of the other Party in accordance with the laws of the latter, including, in particular but not exclusively:

(a) movable and immovable property, as well as any real rights, 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 monetary funds or any performance of obligations under a contract having economic value;

(d) intellectual property rights in accordance with the laws and international obligations of the States of the Parties;

(e) concessions or any rights granted in accordance with the laws, a contract, or any licenses or permits issued in accordance with the laws of a State Party in whose territory the investment is made, including rights to explore for, extract, and utilize natural resources.

2. Income — amounts derived from 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 Party, means any natural or legal person of a Party's state that makes an investment in the territory of the other Party's state:

(a) a natural person means any natural person who is a citizen of a Party's state in accordance with its laws;

(b) a legal entity — with respect to either Party, any legal entity established or incorporated, and recognized as such under the laws of that Party, that has its principal office or conducts its principal business and economic activities in the territory of that Party.

4. Territory, with respect to each Party, means the land, the internal waters and territorial sea of the State of that Party and 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 Party exercises jurisdiction or sovereign rights in accordance with national legislation and international law.

5. The laws of each Party mean the laws of the State of the respective Party.

Article 2. Promotion and Protection of Investments

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

2. Investments by investors of each Party shall at all times be accorded fair and equitable treatment, as well as full protection and security, in the territory of the other Party. Each 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 Party within its territory.

3. Each Party undertakes to comply with any obligation assumed with respect to investments by investors of the other Party.

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

1. Each Party shall accord, within its territory, to investments of investors of the other 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 by 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 Party undertakes to grant, within its territory, to investors of the other Party, with respect to the management, maintenance, use, ownership, or disposal of their investments, treatment no less favorable than that which it accords, under comparable circumstances, to its own investors or to investors of any third State, whichever, in the opinion of the investors, is more favorable.

3. Without prejudice to the provisions of Articles 4–7 of this Agreement, each Party reserves the right to apply and introduce, on a non-discriminatory basis and in accordance with its domestic law, exceptions to the national treatment provided for in paragraphs 1 and 2 of this Article.

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

5. The provisions of paragraphs 1 and 2 of this Article regarding the granting of most-favored-nation treatment shall not apply to the settlement of disputes between an investor of one Party and the other Party, which shall be settled in accordance with Article 8 of this Agreement.

Article 4. Expropriation

1. Investments made by investors of one Party in the territory of the other Party shall not be subject to nationalization, expropriation, either directly or indirectly through any other measures having an effect equivalent, directly or indirectly, 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 that are formulated and applied by either 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.

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 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.

4. If one of the Parties expropriates property or a part thereof from a legal entity established or incorporated in accordance with the applicable laws of the Party in which investors of the other Party have made investments, including equity participation, investors of the other 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 be entitled to a prompt review of his or her case and an assessment of his or her investment in accordance with the principles set forth in this Article by a court or other competent authority of the State of the Party carrying out the expropriation.

Article 5. Compensation for Losses

1. Investors of one Party whose investments have suffered losses in the territory of the other 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 Party, shall be accorded by the latter Party, with respect to restitution, indemnification, compensation, or other settlement, treatment no less favorable than that which the latter 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 of the Parties who, in any of the situations mentioned in this paragraph, suffer losses in the territory of the other Party as a result of:

(a) the requisition 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 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 2–5 of Article 4 of this Agreement mutatis mutandis.

Article 6. Free Transfer

1. Each Party shall guarantee to investors of the other Party, after payment of the applicable taxes and fees, the unimpeded transfer of payments related to their investments, including, but not limited to:

(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 related to or pertaining to investments;

(d) proceeds from the full 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 the investment, in accordance with the laws of the Party in whose territory the investment was made;

(g) transfers of payments made as a result of the settlement of disputes in accordance with the procedures provided for in Article 8 of this Agreement.

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 Party from whose territory the transfer is made.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a 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 States 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 protection, public 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

If one of the Parties or its authorized organization makes a payment under a guarantee or insurance contract with respect to an investment by its investor in the territory of the other Party, the latter Party shall recognize the transfer of any right or claim of such investor to the first Party or its authorized organization and the right of the first 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 Party and an Investor of the other Party

1. Any dispute directly related to investments between a Party and an investor of the other 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 on which a Party receives written notice from the investor of the existence of an investment dispute, that investor may submit the dispute for resolution through the domestic judicial procedures available to the investor in the Party in whose territory the investment was made.

3. If the dispute has not been heard and/or settled pursuant to the provisions of this Agreement through the relevant domestic judicial proceedings within eighteen (18) months from the date of filing with the competent courts of the State of the Party, in whose territory the investment was made, the investor may, at its option, refer the dispute:

(a) to arbitration at 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 Party and the other Party are parties to that Convention; or

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

(c) 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 and supplemented by the parties to the dispute; or

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

4. Upon referral of the dispute by the investor to one of the tribunals specified in subparagraphs (a) – (d) of paragraph 3 of this Article, the investor shall take all measures available under the laws of the host Party to terminate the consideration of the dispute through domestic judicial proceedings available to the investor in the Party in whose territory the investment was made.

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

6. An award rendered by the arbitral tribunal in accordance with paragraph 3 of this Article shall be final and binding on both parties to the dispute.

Arbitral awards rendered pursuant to 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., shall be enforced by the Parties in accordance with the procedures provided for in said Convention.

Awards rendered in accordance with the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other arbitration rules shall be enforced by each Party in accordance with the laws of that Party's state.

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

Article 9. Disputes between the Parties

1. Disputes between the Parties concerning 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 any Party requests such negotiations, the dispute shall, at the request of either Party, be referred to an arbitral tribunal.

3. An arbitral tribunal shall be established on a case-by-case basis as follows. Within two (2) months of receiving the request for arbitration, each 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 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 Parties have agreed otherwise, a request for the necessary appointments may be addressed by either Party to the President of the International Court of Justice. If the President of the International Court of Justice is a national of a State 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 most senior member of the International Court of Justice who is not a national of either Party and who is able to perform the aforementioned actions.

5. The arbitral tribunal shall render its decisions by a majority vote. The tribunal's decisions shall be final and binding on both Parties. Each 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 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

If the provisions of the laws of one of the Parties or obligations under international law, whether currently in force or subsequently established between the Parties in addition to this Agreement, contain general or specific rules under which investors of the other 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 Party shall apply if they provide the investor, in the investor's opinion, with more favorable terms than those established by this Agreement, provided that such terms do not conflict with the national legislation of the host Party.

Article 11. General Exceptions

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

(a) necessary measures to prevent the commission of crimes;

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

(c) 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;

(d) the fulfillment of its obligations under the UN Charter to maintain international peace and security;

(e) measures taken by either Party to combat environmental pollution. Nothing in this Agreement shall be construed to prevent the 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. Transparency

1. A Party shall, in a timely manner, publish or otherwise make publicly available its domestic legislation, as well as the procedures applied within its territory and decisions of general application that may affect investments by investors of the other Party.

2. Nothing in this Agreement shall be construed as obligating any Party to publish or otherwise make publicly available commercial information that is protected under the laws of that Party's State.

Article 13. Application of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of either Party in the territory of the other 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 14. Consultations

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

Article 15. Entry Into Force, Duration, and Termination

1. This Agreement shall enter into force on the thirtieth (30th) day following the date of receipt of the last written notification that the Parties have completed the internal procedures necessary for the entry into force of this Agreement.

2. This Agreement shall remain in force for ten (10) years and shall be automatically renewed for successive five-year periods until one of the Parties notifies the other 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 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 additions.

4. With respect to investments made prior to the termination of this Agreement, the provisions of Articles 1–13 shall remain in force for five (5) years from the date of termination of this Agreement. In witness whereof, the representatives, duly authorized thereto, have signed this Agreement.

Done at Ashgabat on December 10, 2015, in two copies, each in the Russian and Turkmen languages, both texts being equally authentic.

In the event of any discrepancy in the interpretation of the provisions of this Agreement, the Russian-language text shall prevail.

For the Government of the Republic of Belarus

For the Government of Turkmenistan