AGREEMENT BETWEEN THE REPUBLIC OF ANGOLA AND THE REPUBLIC OF CUBA ON THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Republic of Angola and the Republic of Cuba, hereinafter referred to as “the Parties”;

Desiring to create conditions conducive to strengthening cooperation between both Parties and, in particular, to the realization of investments by investors of each Party in the territory of the other Party;

Recognizing that the encouragement and reciprocal protection of such investments, under international law and the domestic law of each of the Parties, will lead to the promotion and stimulation of business initiatives and increase prosperity in the territories of their respective States;

Aware that the promotion of investments between the Parties will allow for the strengthening of cooperation between both countries;

Have agreed as follows:

Chapter I. General Provisions

Article 1. (Purpose)

This Agreement sets forth the rules and principles to which the Parties are bound for the reciprocal promotion and protection of investments that investors of each Party make in the territory of the other Party.

Article 2. (Scope of Application)

1. This Agreement applies to investments that investors of one Party make in the territory of the other Party in accordance with their respective laws and regulations, made after its entry into force.

2. Investments made or authorized prior to the entry into force of this Agreement shall be governed by the provisions of the applicable laws and the terms of the specific contracts under which authorization was granted.

Article 3. (Definitions)

For the purposes of this Agreement:

1. “Investor” means any natural or legal person of one Party who invests in the territory of the other Party, in accordance with the laws and regulations of the latter Party, provided that:

a) “Natural person”

i. With respect to the Republic of Angola: means any natural person who is an Angolan national under the applicable laws in force;

ii. With respect to the Republic of Cuba: means a natural person who is a Cuban citizen in accordance with its laws and resides permanently in the national territory.

b) “Legal Entity” means any entity possessing legal personality established or organized under the laws of a Party, whether for-profit or not-for-profit, whether privately or state-owned, whether owned or under the effective control of investors of that Party and that carries out substantive business activities in the territory of said Party, including associations, foundations, corporations, and business entities.

2. “Investment” means all assets invested by investors of one Party in the territory of the other Party in accordance with the laws and regulations of the Party in whose territory such investment was made, including, in particular, but not limited to:

a) Ownership of movable and immovable property, as well as other real rights such as mortgages, pledges, usufruct, and similar rights;

b) Securities, shares, quotas, or equity interests, or other forms of participation in companies and/or economic interests arising from their activities;

c) Credit claims or any other right having economic value;

d) Intellectual property rights, including copyrights, reproduction rights, patents, trademarks, trade names, industrial designs, technical processes,

d) Intellectual property rights, including copyrights, reproduction rights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets, know-how, and clientele;

e) Concessions of economic value, granted by law, by contract, or by an administrative act of a competent public authority, including concessions for the prospecting, cultivation, extraction, or exploitation of natural resources;

f) Assets that, within the scope of and in accordance with applicable law and the respective lease agreements, are made available to a lessor in the territory of the other Party.

3. In the case of the Republic of Cuba, the expression “in accordance with the laws and regulations of the Party in whose territory such investment was made” shall be interpreted as any type of invested, which, in order to be considered an investment protected by this Agreement, must comply with any of the forms of foreign investment thus defined by specific domestic legislation, approved by the competent body or authority of the Government of the Republic of Cuba and registered as such in the corresponding registry for the various forms of foreign investment.

The term “investment” shall also apply to “profits” retained for the purpose of reinvestment.

Any change in the form of the investment shall not affect its qualification as an investment, provided that such change is made in accordance with the laws and regulations of the territory of the Party in which the investments are made.

3. “Income” means all amounts generated by an investment, including, in particular, though not exclusively, profits, dividends, royalties, related interest and fees, and gains arising from “liquidation.”

4. “Liquidation” means any disposal that has been carried out for the purpose of partially relinquishing or terminating an investment.

5. “Territory”

i. With respect to the Republic of Angola: means the area over which the Angolan State exercises sovereignty, sovereign rights, and jurisdiction, in accordance with international law and its domestic law, including the land territory, inland waters, territorial sea, and the airspace above them, as well as the maritime areas adjacent to the territorial sea, including the seabed, the continental shelf, and the corresponding subsoil.

ii. With respect to the Republic of Cuba: refers to the territory comprising the island of Cuba, the Isle of Youth, and other islands and islets, the internal waters, the territorial sea, and its airspace; as well as the maritime areas outside the territorial sea, including the continental shelf, over which the Republic of Cuba exercises, by virtue of its domestic legislation and in accordance with international law, sovereignty, sovereign rights, and jurisdiction for the purpose of exploiting natural, biological, and mineral resources.

6. “Freely convertible currency” means the currency used for payments in international transactions and which can be exchanged on the main international foreign exchange markets.

Chapter II. Provisions on the Promotion and Protection of Investments

Article 4. (Promotion and Admission of Investments)

1. Each Party shall encourage and create favorable conditions so that investors of the other Party may make investments in its territory, and shall permit such investments in accordance with its laws and regulations.

2. Each Party shall give favorable consideration, in accordance with its laws and regulations, to matters concerning the entry into and stay in its territory of nationals of the other Party working in connection with the investment, as well as of their families.

3. It is incumbent upon each Party to determine, in accordance with its domestic legislation, the reserved economic sectors where the activities of investors shall be excluded or restricted.

4. The determination referred to in the preceding paragraph, insofar as it applies to investments already made, shall be made without prejudice to the mechanism provided for in Article 7.

Article 5. (Treatment of Investments)

1. Investments made by investors of each of the Parties shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. Neither Party shall subject the management, maintenance, use, enjoyment, or disposal of investments made in its territory by investors of the other Party to arbitrary or discriminatory measures.

2. Each Party shall, within its territory, accord to investments and returns of investors of the other Party treatment no less favorable than that accorded, under similar conditions, to investments and returns of its own investors or of investors of third States.

3. Each Party shall, within its territory, accord to investors of the other Party, with respect to the management, maintenance, use, enjoyment, or disposal of their investments, treatment no less favorable than that accorded, under similar conditions, to its own investors or investors of third States.

Article 6. (Compensation for Losses)

1. Investors of one Party whose investments suffer, within the territory of the other Party, losses due to war or other armed conflict, a state of national emergency, revolt, insurrection, or other situations deemed similar under international law, shall be granted by that Party restitution, indemnification, compensation, or other forms of redress on terms no less favorable than those granted by that Party to its own investors or investors from third States.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from the requisition or destruction of their investments by the authorities of the latter, which have not been caused in combat operations or have not been required by the exigencies of the situation, shall be granted by that Party restitution, indemnification, compensation, or other forms of redress on terms no less favorable than those that that Party grants to its own investors or to investors of third States.

Article 7. (Expropriation)

1. Investments of investors of a Party shall not be nationalized, expropriated, or otherwise subjected to any other measure having an effect similar to nationalization or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Party, except for purposes of public interest and against prompt, adequate, and effective compensation. Expropriation shall be carried out on a non- discriminatory basis and in accordance with legal procedures. It is understood that such measures having an equivalent effect are those derived from the provisions set forth in paragraphs 3 and 4 of Article 4 of this Agreement.

2. Investors of a Party whose investments have been expropriated shall be entitled, in the event of a dispute, to a prompt review of their case and that the value of their investments be reassessed in judicial or other proceedings conducted by a judicial authority or other entity independent of the other Party, in accordance with the principles set forth in this Article and under the laws and regulations of the territory in which theinvestments were expropriated.

3. Compensation shall be the fair market value of the expropriated investments as of the date immediately prior to the expropriation or the date on which it becomes public knowledge, whichever is earlier, and regardless of the previous value of the investment. The valuation criteria shall encompass the value of the assets, including the declared tax value of the ownership of tangible property, as well as other criteria that are appropriate for determining fair market value.
The compensation shall include default interest at the commercial rate in effect in the territory of the Party making the payment, applicable from the date of expropriation until the date of payment, and shall be effectively realizable. Both with respect to the expropriation and its corresponding compensation, treatment shall be no less favorable than that accorded by the Party to its own investors or to investors of any other State.

4. If a Party expropriates the assets of a company incorporated or established in accordance with its laws and regulations in which investors of the other Party hold assets, obligations, or other forms of participation that are considered investments in accordance with the provisions of this Agreement, the provisions of this Article shall apply with respect to such assets, obligations, or other forms of interest, the provisions of this Article shall apply.

Article 8. (Transfers)

1. Each Party shall guarantee to investors of the other Party the free transfer, into and out of its territory, of funds related to investments that are protected by this Agreement. Such transfers shall be made in accordance with the laws of the Party receiving the investment, after fulfillment of tax obligations and without undue delay, and shall include:

a) Profits, capital gains, dividends, interest, fees, and any other benefits resulting from the investments;

b) Proceeds from the sale or total or partial liquidation of the investments;

c) Funds from the repayment of loans related to the investments;

d) Income of nationals of the other Party authorized to work in connection with investments made in its territory;

e) Initial capital and additional funds necessary for the maintenance or development of existing investments;

f) Amounts spent on the management of investments, in the territory of the other Party or a third State;

g) Any preliminary payments that may have been made on behalf of investors, in accordance with Article 10;

h) Compensation or other payments arising from the provisions of Articles 6 and 7 of this Agreement.

2. For the purposes of paragraph 1 of this Article, transfers shall be deemed to have been made without undue delay if they are carried out within the period normally required to complete the transfer.

3. All transfers under this Agreement shall be made in a freely convertible currency, at the market exchange rate prevailing on the date of the transfer in the territory of the Party where the investment is made.

4. Notwithstanding the provisions of paragraphs 1, 2, and 3 of this Article, either Party may prevent a transfer, for the duration of the situation, through the equitable, non-discriminatory, and good-faith application of its laws and regulations, in the event of:

a) Bankruptcy, insolvency, or other legal proceedings to protect the rights of creditors;

b) The issuance, trading, and transactions of securities and default on insurance payments;

c) Criminal or administrative violations;

d) Ensuring compliance with decisions resulting from administrative proceedings.

5. If there are serious balance of payments difficulties or a threat thereto, provided that the affected Party implements measures or a program in accordance with recognized international standards, transfers may be restricted for a period not exceeding six (6) months and subject to the equitable, non-discriminatory, and good-faith application of its laws.

Article 9. (Exceptions)

The provisions of this Chapter shall not be interpreted in such a way as to oblige either Party to extend to investors of the other Party and to the investments of such investors the benefits of any treatment, preference, or privileges resulting from:

a) Any participation in a free trade area, customs union, monetary union, or any similar international agreement leading to the formation of such unions or institutions, or any other regional integration organization to which either Party is or may become a party;

b) Any right or obligation arising from any international agreement or arrangement, in whole or in part relating to tax matters, or from any domestic law or regulation, in whole or in part relating to tax matters.

Article 10. (Subrogation)

1. In the event that one of the Parties or an agency designated by it makes payments to one of its investors by virtue of a

guarantee provided for an investment made in the territory of the other Party, it shall thereby be subrogated to the rights and remedies of such investor and may exercise them under the same terms and conditions as the original holder.

2. Where the payments made by the subrogated entity were caused by any loss or damage suffered by the original investor attributable to the Party receiving its investment, the investor, unless expressly authorized by the subrogated entity, may not assert such rights against said Party.

3. In the event of a dispute, the Party that has been subrogated to the investor's rights may only submit the case to international arbitration in accordance with the provisions of Section 2 of Chapter III of this Agreement.

Chapter III. Dispute Settlement

Section One. Settlement of Disputes between the Parties

Article 11. (Settlement of Disputes between the Parties)

1. This section shall apply to the settlement of disputes between the Parties arising from the interpretation or application of the provisions of this Agreement.

2. A Party's failure to comply with an obligation under Chapter shall be resolved exclusively in accordance with the provisions of the second section of this chapter.

3. Disputes arising between the Parties regarding the interpretation or application of this Agreement shall, to the extent possible, be resolved through diplomatic negotiations.

4. If the dispute cannot be resolved within six (6) months after the start of negotiations, it shall be submitted, at the request of either Party, to an ad hoc Arbitral Tribunal, in accordance with the provisions of this Article.

5. A request by either Party to refer the dispute to an ad hoc Arbitral Tribunal shall be made in writing, through diplomatic channels, and shall contain the following:

a) a summary statement setting forth the grounds and reasons for the claim;

b) a summary of the progress and results of the negotiations conducted in accordance with paragraph 3 above, and

c) the requesting Party's intention to initiate proceedings under this section of the Agreement.

6. The Arbitral Tribunal shall consist of three arbitrators, appointed as follows:

a) Within two (2) months of receipt of the written notification via diplomatic channels requesting arbitration, each Party shall appoint one arbitrator;

b) The two arbitrators thus appointed shall jointly designate, within three (3) months, a national of a third State, with which both Parties maintain diplomatic relations, who shall be appointed President of the Arbitral Tribunal by both Parties.

7. If, within the periods specified in paragraph 6 of this Article, the necessary appointments have not been made, either Party may request the President of the International Court of Justice to make those appointments. If the President of the International Court of Justice is a national of one of the Parties or is otherwise unable to perform such a function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is also a national of either Party or is unable to perform such a function, the member of the International Court of Justice who follows next in seniority and who is not a national of either of the two Parties shall be invited to make the appointments.

8. Once convened by the President, the Arbitral Tribunal shall determine the seat of the arbitration and the date of the commencement of the arbitration proceedings. In any case, it shall be held in a State party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 1, 1958, known as the New York Convention. Claims submitted to arbitration under this Agreement shall be considered to arise out of a commercial relationship or transaction as provided for in Article 1 of said Convention.

9. The Arbitral Tribunal shall determine its rules of procedure and render its decisions in accordance with the provisions of this Agreement and applicable international law.

10. The Parties may, at any stage of the proceedings, resolve the dispute amicably before the Tribunal issues a decision.

11. The Arbitral Tribunal shall decide by majority vote. Its decisions shall be final and binding on both Parties. The Arbitral

Tribunal shall provide reasons for its decisions, upon request by either Party.

12. Each Party shall bear the costs of its own arbitrator and of its representation in the arbitration proceedings. The costs related to the Chairperson, as well as all other costs, shall be borne inequal parts by both Parties.

13. The awards shall be binding as to their recognition and enforcement, in accordance with applicable domestic and international law.

Section Two. (Settlement of Investment Disputes between a Party and an Investor of the other Party)

Article 12. (Scope)

This Section shall apply to disputes arising between one of the Parties and an investor of the other Party, resulting from a breach of an obligation set forth in Chapter 11 of this Agreement.

Article 13. (Consultations and Negotiations)

1. The Party and the investor of the other Party shall first attempt to resolve the dispute through consultations and negotiations, for which purpose the investor shall notify the disputing Party in writing of the existence of a dispute and the possibility of invoking this Agreement.

This notification shall contain:

a) The name and address of the investor;

b) The subject matter of the dispute and the Party's breaches;

c) The facts and legal grounds on which the claim is based.

2. As part of the negotiations referred to in paragraph 1 of this Article, the Party and the investor of the other Party may, by mutual agreement, submit the dispute to commercial mediation as an alternative means of dispute resolution.

Article 14. (Dispute Resolution Mechanisms)

1. If the dispute is not resolved amicably within a period of one hundred and eighty (180) days following the date of the notification referred to in Article 13 above, the investor, at its discretion and upon the expiration of this period, may submit the claim to:

a) The competent court of the Party in whose territory the dispute arose.

b) An ad hoc arbitral tribunal established, which shall operate in accordance with its own Rules of Procedure.

2. The chosen arbitration procedure shall govern the arbitration, except to the extent modified by this Agreement.

Article 15. (Notification of the Existence of a Dispute and of Arbitration)

Notification of the existence of a dispute and of the intention to resort to arbitration, pursuant to the provisions of this Section, shall be delivered:

a) In the case of Angola: To the headquarters of the Ministry of Foreign Affairs.

b) In the case of Cuba: To the headquarters of the Ministry of Foreign Affairs.

Article 16. (Conditions and Limitations on Arbitration)

1. An investor may submit a claim to arbitration only if:

a) it waives its right to initiate or continue any proceedings before a judicial or administrative tribunal of the Party in whose territory the dispute arose, regarding any breach of Chapter 11, except for proceedings in which the application of precautionary measures of a suspensive, declaratory, or extraordinary nature that do not entail the payment of damages is sought;

b) 24 months have not yet elapsed from the date on which the investor first became aware or should have become aware of the violation of Chapter 11 and of the alleged damage, and provided that the period of one hundred and eighty (180) days for the amicable resolution of the dispute has elapsed.

2. When the investor submits the claim to arbitration, it may not base its claim on elements other than those contained in the notice submitted to the disputing Party, in accordance with the provisions of Article 13.

Article 17. (Composition of the Arbitral Tribunal)

1. Unless the Party and the investor of the other Party agree otherwise, the arbitral tribunal shall consist of three arbitrators. Each party to the dispute shall appoint one arbitrator. The third arbitrator, who shall serve as President of the arbitral tribunal, shall be appointed by agreement between the Party and the investor of the other Party, and shall be a national of a third State with which both Parties maintain diplomatic relations.

2. The arbitrators referred to in paragraph 1 of this Article shall have experience in international law and in matters of investment.

3. If an arbitral tribunal has not been constituted within ninety (90) days from the date on which the claim was submitted to arbitration, whether because the Party and the investor of the other Party have not yet appointed any of the members, or because there is no consensus on the appointment of the Chair of the tribunal, the Secretary General of the International Chamber of Commerce (ICC), at the request of any of the Parties to the dispute, shall, at his or her discretion, appoint the arbitrator or arbitrators not yet appointed. However, in appointing the President of the Arbitral Tribunal, the Secretary General of the ICC shall ensure that the President is not a national of any of the Parties to this Agreement and that he or she is a national of a State with which the Parties maintain diplomatic relations.

4. Once the tribunal has been constituted and the proceedings have commenced, its composition shall remain unchanged; provided, however, that if an arbitrator dies, becomes incapacitated, resigns,or is disqualified, the vacancy shall be filled in accordance with the procedure applicable to appointment.

Article 18. (Conduct of Arbitration)

1. Any arbitration under this Section shall be conducted at a place mutually agreed upon by the Party and the investor of the other Party, and shall always be held in a State party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 1, 1958, known as the New York Convention. Claims submitted to arbitration under this Agreement shall be deemed to arise out of a commercial relationship or transaction as provided in Article 1 of the New York Convention.

2. Neither Party shall offer diplomatic protection or submit an international claim relating to any dispute submitted to arbitration under this Section, unless the other Party fails to accept and comply with the award rendered in that dispute.

3. The disputing Party may not argue as a defense, counterclaim, right of set-off, or for any other reason that the disputing investor has received or will receive indemnification or other compensation, in respect of all or part of the losses or damages, pursuant to an insurance contract or guarantee agreement.

4. Where the disputing Party, in its interpretation, asserts in its defense that: itself

a) the investment that is the subject of the damages does not constitute a protected investment in accordance with the provisions of this Agreement; or

b) the disputing investor does not meet the definition of investor as set forth in this Agreement; or

c) the measure considered a violation of Chapter 11 does not fall within the scope of breaches of the provisions of that Chapter.

The tribunal, at the request of the Claiming Party, shall request the other Non-Claiming Party to provide its interpretation regarding any of the issues noted above. The non-disputing Party shall submit its response to the tribunal in writing; and the tribunal shall render its decision within sixty (60) days following the submission of the request by the disputing Party. If the non-disputing Party fails to submit a response to the tribunal, the tribunal shall deem the disputing Party's interpretation to be valid.

5. An interpretation formulated by consensus of the Parties regarding a provision of this Agreement shall be binding on any tribunal established in accordance with the provisions of this Section.

6. An arbitral tribunal constituted in accordance with this Section shall decide the issues in dispute in accordance with the relevant provisions of this Agreement, the legal provisions agreed upon by the Party and the investor of the other Party, and if no such agreement exists, the principles and rules of international law shall apply.

7. Regardless of whether an investor has submitted a dispute to arbitration under this Section, he may, prior to the commencement of the arbitration proceedings or during the same, seek, before the judicial or administrative courts of the disputing Party, the adoption of interim measures in accordance with the laws and regulations of that Party, for the preservation of his rights and interests, provided that such measures do not include a claim for payment of any damages.

Article 19. (Awards and Enforcement)

1. Arbitral awards shall be final and binding only on the Party and the investor of the other Party, and solely with respect to the matter in question. This obligation shall be without prejudice to the right of the Parties to initiate proceedings for the corresponding annulment before the ordinary courts, or tooppose its enforcement on the grounds for refusal established in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 1, 1958.

2. The arbitral award shall be public, unless the Party and the investor of the other Party agree otherwise.

3. An arbitral tribunal may not order the payment of damages that do not correspond to the damages actually caused and verified, with punitive effect.

4. Each Party shall adopt within its territory the measures necessary for the effective enforcement of the award, in accordance with the provisions of this Article, and shall facilitate the enforcement of any award issued in a proceeding to which it is a party.

5. The disputing parties may seek enforcement of an arbitral award in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 1, 1958, provided that both Parties are parties to this instrument.

6. Awards shall be subject to mandatory recognition and enforcement, in accordance with applicable domestic law and international law.

Chapter IV. Final Provisions

Article 20. (Application of other Rules)

If the domestic law of one of the Parties or international law in force or that may come into force between both Parties establishes a legal regime that grants investments made by investors of the other Party more favorable treatment than that provided for in this Agreement, the more favorable regime shall prevail over this Agreement.

Article 21. (Consultations)

The Parties shall, whenever necessary, consult with each other regarding any matter relating to the application of this Agreement, at a place and date to be agreed upon through diplomatic channels.

Article 22. (Entry Into Force)

This Agreement shall enter into force provisionally on the date of its signature and definitively upon receipt of the last notification, in writing and through diplomatic channels, stating that all requirements of domestic law of both Parties necessary for that purpose have been fulfilled.

Article 23. (Revision)

1. This Agreement may be revised at the request of either Party.

2. Amendments shall enter into force on the date of receipt of the last notification, in writing and through diplomatic channels, stating that all requirements of domestic law of both Parties necessary for that purpose have been fulfilled.

Article 24. (Duration and Termination)

1. This Agreement shall remain in force for successive periods of ten (10) years, automatically renewable.

2. Either Party may terminate this Agreement by notifying the other Party of its intention, in writing and through diplomatic channels, at least one (1) year prior to the expiration of the current term. Termination shall take effect on the day following the expiration of the current term.

3. The provisions set forth in Articles 1 through 20 of this Agreement shall continue to apply to investments made prior to termination, for a period of five years, counted from the date on which the termination took effect.

4. The provisions of paragraph 3 of this Article shall not apply to investments made after receipt of the notification of denunciation or of the intention to terminate the Agreement.

Article 25. (Registration)

The Party in whose territory this Agreement is signed shall submit it for registration with the Secretariat of the United Nations as soon as possible after its entry into force, in accordance with Article 102.0 of the Charter of the United Nations, and shall also notify the other Party of the completion of this procedure and indicate to it the registration number assigned.

IN WITNESS WHEREOF, the undersigned, duly authorized for that purpose, have signed this Agreement.

Done at Havana, on May 20, 2008, in two original copies in the Portuguese and Spanish languages, both texts being equally authentic.

For the Republic of Angola

Francisco Higino Lopes Carneiro

Minister of Public Works

General

For the Republic of Cuba

Marta Lamas Morales

Minister for Foreign Investment and Economic Cooperation