AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF LITHUANIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS.

The Portuguese Republic and the Republic of Lithuania, hereinafter referred to as the Conctracting Parties:

Desiring to intensify the economic co-operation between the two States;

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit;

Recognising that mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative; have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1— The term «investments» shall mean every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights;

b) Shares, stocks, debentures, or other forms of interest in the equity of companies;

c) Claims to money or to any performance under having an economic value;

d) Intellectual property rights such as copyrights, patents, industrial designs and models, trade marks, trade names, trade and business secretes, technical processes, know-how and good will;

e) Concessions conferred by law under a contract or an administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources.

Any alteration of the form which assets are invested shall not affect their character as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.
2— The term «returns» shall mean the amount yielded by investments, in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investments including technical assistance fees.

Returns from investments and from re-investment shall enjoy the same protection as investment.
3— The term «investors» means:

a) A natural person having the nationality of either Contracting Party, in accordance with its laws; and

b) A legal person, including corporations, commercial companies or other companies or associations, wich have a main office with substancial business activities in the territory of either Contracting Party and are incorporated or constituted in accordance with the law of that Contracting Party.

4— The term «territory» means the territory of either of the Contracting Parties, including the territorial sea and maritime or submarine area within which the Contracting Parties may exercise, in accordance with internacional law, rights for the purpose of exploration, exploitation and preservation of the sea-bed, sub-soil and natural resouces.

Article 2. Promotion and Protection of Investments

1— Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in case accord such investments fair and equitable treatment.

2— Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. National and Most Favoured Nation Treatment

1— Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded treatment which is fair and equitable and not less favourable than latter Contracting Party accords to the investments of its own investors or to the investments of investors of any third State.

2— Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal or their investments, treatment which is fair and equitable and not less favourable that the latter Contracting Party accords to the investments of its own investors or to investments of investors of any third State.

3— The provisions of this article shall not be construed so as to oblige one Contracting Party to the extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a) Any existing or future free trade area, customs union, common market or other similar international including other forms of regional economic co-operations to which either of the Contracting Parties is or may become a Party; and

b) Any international agreement relating wholly or mainly to taxation.

Article 4. Expropriation

1— Neither Contracting Party shall expropriate, nationalise or take similar measures (hereinafter referred to as expropriation) against investments of investors of the other Contracting Party in its territory, unless:

a) Such expropriation is in the public interest and under due process of law;

b) Such expropriation is carried out on a non-discriminatory basis;

c) Prompt, adequate and effective compensation is given.

2— Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation ocurred or the impending expropriation becomes the public knowlege, whichever is the earlier. The compensation shall be paid without undue delay, shall include interest calculated on the LIBOR basis form the date of expropriation until the date of payment. The compensation shall be effectively realisable and freely tranferable.

3— The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party to the prompt review by a judicial or other competent authority of that Contracting Party of his case and of valuation of his or its investments in accordance with the principles set out in this article.

Article 5. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory owing to war, a state of national emergency, insurrection, riot, armed conflict, revolution or other similar events, shall be accorded treatment no less favourable by the latter Contracting Party than that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable, as regards restitution, indemnification, compensation or other valuable consideration. Any payment made under this article shall be, without undue delay, freely transferable in convertible currency.

Article 6. Transfers

1— Pursuant to its own legislation, each Contracting Party shall guarantee investors of the other Contracting Party the free

transfer of sums related to their investments, in particular, though not exclusively:

a) Capital and additional amounts necessary to maintain or increase the investments;

b) The returns defined in paragraph 2, article 1 of this Agreement;

c) Funds in repayment of loans regularly contracted and documented and directly related to the investment;

d) The proceeds obtained from the sale or from the total or partial liquidation of the investment;

e) Any compensation or other payment referred to in articles 4 and 5 of this Agreement;

f) Any preliminary payments that may be made in the name of the investor in accordance with article 7 of this Agreement; or

g) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party.

2— The transfers referred to in this article shall be made without undue delay at the exchange rate applicable on the date of the transfer in convertible currency.

Article 7. Subrogation

If either Contracting Party or its designated agency any payment to one of its investors as a result of a guarantee in respect of an investment made in the territory of the other Contracting Party, the former Contracting Party shall be surrogated to the rights and claims of this investor and may exercise them according to the same terms and conditions as the original holder.

Article 8. Disputes between the Contracting Parties

1— Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

2— If the Contracting Parties fail to reach such settlement within six months after the beginning fo negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this article.

3— The Arbitral Tribunal shall be constituted ad hoc, as follows: each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two months and the chairman shall be appointed within three months from the date on which either Contracting Party notifies the other that it wishes to submit the dispute to an arbitral tribunal.

4— If the deadlines specified in paragraph 3 of this article are not complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from doing so, or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is also a national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a national of either Contracting Party. 5— The chairman of the Arbitral Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

6— The Arbitral Tribunal shall rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses. The tribunal may make a different decision regarding division of costs. In all other respects, the tribunal court shall define its own rules of procedure.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

1— Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.

2— If such dispute cannot be settled within a period of six months from the date of request for settlement, the investor concerned may submit the dispute to:

a) The competent court of the Contracting Party for decision; or

b) The International Centre for the Settlement of Investments Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature in Washington D. C., on March 18, 1965; or

c) An ad hoc court of arbitration, in accordance with the Arbitration Rules issued in 1976 by the United Nations Commission on International Trade Law (UNICTRAL).

3— Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the International Centre for the Settlement of Investments Disputes.

4— The arbitral decision shall be final and biding on both parties to the dispute. Each Contracting Party shall execute it in accordance with its laws and in accordance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provied for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11. Application of the Agreement

This Agreement shall apply to all investments, made by investors from one of the Contracting Parties in the territory of the Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force and Duration

1— This Agreement shall enter into force thirty days after the Contracting Parties notify each other in writing that their respective internal legal procedures have been fulfilled.

2— This Agreement shall remain in force for a period of ten years. Unless notice of termination has been given by either Contracting Party at least twelve months before the date of expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least twelve months before the date of expiry of the current period of validity.

3— In respect of investment made prior to the date of termination of this Agreement the provisions of articles 1 to 12 shall remain in force a further period of ten years from the date of termination of this Agreement.

Done in duplicate in Lisbon at this 27 day of May 1998 in the Portuguese, Lithuanian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

(concerning the interpretation of certain provisions of the Agreement, which constitue an integral part of the said Agreement)

1— With reference to article 2 of this Agreement:

The provisions of article 2 of this Agreement should be also applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors;

Such investments shall be considered as new ones and, to that extent, shall be made in accordance with the rules on the admission of investments, according to article 2 of this Agrrement.

2— With reference to article 3 of this Agreement:

The Contracting Parties shall not consider that the provisions of article 3 of this Agreement are in prejudice of the right of either Contracting Party to apply the provisions of their legislation on taxes which makes the distinction between taxpayers with regard to their place of residence or with regard to the place where the investment was made.

Done in duplicate in Lisbon at this 27 day of May 1998 in the Portuguese, Lithuanian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.