# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF UKRAINE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of Ukraine (hereinafter referred to as "the Contracting Parties"),

Desiring to intensify economic cooperation for the mutual benefit of both States,

Intending to create favourable conditions for investments by investors of one State in the territory of the other State, and

Recognizing that the encouragement and protection of investments on the basis of the present Agreement stimulate business initiatives in this field,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party and includes, in particular, though not exclusively:

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

(b) Shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture;

(c) Claims to money or to any performance having an economic value associated with an investment;

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

(e) Any rights conferred by law or under contract, including the rights to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment.

(2) The term "investor" means with regard to either Contracting Party:

(a) A natural person who is a national of that Contracting Party in accordance with its laws; or

(b) Any corporations, companies, firms, enterprises, organizations and associations incorporated or constituted under the law in force in the territory of that Contracting Party; provided that the natural person, corporation, company, firm, enterprise, organization or association is competent, in accordance with the laws of that Contracting Party, to make investments in the territory of the other Contracting Party.

(3) The term "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

(4) The term "territory" means the territory of the Republic of Korea or the territory of Ukraine respectively, as well as those maritime areas, including the sea-bed and sub-soil, adjacent to the outer limit of the territorial sea of either State, over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

## Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws.

(2) The investment of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

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

(4) Each Contracting Party shall observe any obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

## Article 3. Treatment of Investments

(1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or investors of any third State.

## Article 4. Compensation for Damages or Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to any armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State. The resulting payments shall be adequate, be made without delay and be freely transferable.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities; or

(b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation;

Shall be accorded restitution or adequate compensation not less favourable than would be accorded under the same circumstances to an investor of the other Contracting Party or of any third State. The resulting payments shall be freely transferable without delay.

## Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before impending expropriation became public knowledge, whichever is the earlier, shall be made within two months of the date of expropriation, after which interest at a normal commercial rate shall accrue until the date of payment, and shall be effectively realizable and be freely transferable.

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that Contracting Party of his or its case and other valuation of his or its investment in accordance with the principles set out in paragraph(1) of this Article.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares or other forms of participation, the provisions

of paragraphs(1) and (2) of this Article shall be applied.

## Article 6. Repatriation of Investments and Returns

(1) Each Contracting Party shall guarantee to the investors of the other Contracting Party the transfer out of its territory without delay in any freely convertible currency of:

(a) The returns accruing from an investment;

(b) The proceeds accruing from the sale or the total or partial liquidation of an investment made by an investor of the other Contracting Party;

(c) Funds in repayment of borrowings related to an investment;

(d) The earnings of nationals of the other Contracting Party subject to the laws and regulations of the Contracting Party where an investment has been made; and

(e) Initial capital and complementary amounts necessary to increase an investment.

(2) For the purposes of this Agreement, the exchange rate shall be the rate applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

## Article 7. Exceptions

The provisions of Articles 3 and 4 of this Agreement shall not be construed so as to oblige one Contracting Party to 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 customs union or free trade area or common external tariff area or monetary union or similar international agreement or other forms of regional cooperation, to which either of the Contracting Parties is or may become a party; or

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

## Article 8. Subrogation

(1) If a Contracting Party or its designated agency makes a payment to the benefit of the investor of the Contracting Party under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency by law or legal transaction, of all the rights and claims of the investor to whom compensation was paid in full.

(2) A Contracting Party or its designated agency shall be entitled to the same extent to exercise any rights and claims which the investor would have been entitled to exercise.

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

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party including expropriation or nationalization of an investment shall, as far as possible, be settled by the parties to the dispute in an amicable way.

(2) The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made are available for the investors of the other Contracting Party on the basis of treatment not less favourable than that accorded to investments of its own investors or investors of any third State, whichever is the more favourable to the investor.

(3) If the dispute cannot thus be settled within six(6) months from the date on which the dispute has been raised by either party to the dispute, it shall be submitted upon request of either the investor or the Contracting Party to:

(a) The International Centre for Settlement of Investment Disputes (ICSID), established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, if both of the Contracting Parties are Parties to members of this Convention; or

(b) The international ad hoc court of arbitration, being created in accordance with the Arbitration Rules of the United

Nations Commission on International Trade Law (UNCITRAL), currently in force.

(4) The award made by the ICSID or ad hoc court of arbitration of UNCITRAL shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

## Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled within six(6) months, it shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two(2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The appointed members shall then select a national of a third State who, on approval of the two Contracting Parties, shall be appointed Chairman of the Tribunal (hereinafter referred to as "the Chairman"). The Chairman shall be appointed within two(2) months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph(3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of other agreements, invite the President of the International Court of Justice to make such appointments. If the President is a citizen of either Contracting Party or if he or she otherwise is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a citizen of either Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party shall be invited to make the necessary appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding upon both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedures.

## Article 11. Application of Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force.

## Article 12. Application of other Rules

(1) Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent an investor of one Contracting Party who owns investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to his case.

(2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

## Article 13. Consultations

Either Contracting Party may propose to the other Contracting Party that they consult each other on any matter concerning the interpretation or application of the Agreement. The other Contracting Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

## Article 14. Entry Into Force, Duration, Termination and Amendments

(1) This Agreement shall enter into force on the day when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for the period of fifteen(15) years. Thereafter, it shall continue to be in force until the expiration of six(6) months from the date on which either Contracting Party shall have given written notice of

termination to the other Contracting Party.

(3) In respect of investment made whilst the Agreement is in force, its provisions shall remain in force for a period of ten(10) years from the date of termination.

(4) This Agreement may be amended by mutual consent of the Contracting Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul this 16th day of December 1996, in the Korean, Ukrainian and English languages, all three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF UKRAINE