

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF _____ AND THE GOVERNMENT OF BOLIVIA ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of _____ and the Government of the Republic of Bolivia hereinafter referred to as the "CONTRACTING PARTIES".

DESIRING to intensify economic integration for the mutual benefit of both States;
INTENDING to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the promotion and protection of such investments through an Agreement may stimulate private economic initiative and increase the welfare of both States;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply to the terms set forth below:

Investment" means a transfer of capital or any kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party under the laws of the latter. This definition includes investments which take the following forms or consist of the following:

The term designates in particular, but not exclusively:

- a. corporations;
- b. tangible property: which includes real estate, and intangible property, which includes leases, mortgages, creditor's privileges and pledges, usufructs and similar rights;
- c. securities, shares, stocks, bonds, debentures and debenture stock or other form of participation in the capital of a corporation;
- d. money, claims and rights to the collection of any obligation based on a contract representing a financial value;
- e. Rights derived from all types of contributions made for the purpose of creating economic value, credits that are directly related to the investment, between parent and subsidiary (such as supplementary capital contributions).
- f. goodwill;
- g. intellectual and industrial property rights, which include, by way of illustration and not exhaustively:
 - Copyright and related rights
 - patents;
 - utility models;
 - industrial designs;
 - trade secrets;
 - trademarks;
 - slogans;
 - technological processes;
 - know-how;
 - goodwill;
 - appellations of origin;
 - integrated circuits;
 - plant varieties.

h. Contractual rights, including shared risk and concession contracts, to carry out economic and/or commercial activities, such as construction, management, production, exploration, cultivation, extraction and exploitation of natural resources.

i. The rights conferred under the law, such as licenses and permits.

An investment shall be considered to be controlled by an investor if the investor controls, directly or indirectly, the enterprise that owns the investment.

The definition of investment does not include real estate or other property, tangible or intangible, which is not acquired or used for the purpose of economic benefit and other business purposes contemplated by this agreement.

2. "Investor" or "Investor" means:

a. Any natural person who is a national of one of the Contracting Parties, in accordance with its legislation.

b. Any juridical person constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of such Contracting Party.

c. A legal person established in the territory where the investment is made, effectively controlled, directly or indirectly, by natural or juridical persons defined in 2- a. and b.

"Investment covered" or "Investment made" means an investment made by an investor of one Contracting Party in the territory of the other Contracting Party.

"Enterprise" means any entity or legal person constituted or organized under the laws of the relevant Contracting Party, whether or not for profit, and whether privately or state-owned, including, but not limited to, corporations, partnerships, trusts, partnerships, sole proprietorships, joint ventures or other types of associations; and any branch of any such entity.

"State Enterprise" means an enterprise owned or controlled by a government by virtue of its interest in such enterprise.

"Nationals" means: in respect of each Contracting Party:

a. Natural persons possessing the nationality of that Contracting Party in accordance with its legislation;

b. Companies incorporated under the laws of that Contracting Party or controlled, directly or indirectly, by nationals of that Contracting Party.

7. "Natural person of a Contracting Party" means any individual having the nationality of that Contracting Party in accordance with its legislation.

8. "Legal entity of a Contracting Party" means any legal entity, whether collective, public or private, for profit or not-for-profit, constituted in accordance with the legislation of that Contracting Party.

9. The term "Territory" means:

a. In relation to the Republic of Bolivia, it refers to the geographic territory under the sovereignty and jurisdiction of the Bolivian State, within which persons, goods and capital circulate freely, in accordance with its respective legislation and international law.

b. In relation to the Republic of, it refers to

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.....

"Host State" means the State in whose territory the investment is made.

11. "Investment Authorization" means the authorization granted by the competent foreign investment authority of a Contracting Party to a covered investment, to a national or company of the other Contracting Party.

12. "Competent Authority" means the institution in charge of supervising compliance with the legal norms that grant guarantees and facilities to the investment.
13. "Investment Agreement" means the Agreement entered into between the national authorities of a Contracting Party and an investment made, whether national or of the other Contracting Party, granting rights over natural resources or other property controlled by the national authorities, and on which the investment or the investor relies for the purpose of making a covered investment.
14. "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington, D.C. on March 18, 1965.
15. "Centre" means the International Centre for Settlement of Investment Disputes established by the ICSID Convention.
16. "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.
17. "Provision" means any law, regulation, procedure, requirement, or practice of each of the Contracting Parties.
18. "Existing Provision" means any provision in existence at the time this Agreement enters into force.
19. "Profits (or earnings)" means the surplus arising from the income, net of the costs of an investment, especially, but not limited to, capital gains, dividends, royalties, royalties, interest, net income and any other operating surplus.

ARTICLE 2

SCOPE OF APPLICATION

1. This Agreement shall apply to investments in the territory of one of the Contracting Parties, made in accordance with its legislation, before or after the entry into force of this Agreement. However, this Agreement shall not apply to any dispute arising out of facts, claims or acts that arose prior to its entry into force even if its effects survive its entry into force.

ARTICLE 3

PROMOTION OF INVESTMENTS

Each Contracting Party shall promote and guarantee in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. The Contracting Party which has admitted an investment into its territory shall grant the necessary permits in connection with such investment, including the execution of licensing contracts and technical, commercial or administrative assistance. Each Contracting Party shall provide, when required, the necessary permits for the activities of consultants or other qualified persons of foreign nationality in accordance with its laws and regulations relating to the entry and stay of such persons, including the necessary permits for the entry and stay in the territory of their family members, in accordance with its laws and regulations.

3. Investments made in the territory of one of the Contracting Parties shall be registered and recorded in accordance with the laws of the receiving state.

ARTICLE 4

PROTECTION OF INVESTMENTS. NATIONAL AND MOST-FAVORED-NATION TREATMENT

1. With respect to the establishment, acquisition, expansion, management, operation, operation, sale or other disposition or transfer of covered investments, each Contracting Party shall accord treatment no less favorable than that which it accords, in like

circumstances, to investments in its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of third countries (hereinafter "most-favored-nation treatment"), whichever is more favorable (hereinafter "national and most-favored-nation treatment").

2. The Agreement agreed upon shall not exceed the benefits and advantages that one of the Contracting Parties grants to nationals of third States by virtue of their present or future participation in, or association with, a free trade area, customs union, common market, economic union or similar international agreements concluded with third States for mutual economic assistance or other forms of regional cooperation.

3. The agreed Agreement shall not exceed the benefits and advantages that one of the Contracting Parties grants to nationals of third States as a consequence of the conclusion of Conventions or Agreements, to avoid double taxation or other Agreements in tax matters.

4. The obligations assumed under paragraph 1 shall not apply to the procedures provided for in multilateral agreements concluded under the auspices of the United Nations, of the World Intellectual Property Organization relating to the acquisition or conservation of intellectual property rights.

ARTICLE 5

FAIR AND EQUITABLE TREATMENT

1. Each Contracting Party shall at all times accord to covered investments fair and equitable treatment and shall in no case accord to covered investments treatment less favorable than that required by international law.

2. Each Contracting Party shall protect in its territory investments made by investors of the other Contracting Party in accordance with its laws and regulations and shall not obstruct by discriminatory measures the management, maintenance, use, enjoyment, growth, operation, sale and, if any, liquidation, of such investments or other disposition of covered investments.

3. Each Contracting Party shall ensure that its laws, administrative practices and procedures of a general nature, as well as judicial decisions, where they relate to or affect covered investments, are promptly published or made available to the public.

4. Both Contracting Parties shall accord to investors of the other Contracting Party, with respect to the enjoyment, use, management, direction, operation, expansion, exploitation, sale or other disposition of their investments or benefits, treatment no less favorable than that which, in the same circumstances, it accords to:

- a. Investors of any other State;
- b. Its own investors.

ARTICLE 6

TRANSFER

Each Contracting Party, in whose territory investors of the other Contracting Party have made investments, shall ensure to such investors the free transfer of payments in connection with such investments, in particular but not limited to:

- a. the capital of the investment and reinvestments
- b. payments, royalties, profits and dividends
- c. The proceeds from the sale or total or partial liquidation of the investment.
- d. Indemnifications, compensations or indemnities resulting from the settlement of disputes.

2. The above transfers shall be effected without delay, in freely convertible currency at the rate of exchange applicable on the date of transfer, in accordance with the regulations of

the foreign exchange regime in force of the Contracting Party in whose territory the investment was made.

Notwithstanding the provisions of paragraphs 1 and 2, each Contracting Party may prevent a transfer in order to protect the rights of creditors or to ensure compliance with final decisions rendered in judicial or arbitral proceedings, through the equitable, impartial, non-discriminatory and good faith application of its laws and regulations, including in particular, but not limited to:

- a. Bankruptcy or insolvency;
- b. criminal offenses;
- c. enforcement of orders or judgments in judicial proceedings;
- d. non-compliance with labor obligations.

4. In the event of the existence or imminence of a serious imbalance in its balance of payments and in accordance with existing international standards in this area, an affected Contracting Party may apply such corrective measures as it deems necessary, in accordance with the following criteria:

- a. They shall not be discriminatory measures
- b. They shall be progressively eliminated as the situation giving rise to them improves.
- c. They shall not exceed what is necessary to meet national circumstances.
- d. They shall be consistent with the Consultative Agreement of the International Monetary Fund.

ARTICLE 7

EXPROPRIATION AND INDEMNIFICATION

1. Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to provisions having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except in the public interest, public utility or national security as determined in the legislation of each Contracting Party, on a non-discriminatory basis, with due process of law and with fair, prompt and effective compensation.

2. Compensation shall be based on the fair market value of the investment or profits expropriated immediately before the expropriation or at the time of the expropriation. at the time the proposed expropriation became public knowledge, whichever occurs first.

3. Compensation shall be payable from the date of expropriation and shall bear interest until the date of actual payment, with the application of a normal commercial interest rate, and shall be fully realizable and freely transferable. The valuation criteria will include the value of the enterprise, value of the assets, including the declared cadastral appraisal of the tangible property, and other criteria as appropriate to determine the fair market value. The fair market value shall not be affected by any change in value, even if the expropriation action becomes known before it is made public.

4. In the event that the fair market value is expressed in a currency which is not freely convertible, the compensation payable (converted into the currency of payment at the exchange rate prevailing in the market on the date of payment) shall not be less than:

- (a) The fair market value on the date of expropriation, converted into a freely convertible currency at the exchange rate prevailing in the market on that date, plus.
- (b) interest at a commercially justified rate for such freely convertible currency, accrued from the date of expropriation until the date of payment.

5. The investor affected shall be entitled, under the applicable laws of the Contracting Party enforcing the expropriation, to the earliest possible examination of his case by a judicial or

other independent authority of that Contracting Party and to the valuation of his investment or benefits in accordance with the principles set forth in the subject matter of expropriation.

ARTICLE 8

COMPENSATION FOR LOSSES

1. Investors of one Contracting Party who suffer losses on their investments in the territory of the other Contracting Party as a result of war, armed conflict, revolution, state of national crisis, rebellion, insurrection or riot in the territory of the other Contracting Party shall, in respect of restitution, indemnities, compensation or other relief, be accorded treatment no less favorable than that accorded to their own investors.

ARTICLE 9

SUBROGATION

Where a Contracting Party or one of its authorized agencies has provided a guarantee or insurance to cover non-commercial risks in connection with an investment made by one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation of the former Contracting Party or its authorized agencies to the same rights of the investor recognized by the law of the party receiving the investment, provided that the former Contracting Party has made a payment under such guarantee.

ARTICLE 10

SETTLEMENT OF DISPUTES.

SETTLEMENT OF DISPUTES BETWEEN ONE CONTRACTING PARTY AND A NATIONAL OF THE OTHER CONTRACTING PARTY

Any dispute between a Contracting Party and an investor of the other Contracting Party relating to a claim by the investor that a provision made, or not made, by the first Contracting Party violates this Agreement, and that the investor has incurred loss or damage as a consequence or result of such violation shall, to the extent possible, be settled amicably between the parties.

If a dispute has not been settled amicably within a period of six months from the date of its initiation, the investor may submit it to arbitration. For the purposes of this paragraph, a dispute is deemed to have been initiated when the investor of a Contracting Party has notified the other Contracting Party in writing alleging that a measure taken, or not taken, by the latter Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage arising or resulting from such breach.

3. Any investor may submit to arbitration a dispute as set forth in paragraph (1) only if:

- a. The investor has consented in writing to such submission;
- b. The investor has waived its right to initiate or continue any other proceeding relating to the provision alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned, or to any dispute settlement proceeding of any kind.

4. The investor may submit the dispute either to the:

- a. a national jurisdiction of the Contracting Party, in whose territory the investment was made, or to the:
- b. international arbitration. In the latter case the investor has the following options:
 - a) The International Centre for Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for accession in Washington on March 18, 1965 (ICSID Convention), provided that both the Contracting Party in disagreement and the Contracting Party of the investor are signatories to the ICSID Convention; or

(b) The ICSID Additional Facility Rules, provided that either the Contracting Party in dispute or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or
c) An international arbitrator or an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

5. The arbitral award shall be final, binding and fully enforceable by the Parties.

6. The language in which the arbitration shall be conducted shall be the one decided by the Contracting Parties.

DISPUTES CONCERNING THE INTERPRETATION OF THE PRESENT AGREEMENT

1. Disputes between the Contracting Parties concerning the interpretation or performance of this Agreement shall preferably be settled through diplomatic channels.

If, within six months from the date on which the dispute arose, it has not been settled through diplomatic channels, it shall, at the request of either party, be submitted to arbitration in accordance with the following procedure:

a. Each Contracting Party shall appoint an arbitrator to sit on the Arbitral Tribunal, and the two arbitrators so appointed shall appoint by mutual agreement a third arbitrator who shall be a national of a third State and shall act as Chairman of the Tribunal.

b. If within two months from the date on which it was decided to submit the disputes to arbitration, a Contracting Party has not made the designation of its arbitrator, the other party may request the President of the International Court of Justice to make the designation.

c. If the President of the International Court of Justice is for any reason unable to make the appointment, or if he is a national of one of the Contracting Parties, the appointment of the arbitrator shall be made by the Vice-President. However, if he is also prevented from making the appointment or if he is a national of one of the Contracting Parties, the appointment shall be made by the most senior judge of the International Court of Justice who is not prevented from making the appointment or who is a national of one of the Contracting Parties.

d. In the performance of their duties, the arbitrators shall act with impartiality, independence, competence, diligence and discretion.

e. The Tribunal shall have the power to decide on its own jurisdiction and on objections to the existence and validity of the arbitration agreement. The Tribunal may decide objections to its jurisdiction as a preliminary question, but may also proceed with its proceedings and reserve the decision on these objections for the award.

f. The arbitral tribunal shall make its decisions by majority vote. Its decisions shall be binding. Each Contracting Party shall bear the expenses occasioned by the activity of its arbitrator, as well as the expenses of his representation in the arbitration proceedings. The expenses of the Chairman and other expenses shall be borne equally by the two Contracting Parties. The arbitral tribunal shall determine its own procedure.

g. The Contracting Parties shall decide by mutual agreement on the language in which the arbitration shall be conducted.

Neither Contracting Party shall offer diplomatic protection or invoke an international claim for a dispute which one of its nationals and the other Contracting Party have submitted to a competent court of the receiving State or to a competent international arbitral tribunal, unless the other Contracting Party fails to abide by and comply with the judgment or award rendered.

4. The award shall be in writing, substantiated and shall decide the dispute in full, final and binding and fully enforceable upon the Parties.

ARTICLE 11

SUPPLEMENTARY PROVISIONS

Each Contracting Party shall at all times respect the obligations it has undertaken with respect to investments of investors of the other Contracting Party.

Any term not defined in this Agreement shall have the meaning used in the legislation in force in each Contracting Party.

ARTICLE 12

TERM, DURATION AND TERMINATION OF THE AGREEMENT

1. This Agreement shall enter into force thirty days following the date of the last notification by which the Contracting Parties have notified each other in writing that the constitutional procedures necessary for its approval in their respective countries have been fulfilled and shall remain in force for a period of 10 years.

2. In the event that any of the Contracting Parties decides to terminate this Agreement, it shall notify the other Party in writing of its decision at least twelve (12) months prior to the expiration date of its current term, otherwise, this Agreement shall be extended indefinitely, at which stage the Parties may notify each other of the decision to terminate this Agreement. The termination of the Agreement shall become effective twelve (12) months after the written notification.

3. With respect to those investments made prior to the date of termination of this Agreement, Articles 1 through 12, precedent thereto, shall continue in force for a period of 10 years from that date.

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

Done at, on in the Spanish language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF _____.

FOR THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA _____.