AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON PROMOTION AND PROTECTION RECIPROCAL INVESTMENTS

The Government of Burkina Faso and the Government of the Republic of Turkey, hereinafter referred to as "the Contracting Parties":

Desiring to promote greater economic cooperation between their two States, in particular through respect for investments made by investors of one Contracting Party in the territory of the other Contracting Party:

Recognising that the conclusion of an Agreement which lays down the legal regime for such investments is likely to stimulate the flow of capital and technology and the economic development of the Contracting Parties :

Agreeing that fair and equitable treatment of investments is desirable for the establishment of an environment favourable to investment, to the effective and optimal exploitation of economic resources and to the improvement of the living conditions of their two peoples ;

Convinced that these objectives can be achieved without relaxing health, safety and environmental standards, as well as internationally recognised labour standards;

Determined to conclude an Agreement concerning the reciprocal promotion and protection of investments;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement :

1. The term "investment" means any kind of assets related to commercial activities. acquired with the aim of establishing lasting economic relations in the territory of a Contracting Party, in accordance with its laws and regulations, and which have the characteristics of an investment, including characteristics such as the commitment of capital or other resources, the expectation of a regular gain or profit, the assumption of risk. contribution to economic development for a certain period of time, and includes above all, but is not limited to:

(a) movable and immovable property, as well as all other rights, such as mortgages, liens, pledges and other similar rights, defined in accordance with the laws and regulations of the Contracting Party in whose territory such property is situated;

(b) reinvested income;

(c) claims or other rights having financial value in connection with the investment;

(d) shares, securities or other forms of participation in companies; (e) intellectual and industrial property rights, including, in particular, patents, industrial designs, technical processes, trademarks, goodwill and know-how;

(f) franchises of undertakings granted by law or by contract, including concessions relating to natural resources,

provided that such investments do not constitute an acquisition of shares or an acquisition of securities. number of votes equal to or less than ten (10) per cent of the capital of a company through of stock exchanges.

The term investment excludes any claim arising exclusively from a commercial contract for the sale of goods or services by a national or an undertaking situated in the territory of a Contracting Party to an undertaking situated in the territory of the other Contracting Party, or the granting of credit in the context of a commercial transaction, such as trade financing.

2. The term "investor" means:

(a) any physical person having the nationality of a Contracting Party in accordance with the national legislation of the latter;

(b) companies, enterprises, commercial firms and business partnerships formed under the laws in force in a Contracting Party and having their registered office and principal place of business in the territory of that Party Contracting Parties which have made investments in the territory of the other Party Contractor.

3. The term "returns" means the amounts contributed by an investment, including above all, even if not exclusively, profits, interest, capital income, royalties, fees and dividends;

4. "Territory" means:

(a) With respect to Burkina Faso, the territory under its sovereignty including the submarine areas and airspace over which this continental party exercises jurisdiction in accordance with international law and sovereign rights.

(b) With respect to the Republic of Turkey, the land territory, internal waters, territorial sea and airspace above them, as well as the maritime areas over which Turkey exercises sovereign rights or jurisdiction in accordance with international law and sovereign rights. jurisdiction for the purposes of resource exploration, exploitation and conservation natural biological or non-biological, in accordance with international law.

Article 2. Scope of Application

This Agreement shall apply to investments made before or after its entry into force in the territory of a Contracting Party by investors of the other Contracting Party in accordance with the laws and regulations in force in the latter.

However, this Agreement shall not apply to disputes which have arisen before its entry into force.

Article 3. Investment Promotion and Protection

1. Subject to its laws and regulations, each Contracting Party undertakes to promote as far as possible in its territory investments made by investors from the other Contracting Party.

2. Investments made by investors of each Contracting Party shall at all times be treated in accordance with minimum standards of treatment as defined by international law, including the enjoyment of fair and equitable treatment and full protection and security in the territory of the other Contracting Party, Neither Contracting Party shall interfere with the management, maintenance, use, operation, enjoyment, sale, liquidation or disposal of the other Contracting Party's assets. disposal of these investments by unreasonable or discriminatory measures.

Article 4. Treatment of Investments

1. Each Contracting Party shall admit to its territory investments on a basis no less favourable than that accorded, in similar circumstances, to investments by investors of a third State under its laws and regulations.

2. Each Contracting Party shall accord to such investments, from the time of their establishment, treatment no less favourable than that accorded in like circumstances to investments of its own investors or of investors of a third State, whichever is more favourable with respect to management, maintenance and use, the operation, enjoyment, extension, sale, liquidation or disposal of the investment.

3. The Contracting Parties undertake, within the framework of their national legislation, to give a favourable opinion on applications for entry and residence visas for nationals of either Contracting Party who wish to travel to the territory of the other Contracting Party for the purpose of undertaking and carrying out investment activities.

4(a) The provisions of this Agreement shall not be construed as obliging a Contracting Party to accord to investors of the other Contracting Party any treatment, preference or privilege which may be accorded by the first Contracting Party under any international agreement or treaty relating wholly or mainly to taxation.

(b) The provisions of this Agreement relating to non-discriminatory national treatment and most-favoured-nation treatment shall not apply to any real or future advantages granted by either Contracting Party in its capacity as a member of an organization, or in the framework of an association relating to a customs, economic or monetary union, or a common market or free trade area, to nationals or companies of its own country or of Member States of such union, common market or free trade area, or of another third State.

(c) For greater certainty, it is understood that the most-favoured-nation treatment referred to in paragraphs 1 and 2 of this Article does not include procedures or mechanisms for the settlement of disputes between investors and States, such as

those provided for in Article 10, in other international treaties.

(d) The provisions of Articles 3 and 4 of this Agreement do not oblige either Contracting Party to accord to investments of investors of the other Contracting Party the same treatment as it accords to investments of its own investors with respect to the acquisition of land, real estate and related land rights.

Article 5. General Exceptions

1. Nothing in this Agreement shall be interpreted as preventing a Contracting Party from adopting, maintaining or applying non-discriminatory legal measures:

(a) designed and applied for the protection of human, animal or plant life or health or of the environment;

(b) relating to the conservation of exhaustible natural resources, living or non-living,

2. Nothing in this Agreement shall be interpreted as allowing a Contracting Party:

(a} to require the other Contracting Party to provide or allow access to information the disclosure of which is considered by it to be contrary to its essential security interests.

(b) to prevent a Contracting Party from taking measures which it considers necessary for the protection of its essential security interests,

(i) measures relating to the trafficking of arms, munitions, and war equipment and to the trafficking and transactions of other articles, materials, services and technology carried out directly or indirectly for the purpose of supplying organizations / military or other security institutions;

(ii) measures taken in time of war or other cases of emergency in the matter of international relations; or

(iii) measures relating to the implementation of national policies or international agreements in the case of the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent a Contracting Party from taking action in execution of its obligations under the Charter of the United Nations for the maintenance of international peace and security

3. The adoption, maintenance or execution of these measures is subject to the condition that they are not applied in an arbitrary or unjustifiable manner, or that they do not constitute a disguised restriction on the investments of investors of the other Contracting Party.

4. This Agreement does not in any way imply an obligation for the Contracting Parties to relax their laws and regulations relating to health, safety or the environment, in order to encourage investment. Neither Contracting Party shall be obligated to waive, or otherwise derogate from, or offer to waive or otherwise derogate, from such measures for the purpose of encouraging establishment, acquisition, expansion, where the. maintenance in its territory of an investment of an investor from the other Contracting Party.

Article 6. Expropriation and Compensation

1. Investments will not be subject to expropriation, nationalization, nor will they be subjected directly or indirectly, to measures with similar effects (hereinafter referred to as “expropriation”), except for purposes of public utility, in a non-discriminatory manner, subject to the payment of prompt, adequate and effective compensation, and in accordance with the lawfulness and the principles of treatment provided for in Article 3 of this Agreement.

2. Non-discriminatory legal measures taken and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

3. Compensation must be equivalent to the market value of the expropriated investment, estimated before the expropriation measures were taken or became public knowledge. Compensation must be paid without delay and freely transferable as provided for in paragraph 2 of article 8 of this Agreement.

4. Compensation is payable in freely convertible currency and, in the event that compensation is paid late, it shall include an appropriate interest rate from the date of expropriation to the date of payment.

Article 7. Compensation for Losses

1. Investors of either Contracting Party whose investments have suffered losses in the territory of the other Contracting Party as a result of war or other armed conflict, insurrection, civil unrest public order or other similar events, benefit from this other Contracting Party, treatment no less favorable than that granted to its promoted investors or to those of a third State, according to the most favorable treatment, in regarding the measures it adopts in relation to these losses.

2. Without prejudice to the provisions of paragraph 1 of this article, investors of a Contracting Party who, in one of the cases mentioned in the said paragraph, suffer losses in the territory of the other Contracting Party, resulting from the requisition of their property by his forces or authorities. or the destruction of their property by its forces or authorities, which destruction will not have been caused by a state of war or required by the necessity of the situation, shall benefit from restitution or compensation which in either case must intervene promptly, adequately and effectively. The related payments must be freely convertible.

Article 8. Repatriation and Transfer

1. Each Contracting Party shall permit in good faith all transfers related to an investment to be made freely and without delay into and out of its territory.

Such transfers include:

(a) the initial capital and any additional amounts intended to maintain or increase the investment;

(b) the returns;

(c) proceeds from the sale or liquidation of all or any part of an investment,

(d) compensation pursuant to Articles 6 and 7,

(e) reimbursements and interest payments deriving from loans in connection with investments,

(f) salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits related to an investment,

(g) payments arising from an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Contracting Party.

3. Where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious balance of payments difficulties, each Contracting Party may temporarily restrict transfers, provided that such restrictions are imposed on a non-discriminatory and in good faith basis.

Article 9. Subrogation

1. If one of the Contracting Parties has a public insurance or guarantee scheme to protect investments of its own investors against non-commercial risks, and if an investor of this Contracting Party has subscribed to it, any subrogation of the insurer under the insurance contract between this investor and the insurer, shall be recognized by the other Contracting Party.

2. The insurer is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 10 of this Agreement.

Article 10. Settlement of Disputes between One Contracting Party and Investors of the other Contracting Party

1. This article shall apply to disputes or disputes between a Contracting Party and an investor of the other Contracting Party, the allegation of violation by the said Contracting Party, of one of its obligations under this Agreement, and which gives rise to loss or damage to the investor or his investments.

2. Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with his

investment, shall be notified in writing, including detailed information, by the investor to the recipient Contracting Party of the investment. As far as possible, the investor and the concerned Contracting Party shall endeavor to settle these disputes by consultations and negotiations in good faith.

3. If after a period of (6) six months from the date of the written notification mentioned in paragraph 2, the Consultations and negotiations have not made it possible to settle these disputes, they may be submitted, to the investor choice:

(a) to the competent court of the Contracting Party in whose territory the investment has been made, or

(b) under the condition set out in paragraph 5 of this Article, to:

(i) the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes Between States and Nationals of other States", in the event that both Contracting Parties become Parties to this Convention;

(ii) an ad hoc arbitration tribunal established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL), approved by the United Nations General Assembly on December 15, 1976, as revised in 2010;

(iii) at the Istanbul Arbitration Center;

(iv) at the Ouagadougou Arbitration, Mediation and Conciliation Center (CAMCO);

(v) to any other arbitration institution or any other arbitration rule, if the parties to the dispute so agree.

4. Once the investor has submitted the dispute to one or the other of the dispute settlement forums mentioned in paragraph 3 of this Article, the choice of one of these procedures is final.

5. In deciding whether an investment dispute falls within the jurisdiction of ICSID and the jurisdiction of the tribunal, the arbitral tribunal established under Paragraph 3 (b) shall comply with the notification submitted by the Republic of Turkey on March 3, 1989 to ICSID, as an integral part of this Agreement.

6. The arbitral tribunal seised shall render its decisions in accordance with the provisions of this Agreement with the laws and regulations of the Contracting Party interested in the dispute in whose territory the investment is made (including its rules on conflict of laws), and relevant principles of international law as accepted by the two Contracting Parties.

7. The arbitral awards rendered are final and binding on all Parties to the dispute. Each Contracting Party undertakes to execute the arbitration award in accordance with its national legislation in the matter.

Article 11. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contrasting Party which is a company of that other Contracting Party and to investments of that investor, if the company does not have substantial economic activities on the territory of the Contracting Party by virtue of the legislation under which it was incorporated or organized, and if the investors of a non-Contracting Party or investors of the opposing Contracting Party own or control the company.

2. The Contracting Party which refuses the advantages shall, as far as possible, inform the other Contracting Party of its decision before executing it.

Article 12. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Contracting Parties agree to engage in direct and meaningful negotiations to arrive at such solutions.

2. Each Contracting Party may offer to the other Contracting Party consultations on any question concerning the interpretation or application of this Agreement. The Contrasting Party which receives such a proposal must consider it with kindness and take all appropriate measures to facilitate the holding of consultations.

3. If the Contracting Parties cannot reach an agreement within a period of six (6) months from the date of notification of the disputes between them by the foregoing procedure, the disputes may be submitted, at the request of either Contracting Party, to an arbitral tribunal of three members.

4. Within two (2) months of receipt of a request, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Contracting Party fails to appoint an arbitrator within the specified time, the other Contracting Patty may request the President of the International Court of Justice to make the appointment.

5. If both arbitrators cannot reach an agreement about the choice of the Chairman within two (2) months after their appointment, the Chairman shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

6. If, in the cases specified under paragraphs (2) and (3) of this Article, the President of the International Court.of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.

7. The tribunal shall have three (3) months from the date of the selection of the Chairman to agree upon rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

8. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight (8) months of the date of selection of the Chairman, and the tribunal shall render its decision within two (2) months after the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes. The arbitral tribunal shall render its decision on the basis of this Agreement and in accordance with the international law applicable between the Contracting Parties.

9. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Contracting Parties. The tribunal may, however, for objective reasons, decide that a greater part of the costs be paid by one or the other of the Contracting Parties.

10. A dispute shall not be submitted to an international arbitration tribunal under the provisions of this Article, if a dispute on the same matter has been brought before another international, arbitration tribunal under the provisions of Article 10 and is still before the tribunal. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

Article 13. Service of Documents

Notices and other documents relating to the settlement of disputes under Articles 10 and 12 must be served on Burkina Faso at the following address:

Ministry of Foreign Affairs and Cooperation,

PO box: 03 BP 7038 Ouagadougou 03

Burkina Avenue

Ouagadougou

Burkina Faso

Phone number: (226) 25 32 47 33/25 32 47 36

Fax: (226) 25 30 87 02

Notices and other documents in disputes under Articles 10 and 12 shall be served on Turkey by delivery to:

Cumhurbaşkanlığı Hukuk ve Mevzuat Genel Müdürlüğü.

Cumhurbaşkanlığı Külliyesi

06560 Beştepe-Ankara

Türkiye

(Presidency of General Directorate of Law and Legislation.

Presidential Complex. 06560 Bestepe - Ankara

Turkey)

Article 14. Entry Into Force

1. This Agreement shall enter into force on the date of the receipt of the last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with paragraph 4 of this Article.

3. This Agreement may be amended by mutual written consent of the Contracting Parties at any time. The amendments shall enter into force in accordance with the same legal procedure prescribed under the first paragraph of the present Article.

4. Either Contracting Party may, by giving one year's prior written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or at any time thereafter.

5. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten (10) years from such date of termination.

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

Done in Ankara on April 11, 2019, in French, Turkish and English, in duplicate originals, all texts being equally authentic.

In the event of a difference in interpretation, the English text will prevail.

For the Government of Burkina Faso

Harouna KABORE

Minister of Trade, Industry and Handicrafts

For the Government of the Republic of Turkey

Mustafa VARANK

Minister of Industry and Technology