AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, on the one hand, AND THE GOVERNMENT OF THE REPUBLIC OF MALI, on the other hand FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

the Government of the Republic of South Africa and the Government of the Republic of Mali (hereinafter referred to as the "Contracting Parties");

With a view to creating favorable conditions for increased investment by investors of one Contracting Party in the territory of the other Contracting Party; and

RECOGNIZING that the encouragement and protection of such investments under the terms of international agreements help to stimulate individual entrepreneurship and increase prosperity in the territories of both Contracting Parties

IT IS AGREED as follows:

Article 1. Definitions

(1) In this Agreement, unless the context otherwise requiresâ

(a) "investment" means investments of every kind and includes, in particular, but not exclusively:

(i) movable and immovable property, as well as other property rights such as mortgages, liens, and pledges;

(ii) shares in a business, as well as the business's shares and bonds, and any other form of interest in a business;

(iii) a claim for money or any performance under a contract that has economic value;

(iv) intellectual property rights, in particular copyrights, patents, registered designs, registered forms, trademarks, trade names, trade and business secrets, and know-how, and goodwill;

(v) titles and permits granted by law or by contract, including concessions for the exploration, cultivation, extraction, or exploitation of natural resources;

(b) "returns" means the amounts generated by an investment and includes, in particular but not exclusively, profits, interest, capital gains, dividends, royalties, and fees;

(c) "investor" means, with respect to both Contracting Parties:

(i) "nationals", that is, natural and legal persons who are citizens of a Contracting Party; and

(ii) "enterprises," that is, any legal entity, corporation, firm, or association, incorporated or established under the national law of the said Contracting Party;

(d) "territory" means the national territory of a Contracting Party, including its territorial waters and any maritime zone beyond the territorial waters of that Contracting Party, which has been designated or may be designated in the future under the national law of the Contracting Party concerned, in accordance with international law, as an area within which the Contracting Party may exercise its sovereign rights and jurisdiction.

(2) No change in the form in which assets are invested shall affect their character as investments.

Article 2. Promotion of Investments

(1) Each Contracting Party shall, to the extent possible, encourage investments in its territory by investors from the other

Contracting Party, and shall, subject to its national law, permit such investments.

(2) Each Contracting Party shall, in accordance with its domestic law, grant the necessary permits relating to such investments and to the performance of authorization agreements and contracts for technical, commercial, or administrative assistance.

(3) In order to create conditions conducive to the assessment of the financial situation and the results of activities relating to investments in the national territory of a Contracting Party, that Contracting Party shall - notwithstanding its own accounting and auditing requirements - allow the investment to be subject to accounting and auditing in accordance with the standards to which the investor is subject under its national requirements or in accordance with internationally accepted standards (such as the International Accounting Standards established by the International Accounting Standards Committee). The results of such accounting and auditing shall be made freely available to the investor.

Article 3. Treatment of Investments

(1) Investments and returns belonging to investors who are nationals of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection within the national territory of the other Contracting Party. Neither Contracting Party shall, in any manner whatsoever, through unreasonable or discriminatory measures, impair the management, maintenance, use, enjoyment, or disposal of investments made by investors of one Contracting Party in the territory of the other.

(2) Each Contracting Party shall, within its national territory, accord to investments and returns belonging to investors of the other Contracting Party treatment no less favorable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(3) Each Contracting Party shall, within its national territory, accord to investors of the other Contracting Party treatment no less favorable than that which it accords to its own investors or to investors of any third State.

(4) The provisions of paragraphs (2) and (3) shall not be construed as requiring a Contracting Party to grant to investors of the other Contracting Party the benefits of any treatment, preference, or privilege arising from:

(a) customs unions, free trade areas, common markets, similar international agreements, or any provisional arrangements, existing or future, aimed at establishing such customs unions, free trade areas, or common markets, in which either Contracting Party participates or may participate; or

(b) international agreements or provisions relating wholly or in part to taxation, or any domestic law relating wholly or in part to taxation.

(5) If one of the Contracting Parties grants special benefits to development finance institutions with foreign participation that were established for the sole purpose of assisting development through activities that are primarily not-for-profit, that Contracting Party shall not be required to grant such benefits to development finance institutions or other investors of the other Contracting Party.

Article 4. Compensation

(1) Investors of one Contracting Party whose investments in the national territory of the other Contracting Party incur losses as a result of war or other armed conflict, revolution, a national state of emergency, a revolt, an insurrection, or a riot within the national territory of the latter Contracting Party, shall be treated by that Contracting Party, with respect to restitution, indemnification, compensation, or any other settlement, no less favorably than that Contracting Party's own investors or investors from a third State.

(2) Without prejudice to the provisions of paragraph (1) of this Article, investors of one of the Contracting Parties who, in any situation referred to in that paragraph, incur losses within the national territory of the other Contracting Party as a result of:

(a) the requisition of their property by the forces or authorities of the latter Contracting Party, or

(b) the destruction of their property by the forces or authorities of that Contracting Party, where such destruction was not caused by combat or necessitated by the exigencies of the situation,

shall be granted restitution or adequate compensation.

Article 5. Expropriation

(1) Investments belonging to investors of either Contracting Parties shall not be nationalized, expropriated, or subjected to measures having an effect similar to nationalization or expropriation (hereinafter referred to as "expropriation") within the national territory of the other Contracting Party except for public purposes, in accordance with the law, on a non-discriminatory basis, and in exchange for prompt, adequate, and effective compensation. Such compensation shall be at least equal to the market value of the investment immediately prior to its expropriation or prior to the imminent expropriation becoming public knowledge, whichever occurs first; it shall include interest at the normal commercial rate until the date of payment, shall be paid without delay, and shall be effectively enforceable.

(2) An investor affected by expropriation shall have the right, under the domestic law of the Contracting Party carrying out the expropriation, to seek a prompt review by a court or other independent and impartial tribunal of that Contracting Party of his case and of the valuation of his investment in accordance with the principles set forth in paragraph (1).

Article 6. Transfer of Investments and Returns

(1) Each Contracting Party shall permit investors of the other Contracting Party the free transfer of payments relating to their investments and returns, including compensation paid in accordance with Articles 4 and 5.

(2) Any transfer shall be made without undue delay in any convertible currency at the market exchange rate in effect on the date of the transfer. In the absence of a foreign exchange market, the rate used shall be the one most favorable to the investor between the most recent exchange rate applied to foreign investments and the most recent exchange rate for the Special Drawing Rights currency convention.

Article 7. Settlement of Disputes between an Investor and a Contracting Party

(1) Any legal dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment by the former that has not yet been settled amicably after the expiration of a six-month period from the date of written notice of a claim shall be submitted to international arbitration if the investor in question so desires.

(2) In the event that the dispute is submitted to international arbitration, the investor and the Contracting Party involved in the dispute may agree among themselves to submit it to such arbitration or:

(a) to the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington, D.C., on March 18, 1965, once each Contracting Party has become a signatory to said Convention.

Until this requirement is met, each Contracting Party agrees that the dispute may be settled in accordance with the rules governing the Supplementary Agreement for the Administration of Proceedings by the ICSID Secretariat, or:

(b) to an international arbitrator or an ad hoc arbitral tribunal to be appointed by special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

(3) If, after a period of three months from the date of the investor's written notice of the decision to submit the dispute to international arbitration, there is no agreement on any of the alternative procedures referred to in paragraph (2), the dispute shall, upon the written request of the investor in question, be resolved in accordance with the procedure preferred by the investor.

(4) The award of the arbitrator in question, pursuant to paragraphs (2) or (3), shall be binding on the parties to the dispute. Each Contracting Party shall enforce the award in accordance with its domestic law.

Article 8. Disputes between the Contracting Parties

(1) Any dispute arising between the Contracting Parties concerning the interpretation or implementation of this Agreement shall, if possible, be settled through negotiations between the Governments of the Contracting Parties.

(2) In the event that the dispute cannot be settled in this manner within six months of the date on which such negotiations were initiated by either Contracting Party, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

(3) Such an arbitral tribunal shall be constituted in each case as follows: Within two months of receiving a request for arbitration, each Contracting Party shall appoint one member to the tribunal. These two members shall then select a national of a third State who, upon the approval of both Contracting Parties, shall be appointed Chair of the tribunal. The Chairperson must be appointed within two months of the date of appointment of the other two members.

(4) If the necessary appointments are not made within the time limits specified in paragraph (3) of this Article, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party, or if he is prevented for any reason from performing said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party, or if he too is prevented for any reason from performing said function, the Member of the International Court of Justice next in order of seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The award of the arbitral tribunal shall be rendered by a majority vote. Such an award shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of its own member of the tribunal as well as the costs of its representation during the arbitration; the costs relating to the Chairperson and the remaining costs shall be shared equally between the Contracting Parties. However, in its award, the tribunal may order one of the Contracting Parties to pay a larger share of the costs, and such a decision shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

If one of the Contracting Parties or its designated agency makes a payment to its own investor under a guarantee it has provided regarding an investment in the national territory of the other Contracting Party, the latter shall recognize the transfer, whether by operation of law or by legal act, to the former Contracting Party of all rights and claims of the indemnified investor, and shall recognize that the former Contracting Party or its designated agency has the right to exercise such rights and assert such claims by virtue of subrogation, to the same extent as the original investor.

Article 10. Application of other Regulations

(1) In the event that the provisions of the domestic law of either Contracting Party or the obligations under international law in force or as may be established in the future between the Contracting Parties in addition to this Agreement contain regulations, whether general or specific, that provide for more favorable treatment than that provided for in this Agreement with respect to investments and returns of investors of the other Contracting Party, such regulations shall prevail over this Agreement to the extent that they are more favorable.

(2) Each Contracting Party shall comply with any other obligations it may have undertaken with respect to investments belonging to investors of the other Contracting Party.

Article 10. Application of other Regulations

(1) In the event that the provisions of the domestic law of either Contracting Party or the obligations under international law in force or as may be established in the future between the Contracting Parties in addition to this Agreement contain regulations, whether general or specific, that provide for more favorable treatment than that provided for in this Agreement with respect to investments and returns of investors of the other Contracting Party, such regulations shall prevail over this Agreement to the extent that they are more favorable.

(2) Each Contracting Party shall comply with any other obligations it may have undertaken with respect to investments belonging to investors of the other Contracting Party.

Article 11. Scope of the Agreement

This Agreement shall apply to any investment, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute arising prior to the date of entry into force of this Agreement.

Article 12. Final Provisions

(1) The Contracting Parties shall notify one another when their respective constitutional requirements for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of twelve months from the date on which either Contracting Party has given written notice of termination to the other.

(3) With respect to investments made prior to the effective date of the notice of termination, the provisions of Articles 1 and

2 shall remain in effect with respect to such investments for an additional period of twenty years from that date.

In witness whereof, the undersigned, duly authorized, have signed this Agreement.

Done in duplicate at Bamako on March 4, 1995, in the English and French languages, both texts being equally authentic.

For the Government of the Republic of South Africa

THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF SOUTH AFRICA

ALFRED N'ZO

For the Government of the Republic of Mali

THE MINISTER OF PUBLIC WORKS AND TRANSPORTATION OF THE REPUBLIC OF MALI, ACTING AS INTERIM MINISTER OF FOREIGN AFFAIRS

MOHAMED AG ERLAF