AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE GOVERNMENT OF BURKINA FASO ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE KINGDOM OF MOROCCO and THE GOVERNMENT OF BURKINA FASO, hereinafter referred to as "the Contracting Parties";

DESIRING to strengthen their economic co-operation by creating favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

CONSIDERING the beneficial influence which this Agreement may have on improving business contacts and confidence in the field of investment;

RECOGNIZING the need to encourage and protect foreign investment with a view to promoting the economic prosperity of both Contracting Parties;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means any asset and any direct or indirect contribution invested by investors of one Contracting Party in the territory of the other Contracting Party, including, but not limited to;

(A) movable and immovable property, as well as any other rights in rem, such as mortgages, pledges, security interests, usufruct and similar rights;

(B) shares and all other forms of participation in companies;

C) monetary claims and rights to any benefits having an economic value;

(D) intellectual property rights, including copyrights, trademarks, patents, technical processes, trade names and any other industrial property rights, as well as goodwill;

(E) concessions under public law conferred by law or contract, including concessions for the extraction or exploitation of natural resources.

No change in the legal structure in which the assets and capital have been invested or reinvested shall affect their character as "investments" within the meaning of this Agreement.

Such investments shall be made in accordance with the laws and regulations in force of the Contracting Party in whose territory such investments are made.

2. The term "investor" means:

(A) any individual possessing the Moroccan or Burkinabe nationality under the legislation of the Kingdom of Morocco or of Burkina Faso and making an investment in the territory of the other Contracting Party;

(B) any legal person having its registered office in the territory of the Kingdom of Morocco or of Burkina Faso and constituted respectively in accordance with Moroccan or Burkinabe legislation or constituted under the legislation of another third State and controlled by nationals Of one of the Contracting Parties and making an investment in the territory of the other Contracting Party.

3. The term "income" means the amounts yielded by an investment, including, but not limited to, profits, interest, dividends

and royalties.

4. the term "territory" means:

(A) in respect of the Kingdom of Morocco: the territory of the Kingdom of Morocco including any maritime area beyond the territorial waters of the Kingdom of Morocco which has been or may hereafter be designated by the legislation of the Kingdom of Morocco in accordance with to international law, as an area within which the rights of the Kingdom of Morocco relating to the seabed and subsoil and to natural resources may be exercised.

(B) for Burkina Faso: the territory of Burkina Faso, including airspace, over which Burkina Faso exercises its sovereign rights or jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

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

The extension, modification or transformation of an investment made in accordance with the laws and regulations in force in the host country shall be considered as a new investment.

2. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall be accorded by the latter Party fair and equitable treatment in accordance with international law and the provisions of this Agreement and, subject to such measures as are strictly necessary for the maintenance of public order, full protection and security.

Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal in its territory of the investments of the other Contracting Party are not hindered by unjustified, arbitrary, abusive or discriminatory measures

In the event of their reinvestment in accordance with the laws and regulations of the Contracting Party in whose territory the investment is situated, the investment income shall enjoy the same protection as the initial investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord in its territory to investments of the other Contracting Party treatment no less favorable than that accorded to investments of its own investors or to investments of the most favored nation, whichever is more favorable.

Each Contracting Party shall provide in its territory to investors of the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of the most favoured nation, whichever is more favourable, in respect of activities relating to their investments.

2. Most-favored-nation treatment shall not apply to the privileges and advantages accorded by a Contracting Party to investors of a third State by virtue of its participation in or association with a free trade area,aA common market or any other form of regional economic organization, or a similar international agreement or a convention for the avoidance of double taxation in respect of taxation or any other convention relating to taxes.

Article 4. Expropriation and Compensation

1. Measures of nationalization, expropriation or any other measure having the same effect or character (hereinafter referred to as "expropriation") as may be taken by the authorities of one Contracting Party against investment By investors of the other Contracting Party shall be neither discriminatory nor motivated by reasons other than public utility. Expropriation measures must be carried out in accordance with the legal procedure.

2. The Contracting Party which has taken such measures shall pay to the person entitled, without undue delay, a compensation the amount of which shall be the fair market value of the investment expropriated on the day before the expropriation shall be made or made public, whichever occurs first.

3. The provisions for the fixing and payment of compensation shall be taken promptly at the latest at the time of expropriation. In the event of late payment, the indemnity will bear interest at market conditions from the date of its payment until the date of payment. The allowance shall be effectively realizable and freely transferable.

Article 5. Damage for Losses

Investors of one of the Contracting Parties whose investments suffer damage or loss as a result of war or any other armed conflict, revolution, national emergency, revolt, insurrection, or any other similar event in the territory of the other Contracting Party, shall be accorded by the latter non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most favored nation with respect to restitution, compensation, indemnification or other relief, whichever is more favorable.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to such investors, after payment of the tax obligations, the free transfer in convertible currency and without undue delay of liquid assets relating to such investments and in particular:

(A) initial capital or additional amounts to maintain or increase the investment;

(B) profits, dividends, interest, royalties and other current income;

(C) amounts required to repay borrowings relating to the investment;

(D) proceeds from a sale or a total or partial liquidation of the investment;

(E) compensation payable under Articles 4 and 5;

(F) wages and other remuneration accruing to nationals of one Contracting Party who have been authorized to work in the territory of the other Contracting Party in respect of an investment.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of the transfer and under the exchange regulations in force.

3. The guarantees provided for in this Article shall be at least equal to those granted to investors of the most favored nation who are in similar situations.

Article 7. Subrogation

1. If, under a legal or contractual guarantee covering non-commercial investment risks, compensation is paid to an investor of one Contracting Party, the other Contracting Party shall recognize the subrogation of the insurer to the rights of the indemnified investor.

2. In accordance with the guarantee given for the investment concerned, the insurer shall be entitled to assert all the rights which the investor could have exercised if the insurer had not been subrogated to it.

3. Any dispute between a Contracting Party and the insurer of an investment of the other Contracting Party shall be settled in accordance with the provisions of Article 9 of this Agreement.

Article 8. Applicable Rules

Where a question relating to investments is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by international conventions existing or subscribed by the Parties in the future, investors of the other Party Contracting Party may avail themselves of the provisions which are most favorable to them.

Article 9. Settlement of Disputes Relating to Investments

1. Any dispute relating to investments between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably by consultations and negotiations between the parties to the dispute.

2. In the absence of an amicable settlement by direct agreement between the parties to the dispute within a period of six months from the date of its written notification, the dispute shall be submitted, at the option of the investor:

(A) to the competent court of the Contracting Party in whose territory the investment was made;

(B) to international arbitration, under the conditions described in the paragraph below.

3. In the event of recourse to international arbitration, the dispute may be referred to one of the following arbitration bodies, at the choice of the investor:

(A) the International Center for the Settlement of Investment Disputes (ICSID), established by the "Convention for the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature at Washington, March 18 1965.

(B) to an ad hoc arbitral tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party shall give its irrevocable consent to the submission of any dispute relating to investments to this arbitration procedure.

4. No party to a dispute may object at any stage of the arbitration proceedings or the execution of an arbitral award to the fact that the investor, as the other party to the dispute, has received compensation for all or part of its losses under an insurance policy.

5. The Arbitral Tribunal shall decide on the basis of the national law of the Contracting Party, party to the dispute, in whose territory the investment is situated, including the conflict of laws rules, the provisions of this Agreement, special agreements on investment and the principles of international law.

6. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce these awards in accordance with its national law.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, through diplomatic channels.

Failing this, the dispute shall be submitted to a joint ad hoc committee, composed of representatives of the Contracting Parties; the latter shall meet without delay at the request of the most diligent Contracting Party.

2. If the ad hoc Joint Committee can not settle the dispute within six months of the commencement of negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. Such tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator, and the two arbitrators shall jointly designate a third arbitrator, who shall be a national of a third State, as President of the tribunal.

The arbitrators shall be appointed within a period of three months, the President, within a period of five months from the date on which one of the Contracting Parties has informed the other Contracting Party of its intention to submit the dispute to An arbitration tribunal.

4. If the time limits laid down in paragraph (3) above have not been complied with, either Contracting Party shall invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of one of the Contracting Parties, or if he is prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President has the nationality of one of the Contracting Parties or if he is prevented from exercising his mandate, the most senior member of the International Court of Justice who is not a national of either Party Contracting Parties, shall be invited to make the

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and of the rules and principles of international law. The decision of the tribunal shall be adopted by a majority of votes. It shall be final and binding on the Contracting Parties.

6. The tribunal shall determine its own rules of procedure.

7. Each Contracting Party shall bear the expenses of its arbitrator and of its representation in the arbitration proceedings. The costs of the President and other costs shall be borne equally by the Contracting Parties.

Article 11. Application

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

Agreement shall not apply to disputes which may arise prior to its entry into force.

Article 12. Entry Into Force, Validity and Termination

1. This Agreement shall be subject to ratification and shall enter into force 30 days from the date of receipt of the last of the two notifications relating to the performance by both Contracting Parties of the constitutional procedures in their respective countries.

It shall remain in force for a period of ten years. Unless one of the Contracting Parties denounces it at least six months before the expiry of its period of validity, it shall be automatically renewed for a further period of ten years, each Contracting Party reserving the right to denounce it by written notice at least six months before the expiry date of the current period of validity.

2. Investments made prior to the date of expiry of this Agreement shall remain subject to the Agreement for a period of ten years from the date of expiry.

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

Done at Rabat on 8 February 2007, in two originals, each in the Arabic and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO

Mohamed BENAISSA

Minister of State Foreign Affairs and Cooperation

FOR THE GOVERNMENT OF BURKINA FASO

Youssouf OUEDRAOGO

Foreign Affairs and Foreign and Regional Cooperation