AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF EQUATORIAL GUINEA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Kingdom of Spain and the Republic of Equatorial Guinea, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation for the benefit of both countries and to create favorable conditions for Equatorial Guinean investments in Spain and Spanish investments in Equatorial Guinea, or investments made by investors of each of the Contracting Parties in the territory of the other, and

Convinced that the promotion and protection of their investments are proper to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. "Investor" shall mean any national or any company of one of the Contracting Parties making investments in the territory of the other Contracting Party:

a) "national" means any natural person who is a national of one of the Contracting Parties in accordance with its legislation ;

b) "company" means any legal person or any other legal entity incorporated or duly organized under the laws of that Contracting Party and having its registered office in the territory of that Contracting Party, such as a corporation, partnership or business association.

2. "Investments" means all types of assets that have been invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party, including in particular, but not limited to, the following:

a) ownership of movable and immovable property, as well as other rights in rem such as mortgages, pledges, usufructs and similar rights ;

b) shares, securities, bonds and any other form of participation in companies;

c) rights to monetary contributions and any other contractual benefit that has economic value and is linked to an investment;

d) Industrial and intellectual property rights; technical processes, know-how and goodwill;

e) rights to carry out economic and commercial activities granted by law or by virtue of a contract, including concessions for prospecting, cultivation, extraction or exploitation of natural resources.

Investments made in the territory of a Contracting Party by a company of the same Contracting Party, which is owned or effectively controlled by investors of the other Contracting Party, shall also be considered as investments made by the latter investors, provided that they have been made in accordance with the legal provisions of the first Contracting Party.

No change in the manner in which the assets are invested or reinvested shall affect their character as investments, provided that such change is made in accordance with the laws of the Contracting Party receiving the investment.

3. "Investment income" shall mean the amounts produced by an investment and, in particular, but not limited to, profits, dividends, interest, capital gains, royalties and fees.

4. The term "territory" means the land territory, internal waters and territorial sea of each Contracting Party, as well as the exclusive economic zone and the continental shelf extending beyond the limit of the territorial sea of each Contracting Party over which the Contracting Parties have or may have jurisdiction and/or sovereign rights in accordance with international law.

Article 2. Promotion and Admission of Investments

1. Each Contracting Party shall promote in its territory, to the extent possible, investments of investors of the other Contracting Party and shall admit such investments in accordance with its legal provisions.

2. Where a Contracting Party has admitted an investment into its territory, it shall, in accordance with its legal provisions, grant the necessary permits in connection with such investment and with the making of licensing, technical, commercial or administrative assistance contracts. Each Contracting Party shall endeavor to grant, whenever necessary, the required authorizations in connection with the activities of consultants or qualified personnel, whatever their nationality.

Article 3. Protection

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall either Contracting Party accord to such investments treatment less favorable than that required by international law.

2. No Contracting Party shall in any way hinder, by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment and sale or, as the case may be, the liquidation of such investments. Each Contracting Party shall observe any other obligations it may have undertaken in writing with respect to investments in its territory of investors of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Clause

1. Each Contracting Party shall accord in its territory to investments made by investors of the other Contracting Party treatment no less favorable than that accorded to investments of its own investors or to investments of investors of any third State, whichever is more favorable to the investor.

2. Both Contracting Parties shall accord to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment and sale or, as the case may be, liquidation of investments made in their territory, treatment no less favorable than that accorded to their own investors or to investors of any third State, whichever is more favorable to the investor.

3. The treatment accorded under paragraphs 1 and 2 of this Article shall not be construed to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from its present or future association or participation in a free trade area, customs or economic union or under any other form of regional economic integration.

4. Measures adopted for reasons of public order, public safety and public health shall not be considered as "less favorable" treatment within the meaning of this Article.

Article 5. Nationalization and Expropriation

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to nationalization, expropriation or any other measure having similar effects (hereinafter "expropriation") except for reasons of public utility or social interest, in accordance with due process of law, in a non-discriminatory manner and accompanied by the payment of prompt, adequate and effective compensation.

2. Compensation shall be equivalent to the market value that the expropriated investment had immediately before the expropriation measure was taken or before the imminence of the expropriation becomes public knowledge, whichever is earlier (hereinafter "valuation date").

3. The market value shall be expressed in a freely convertible currency at the prevailing market rate of exchange for that currency on the valuation date.

The compensation shall include interest at a commercial rate fixed at market rates for that currency from the date of expropriation until the date of payment. The compensation shall be paid without delay, shall be effectively realizable and

freely transferable.

4. The affected investor shall be entitled, in accordance with the law of the Contracting Party carrying out the expropriation, to a prompt review of his case by the judicial or other competent and independent authority of that Contracting Party to determine whether the expropriation and the valuation of his investment have been taken in accordance with the principles set forth in this Article.

5. If a Contracting Party expropriates the assets of an enterprise which is incorporated in its territory in accordance with its legislation in force, and in which there is participation of investors of the other Contracting Party, the first Contracting Party shall ensure that the provisions of this Article are applied in such a manner as to guarantee to such investors prompt, adequate and effective compensation.

Article 6. Compensation for Losses

1. Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, revolution, state of national emergency, insurrection, riot or any other similar occurrence shall be accorded, by way of restitution, indemnity, compensation or other settlement, treatment no less favorable than that accorded by the latter Contracting Party to its own investors or to investors of any third State, whichever is more favorable to the investor concerned. The resulting payments shall be freely transferable.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of a Contracting Party who suffer losses in any of the situations referred to in that paragraph in the territory of the other Contracting Party as a result of:

a) the requisition of their investments or part of their investments by the forces or authorities of the latter Contracting Party, or

b) the destruction, not required by the necessity of the situation, of their investments or part of their investments by the forces or authorities of the latter Contracting Party,

shall be granted, by the latter Contracting Party, prompt, adequate and effective restitution or compensation. The resulting payments shall be made without delay and shall be freely transferable.

Article 7. Transfers

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of all payments related to their investments, and in particular, but not exclusively, the following:

a) the initial capital and additional sums necessary for the maintenance, extension and development of the investment ;

b) investment income, as defined in Article 1 ;

c) funds required for the repayment of loans linked to an investment ;

d) indemnities and compensations provided for in Articles 5 and 6 ;

e) proceeds from the sale or total or partial liquidation of an investment ;

f) salaries and other remuneration received by personnel recruited abroad in connection with an investment ;

g) payments resulting from the settlement of disputes.

2. The transfers referred to in this Agreement shall be made without delay, in freely convertible currency at the market rate of exchange applicable on the day of transfer.

Article 8. Other Provisions

1. If the legal provisions of one of the Contracting Parties, or obligations arising under international law outside this Agreement, present or future, between the Contracting Parties, result in a general or specific regulation under which investments of investors of the other Contracting Party are to be accorded more favorable treatment than that provided for in this Agreement, such regulation shall prevail over this Agreement, to the extent that it is more favorable.

2. Conditions more favorable than those of this Agreement which have been agreed upon by one Contracting Party with investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions of international treaties governing industrial intellectual property rights in force at the time of signature of this Agreement.

Article 9. Subrogation

If a Contracting Party, or the agency designated by it, makes a payment under a contract of insurance or guarantee provided against non-commercial risks in connection with an investment of any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation of any right or title of such investor in favor of the former Contracting Party, or its designated agency, and the right of the former Contracting Party, or its designated agency, to exercise, by virtue of the subrogation, any such right or title to the same extent as its former holder. Such subrogation shall make it possible for the first Contracting Party or its designated agency to be the direct beneficiary of any indemnity or compensation payments to which the original investor may be entitled.

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, to the extent possible, be settled through diplomatic channels.

2. If the dispute cannot be so settled within six months of the commencement of negotiations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each particular case as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall choose a citizen of a third State as chairman.

The arbitrators shall be appointed within three months and the chairman within five months from the date on which either Contracting Party has notified the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have not been made within the time limits provided for in paragraph 3 of this Article, either Contracting Party may, in the absence of other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is unable to perform such function or is a national of any of the Contracting Parties, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is unable to perform this function or is a national of any of the Contracting Parties, the appointments shall be made by the member of the International Court of Justice next in seniority who is not a national of any of the Contracting Parties.

5. The arbitral tribunal shall decide on the basis of the provisions contained in this Agreement and the generally accepted principles of international law.

6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall establish its own procedure.

7. The arbitral tribunal shall reach its decision by majority vote and its decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those related to its representation in the arbitration proceedings. All other expenses, including those of the Chairman, shall be borne equally by both Contracting Parties.

Article 11. Disputes between a Contracting Party and Investors of the other Contracting Party

1. Any investment dispute arising between a Contracting Party and an investor of the other Contracting Party with respect to matters governed by this Agreement shall be notified in writing by the investor to the Contracting Party receiving the investment. To the extent possible the parties to the dispute shall attempt to settle such differences by amicable agreement.

2. If the dispute cannot be settled in this way within six months from the date of written notification referred to in paragraph 1, the dispute may be submitted, at the option of the investor, to:

the competent courts of the Contracting Party in whose territory the investment was made ; or

to an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

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 at Washington on March 18, 1965, when each State party to this Agreement has acceded to it. In the event that one of the Contracting Parties is not a Contracting State to the said Convention, the dispute may be settled under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings by the ICSID Secretariat; or

to an arbitral tribunal established under the arbitration rules of the Organization for the Harmonization of Business Law in Africa (OHADA).

3. The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment has been made, including the rules relating to conflicts of law, as well as such rules and principles of international law as may be applicable.

4. The Contracting Party which is a party to the dispute may not invoke in its defense the fact that the investor, by virtue of an insurance or guarantee contract, has received or will receive indemnification or other compensation for all or part of the losses suffered.

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

Article 12. Scope of Application

1. This Agreement shall apply to investments made after the entry into force of this Agreement by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legal provisions of the latter.

2. Investments existing prior to the entry into force of this Agreement shall benefit from the provisions contained in this Agreement.

3. This Agreement shall not apply to claims arising out of events that occurred prior to its entry into force nor to claims that have been settled prior to its entry into force.

4. Both Contracting Parties agree to the provisional application of its provisions as from the date of signature of this Agreement.

5. The treatment accorded by this Agreement shall not apply to tax matters.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force one month after the receipt through diplomatic channels of the last notification by which the Contracting Parties inform each other of the fulfillment of the internal constitutional requirements for its entry into force. It shall remain in force for an initial period of ten years. After the expiration of that initial period, it shall remain in force indefinitely unless denounced by either Contracting Party by written notification to the other Contracting Party.

The denunciation shall take effect twelve months after such notification.

2. With respect to investments made prior to the date on which the denunciation of the Agreement becomes effective, the provisions of Articles 1 to 12 of this Agreement shall continue in force for an additional period of eight years from the date of termination of the Agreement.

In witness whereof, the respective plenipotentiaries have signed this Agreement.

Done in two originals in the Spanish language, which are equally authentic, in Malabo on the 22nd day of November 2003.

For the Kingdom of Spain,

Ana Palacio Vallelersundi

Minister of Foreign Affairs

For the Republic of Equatorial Guinea

Pastor Micha Ondo Bile

Minister of Foreign Affairs and International Cooperation and Francophony