AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE GAMBIA AND THE GOVERNMENT OF THE KINGDOM OF SPAIN

The Kingdom of Spain and the Republic of Gambia (hereinafter referred to as “the Contracting Parties”),

Desiring to intensify economic cooperation for the mutual benefit of both States,

Determined to utilize their economic resources and potential mechanisms in the field of investment and to create favorable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of such investments under this Agreement will stimulate the entrepreneurial initiative of investors and increase the prosperity of both countries,

Agreeing that these objectives can be achieved without prejudice to measures of general application in the fields of health, safety, and the environment,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. “Investment” means all types of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations 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 real rights, such as mortgages, pledges, guarantees, and similar rights;

b) shares and any other form of participation in an enterprise or company;

c) the right to monetary contributions or any other type of performance under a contract that has economic value and is associated with an investment;

d) intellectual and industrial property rights; technical processes, technical knowledge (know-how) and goodwill,

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

No change in the form in which assets are invested or reinvested shall affect their investment character, provided that such change is made in accordance with the laws and regulations of the Contracting Party hosting the investment.

2. “Investor” means the following persons of either Contracting Party who make investments in the territory of the other Contracting Party in accordance with the laws of that Party and the provisions of this Agreement:

a) any natural person who, in accordance with the laws of that Contracting Party, is considered a national of that Party;

b) any legal person or any other legal entity established in accordance with the laws of that Contracting Party and having its registered office or principal place of business, as well as its effective economic activity, in the territory of that Contracting Party.

3. “Income” shall mean the amounts derived from an investment and shall include, in particular, but not exclusively, profits, dividends, interest, capital gains, royalties, and fees.

4. “Territory” means the territory of either Contracting Party, including the land territory, internal waters, territorial sea, and airspace, as well as the exclusive economic zone and continental shelf extending beyond the limits of the territorial sea and over which the Contracting Party concerned has or may have jurisdiction or sovereign rights in accordance with international law and its national legislation.

Article 2. Promotion and Admission of Investments

1. Each Contracting Party shall, in accordance with its laws and regulations, create favorable conditions for attracting investments from investors of the other Contracting Party in its territory.

2. Each Contracting Party shall admit in its territory investments from investors of the other Contracting Party in accordance with its laws and regulations.

3. When a Contracting Party has admitted an investment into its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in relation to such investment and to the implementation of license agreements and contracts for technical, commercial, or administrative assistance. Each Contracting Party shall endeavor to issue the necessary authorizations in relation to the activities of consultants and other qualified persons, regardless of their nationality.

Article 3. Protection of Investments

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security.

2. Neither Contracting Party shall hinder, through unjustified or discriminatory measures, the management, maintenance, use, enjoyment, or disposal of such investments.

Article 4. National Treatment and Most-Favored-Nation Treatment

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

2. Each Contracting Party shall grant to investors of the other Contracting Party, in respect of the management, maintenance, use, enjoyment, or disposal of their investments, treatment no less favorable than that accorded to its own investors or to investors of any third State, whichever is more favorable to the investor.

3. The treatment granted under this Article shall not be construed as obliging a Contracting Party to extend to investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from:

a) its membership of or association with any free trade area, customs union, economic or monetary union or other similar international arrangements, including other forms of regional economic integration, whether existing or future; or

b) any international agreement or arrangement relating wholly or mainly to taxation or any internal legislation relating wholly or mainly to taxation.

4. The provisions of this Article shall be without prejudice to the right of either Contracting Party to apply different tax treatment to different taxpayers based on their place of tax residence.

Article 5. Expropriation and Compensation

1. Neither Contracting Party shall take any measures of expropriation or nationalization, or any other measures having an equivalent effect (hereinafter referred to as “expropriation”) against investments belonging to investors of the other Contracting Party except for reasons of public interest, in accordance with due legal process, in a non-discriminatory manner and upon payment of prompt and effective compensation.

2. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the expropriation or the imminence thereof became known, whichever is earlier (hereinafter referred to as the “valuation date”).

3. Such market value shall be expressed in a freely convertible currency at the market exchange rate prevailing for that currency on the valuation date. The compensation shall include interest at a commercial rate determined on the basis of the market for the currency of valuation from the date of expropriation until the date of payment. The compensation shall be

paid without delay, shall be effectively realizable and freely transferable.

Article 6. Compensation for Losses

Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, a state of national emergency, revolution, insurrection or civil disturbances or other similar events shall be granted by the latter Contracting Party, by way of restitution, compensation, indemnification or other settlement, treatment no less favorable than that accorded by that Contracting Party to its own investors or to investors of any third State, whichever is more favorable to the investor.

Article 7. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments in connection with their investments. Such transfers shall include, in particular, but not exclusively:

a) the initial capital and any additional capital to maintain or increase an investment;

b) income from the investment, as defined in Article 1;

c) funds intended for the repayment of loans relating to an investment;

d) compensation provided for in Articles 5 and 6;

e) the proceeds from the sale or liquidation, in whole or in part, of an investment;

f) income and other remuneration of personnel employed abroad in connection with an investment;

g) payments arising from the settlement of disputes.

2. Transfers under this Agreement shall be made without delay and in a freely convertible currency at the market exchange rate applicable on the date of transfer.

3. The term “without delay” shall mean the time normally required to complete the financial procedures necessary for the transfer of payments. Such period shall begin on the date on which the request for transfer is made and shall in no case exceed two months.

Article 8. Most Favourable Provisions

1. If the legislation of either Contracting Party or obligations arising from international law, already existing or subsequently arising between the Contracting Parties in addition to this Agreement, contain rules, whether general or specific, under which investments made by investors of the other Contracting Party should be accorded more favorable treatment than that provided for in this Agreement, such provisions shall prevail over this Agreement to the extent that they are more favorable.

2. Notwithstanding the provisions of this Agreement, the more favorable provisions that have been or may be agreed upon subsequently between any of the Contracting Parties and an investor shall apply.

Article 9. Subrogation

Where a Contracting Party or its designated agency makes a payment under an insurance or guarantee agreement against non-commercial risks granted in relation to an investment made by one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the transfer of any right or claim by the investor to the first Contracting Party or its designated agency; and

b) that the first Contracting Party or its designated agency is entitled to exercise, by subrogation, the rights and claims to the same extent as its predecessor in title.

Article 10. Observance of Commitments

Each Contracting Party shall ensure that the commitments it has undertaken with respect to investments made by investors of the other Contracting Party are fulfilled.

Article 11. Settlement of Disputes between the Contracting Parties

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

2. If a dispute cannot be resolved in this manner within six months of the start of negotiations, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator, and these two arbitrators shall choose a national of a third State that has diplomatic relations with both Contracting Parties, who, with the approval of both Contracting Parties, shall be appointed President of the tribunal. The arbitrators shall be appointed within sixty days of the receipt of the request for arbitration and the President within sixty days of the appointment of the other two members.

4. If the necessary appointments have not been made within the time limits set out 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 one of the Contracting Parties or is unable to perform this function for other reasons, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or is also unable to perform this function, the member of the International Court of Justice who is next in seniority and who is not a national of any of the Contracting Parties shall be requested to make the necessary appointments.

5. The arbitral tribunal shall render its decision on the basis of the provisions contained in this Agreement and the rules and principles of international law applicable.

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

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

8. Each Contracting Party shall bear the costs of its own arbitrator and those related to its representation in the arbitration proceedings. All other costs, including those of the President, shall be borne equally by the two Contracting Parties.

Article 12. Settlement of Disputes between a Contracting Party and Investors of the other Contracting Party

1. Any dispute arising between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of that investor shall be notified in writing by the investor to the latter Contracting Party. The parties concerned shall, as far as possible, endeavor to settle such disputes amicably through negotiations.

2. If the dispute cannot be resolved within six months of the date of the written notification referred to in paragraph 1, the dispute may be submitted, at the investor's choice, to:

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

b) an ad hoc arbitration tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

c) arbitration by 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,” open for signature in Washington on March 18, 1965, if both Contracting Parties are parties to that Convention; or

d) arbitration in accordance with the ICSID Additional Facility if only one of the Contracting Parties is a Contracting Party to the Convention referred to in subparagraph c) of this paragraph.

3. Each Contracting Party unconditionally agrees to submit to arbitration in accordance with this article any dispute arising between it and an investor of the other Contracting Party.

4. The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including the rules concerning conflicts of laws, and the rules and principles of international law applicable.

5. Neither Contracting Party may invoke as a defense that the investor has already received or will receive compensation or other compensation for all or part of the alleged damage under an insurance contract or guarantee.

6. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards without delay in accordance with its national law.

Article 13. Consultations

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to the application or interpretation of this Agreement. The other Contracting Party shall give favorable consideration to the proposal and provide an appropriate opportunity for such consultations.

Article 14. Scope of Application

This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's national laws and regulations, prior to or after its entry into force, but shall not apply to investment disputes that arose before its entry into force or to claims that were settled before that date.

Article 15. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party of the completion of the respective constitutional requirements for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for an initial period of ten years. Upon expiry, it shall remain in force unless either Contracting Party notifies the other in writing of its decision to terminate this Agreement. The notification of termination shall take effect one year after the date of notification.

3. With regard to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 14 shall remain in force for a further period of ten years from that date.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in duplicate at Madrid on December 17, 2008, in Spanish and English, both texts being equally authentic.

FOR THE KINGDOM OF SPAIN,

Miguel Ángel Moratinos Cuyaubé

Minister of Foreign Affairs and Cooperation

FOR THE REPUBLIC OF GAMBIA

Omar Touray

Secretary of State for Foreign Affairs