AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA AND THE GOVERNMENT OF THE REPUBLIC OF CABO VERDE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Republic of Equatorial Guinea and the Government of the Republic of Cabo Verde, hereinafter referred to as "the Contracting Parties."

Desiring to create favorable conditions for an increased flow of investments by investors of either Contracting Party into the territory of the other Contracting Party;

Recognizing that the mutual promotion and protection of investments, under the terms of this Agreement, will contribute to stimulating private initiative and increasing the well-being of both peoples, thereby enhancing prosperity in the territories of the Contracting Parties,

Agree as follows:

Article 1. Definitions

1. For the purposes of this Agreement:

a) The term "investment" encompasses all types of eligible 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, including in particular, but not exclusively:

i. Ownership of movable and immovable property, as well as other real rights, including security interests such as mortgages and/or pledges;

ii. Shares, quotas, or other forms of equity participation in a company;

iii. Credit claims or other contractual rights of economic value;

iv. Industrial and intellectual property rights, in particular copyrights, patents, utility model patents, industrial designs, trademarks, trade names, technical processes, know-how, and goodwill;

v. Concessions and licenses of economic value granted by law, by administrative act, or by contract, including concessions for the prospecting, exploration, cultivation, or exploitation of natural resources;

b) The term "income" means the amount generated by an investment, including, but not limited to, profits, interest, capital gains, dividends, royalties, and fees;

c) The term "investor" means, for either Contracting Party:

i. 4. "National" means: Any natural person who is a national of a Contracting State.

ii. 5. "Company" or legal entity, including commercial companies, enterprises, or associations, established in accordance with the law of one of the Contracting Parties and having their headquarters as well as effective economic activity within the territory of that same Contracting Party;

d) The term "territory" means the territories over which the Contracting Parties have, in accordance with international law and their national laws and regulations, sovereign rights or jurisdiction.

2. Any change in the manner of application of the invested assets shall not affect their classification as investments, as defined in this Agreement.

Article 2. Scope of the Agreement

This Agreement applies solely to investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the host Contracting Party.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall, within the framework of its general policy on foreign investment, promote and encourage investments by investors of the other Contracting Party in its territory, admitting such investments in accordance with its laws and regulations.

2. Each Contracting Party shall endeavor to grant, in accordance with its laws, the necessary authorizations for the realization of such investments and, where appropriate, to ensure licensing agreements and contracts for technical, commercial, or administrative assistance.

3. Investments approved under Article 2 shall enjoy fair and equitable protection in accordance with this Agreement.

Article 4. Treatment of Investments

1. This Agreement guarantees fair and equitable treatment for investments and returns of investors of each Contracting Party in the territory of the other Party. Therefore, neither Contracting Party shall, in any manner, subject the management, maintenance, use, enjoyment, or disposal of investments made in its territory by investors of the other Contracting Party to unjustified, arbitrary, or discriminatory measures.

2. Each Contracting Party shall accord to investors and to the investments and returns of investors of the other Contracting Party within its territory treatment no less favorable than that accorded to its own investors or to investors of third States.

3. The provisions of paragraph (2) of this Article shall not require a Contracting Party to grant any type of treatment, preference, or privilege to investors of the other Contracting Party resulting from:

(a) Participation in a customs union, free trade area, common market, or other similar international agreement, or interim agreements leading to such a union, area, or market, of which one of the Contracting Parties is a member;

(b) An international agreement or any national legislation relating wholly or partly to matters of a fiscal nature;

(c) Special advantages for foreign development financial institutions operating in the territory of either Contracting Party for the exclusive purpose of development assistance, primarily through non-profit activities.

4. Each Contracting Party shall observe the obligations arising from its national legislation and from this Agreement that bind the Contracting Party, its investors, as well as the investors of the other Contracting Party in matters relating to investments.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investment in the territory of the other Contracting Party suffers losses due to war or other armed conflicts, revolution, a state of national emergency, insurrection, or revolt shall be accorded treatment no less favorable than that granted by the latter Contracting Party to investments by its own investors or to investors of third States with respect to restitution, indemnification, compensation, or other relevant measures. The resulting compensation shall be freely transferable at the exchange rate applicable on the date of transfer in accordance with the exchange regulations in force.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of each Contracting Party who, in any of the situations mentioned in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) The requisition of their property or part of their investments by the forces or authorities of the latter Contracting Party, acting within the framework of the legal provisions relating to their powers, duties, and chains of command; or

(b) The destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused by combat operations or justified by the exigencies of the situation or by the fulfillment of any legal obligation;

3. Restitution or adequate compensation shall be granted, no less favorable than that which the latter Contracting Party grants to its own investors or to investors of any third State.

Article 6. Expropriation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized, or subjected to other measures having effects equivalent to expropriation or nationalization, except for public utility, in the manner provided by law without discrimination, and subject to prompt compensation.

Compensation shall be paid without delay, shall accrue interest at the customary commercial rate until the date of its settlement, and shall be prompt, effective, adequate, and freely transferable.

2. An investor affected by expropriation shall have the right, in accordance with the law of the expropriating Contracting Party, to a review of his case by a court or other independent and impartial body.

3. If a Contracting Party takes nationalization or expropriation measures against the assets of a company incorporated under the laws in force in its territory in which investors of the other Contracting Party hold an interest; the latter shall ensure that the provisions of paragraph (1) of this Article apply to the extent necessary to guarantee fair compensation to investors of the other Contracting Party affected by the aforementioned measures.

Article 7. Transfer of Investment Capital and Income

1. Each Contracting Party shall, in accordance with its laws, guarantee to investors of the other Contracting Party the free transfer of funds related to investments and income, including compensation paid pursuant to Articles 5 and 6 of this Agreement.

2. Transfers shall be made without delay, in convertible currency, and at the market exchange rate applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used shall be the most recent exchange rate applied to domestic investments or the most recent exchange rate for the conversion of currency into Special Drawing Rights, whichever is more favorable to the investor.

3. Notwithstanding paragraph (1), neither Contracting Party may require its investors to transfer earnings, profits, or any other amounts attributable to investments made in the territory of the other Contracting Party, nor may it penalize them for failing to make such a transfer.

Article 8. Settlement of Disputes between the Parties

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

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

3. The arbitral tribunal shall be constituted for each particular case as follows: within two months of receiving the request for arbitration, each Contracting Party shall appoint one arbitrator to the tribunal. The two arbitrators shall then select a national of a third State who, with the approval of both Contracting Parties, shall be appointed President of the tribunal. The President shall be appointed within two months of the date of appointment of the two arbitrators.

4. If the necessary appointments are not made within the time limits set forth in paragraph 3 of this Article, each Contracting Party may, unless otherwise agreed, request the President of the International Court of Justice to make such appointments. If the President is unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If the Vice-President is a national of one of the Contracting Parties or is unable to act for any other reason, the decisions shall be made by the next-ranking member of the International Court of Justice, provided that he or she is not a national of either Contracting Party.

5. The arbitral tribunal shall decide by majority vote. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the arbitrator it is responsible for appointing and of its representation in the arbitral proceedings. The Contracting Parties shall bear the costs of the President equally, as well as all other expenses. The tribunal may, however, decide that a larger proportion of the costs shall be borne by one of the Contracting Parties, and such decision shall be binding on both Contracting Parties and enforced by them.

6. In all other respects, the arbitral tribunal shall determine its own rules of procedure.

Article 9. Settlement of Disputes between a Contracting Party and Investors of the other Contracting Party.

1. Any investment-related dispute arising between one Contracting Party and an investor of the other Contracting Party, regarding 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 resolve these differences through amicable agreement.

2. If the dispute cannot be resolved in this manner within six months from the date of the written notification referred to in paragraph 1, the dispute shall be submitted to:

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

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

c) 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 on March 18, 1965, once each State Party to this Agreement has acceded thereto. In the event that one of the Contracting Parties is not a Contracting State to the aforementioned Convention, the dispute may be resolved in accordance with the Supplementary Mechanism for the Administration of Conciliation, Arbitration, and Fact-Finding Procedures by the ICSID Secretariat;

(d) an arbitral tribunal established in accordance with 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 on conflicts of law, as well as on the rules and principles of international law that may be applicable.

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

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

Article 10. Subrogation

1. In the event that one of the Contracting Parties or the agency designated by it makes payments to one of its investors pursuant to a guarantee provided for an investment made in the territory of the other Contracting Party, the latter shall recognize the transfer to the other Contracting Party of all rights and claims of the indemnified investor, and that the other Contracting Party or the agency designated by it may exercise such rights and bring such claims by way of subrogation on the same terms and conditions as the original holder.

2. Any payment made by one of the Contracting Parties to its own investor or by the respective designated Agency pursuant to paragraph 1 shall not affect the right of such investor to bring a claim against the other Contracting Party in accordance with Article 8, provided that the exercise of such right does not overlap with or conflict with the exercise of a right by virtue of the subrogation provided for in that paragraph.

Article 11. Application of other Rules

1. If, in addition to this Agreement, the provisions of the domestic law of one of the Contracting Parties or obligations arising from international law in force between the two Contracting Parties establish a general or special regime that accords investments made by investors of the other Contracting Party more favorable treatment than that provided for in this Agreement, such regime shall prevail over this Agreement.

2. Each Contracting Party shall, however, respect any obligation it has assumed in relation to investments by investors of the other Contracting Party.

Article 12. Prohibitions and Restrictions

The provisions of this Agreement shall in no way limit the right of each Contracting Party to apply prohibitions or restrictions of any kind or to take any other measures aimed at the protection of its essential security interests or the protection of public health or the prevention of animal or plant diseases and pests.

Article 13. Final Provisions

1. This Agreement shall apply to all 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 respective laws and regulations. For the avoidance of doubt, it is hereby declared that all investments, subject to this Agreement, shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. The Contracting Parties shall notify each other without delay of the completion of their internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the day following the receipt of the last notification.

3. Either Contracting Party may, upon mutual consent, request an amendment to this Agreement, provided that such amendment does not prejudice rights acquired or obligations assumed prior to the entry into force of the amendment.

4. This Agreement shall remain in force for a period of ten (10) years. Upon expiration, it shall continue in force unless one of the Contracting Parties notifies the other Contracting Party in writing of its intention to terminate this Agreement. Termination shall take effect twelve (12) months after such notification.

5. With respect to investments approved and/or made prior to the date of notification of termination of this Agreement, the provisions of the preceding articles shall apply to such investments for an additional period of ten (10) years from that same date or for any longer period provided for or agreed upon by the Parties, by act or contract, and for the benefit of the investor.

Done at Praia, on the sixteenth day of April in the year Two Thousand Nineteen (2019), in two original copies in the Spanish and Portuguese languages, both texts being equally valid and authentic.Done at Praia, on the sixteenth day of April in the year Two Thousand Nineteen (2019), in two original copiesin the Spanish and Portuguese languages, both texts being equally valid and authentic.

For the Government of the Republic of Equatorial Guinea

His Excellency Mr. Simeón Oyono Esono Angue,

Minister of State at the Ministry of Foreign Affairs and Cooperation

For the Government of the Republic of Cabo Verde

His Excellency Mr. Luís Felipe Lopes Tavares

Minister of Foreign Affairs and Communities