AGREEMENT BETWEEN THE REPUBLIC OF THE CONGO AND THE REPUBLIC OF ANGOLA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Congo and

The Republic of Angola, hereinafter referred to as the "Contracting Parties", Considering the Framework Agreement for Economic, Scientific, Cultural and Technical Cooperation signed in Luanda on 6 August 1977 between the two States,

Desiring to create favourable and equitable conditions for investments made by investors of one of the Contracting Parties in the territory of the other ;

Aware that the reciprocal promotion and protection of investments can give impetus to the dynamics of multifaceted cooperation for development between the two countries;

Recognizing in particular that their respective access to the Atlantic Ocean is an important asset for the consolidation of exchanges on international cooperation and development in Africa;

Have agreed as follows:

Article 1. Definitions

Under the terms of this Agreement :

1. The term "investment" means all kinds of assets owned by an investor of one of the Contracting Parties which will be invested or reinvested in the territory of the other Party in accordance with the laws and regulations in force in the other Contracting Party. It includes, but is not limited to

(a) movable and immovable property such as mortgages on real property, liens, encumbrances or leases ;

(b) shares in companies, debentures and all other forms of shares in such companies ;

(c) debts, financial claims or any other commitment under a loan agreement or other contract which has an economic value and relates to an investment ;

(d) industrial and intellectual property rights, such as patents, publication rights, trademarks, trade secrets, commercial distribution, industrial operations and technical knowledge;

(e) any rights acquired in accordance with permits, authorizations or licenses under the law, including natural resource rights. Any change in the form in which the assets have been invested or reinvested shall not affect their investment quality.

The term "investor" means :

- any natural person who is a national of one of the two Contracting Parties;

- any legal person founding or promoting an economic entity in accordance with the legislation in force in the territory of one of the two Contracting Parties.

3. The term "territory" means the entire territory under the jurisdiction of one of the Contracting Parties, including the exclusive economic zone as well as the seabed, territorial waters, sea surface and airspace over which it exercises its sovereign rights under international law.

4. The term "revenue" means the sums net of receipts from investments made, including profits, interest, fees and other similar charges.

5. The term "transferable currency" means any kind of currency that is outstanding in international commercial transactions and is exchangeable in the principal financial markets.

Article 2. Investment Promotion and Protection

1. The two Parties undertake to strengthen and deepen cooperation between them with a view to encouraging, promoting and protecting investments made in the territory of one Party by investors from the other Contracting Party.

2. Each of the two Parties shall create favourable conditions for investment in its territory for the benefit of investors of the other Contracting Party in accordance with its legislation.

3. Investments by investors of each Party shall be treated fairly and at all times equitably in the territory of the other Party.

Such investments shall enjoy adequate and sufficient protection in the territory of each Party in accordance with the laws in force. Each Party shall refrain from taking arbitrary measures that might prejudice the management or hinder the investments of the other Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord to the investments of the other Party treatment no less favourable than that accorded, under the same conditions, to investments made by a third Party, or by its own investors.

2. No Contracting Party shall, in its territory, impose discriminatory measures on investments made by investors of the other Contracting Party.

3. The provisions of this Article shall not oblige either Contracting Party to grant investments by investors of the other Contracting Party to the other Contracting Party. Part, other salaries, privileges or benefits resulting from :

(a) any economic union, customs union, free trade area, common market or similar international agreement ;

(b) any international agreement or arrangement wholly or partly related to the tariff system ;

(c) any regional economic organisation of which one of the two Contracting Parties is a member.

Article 4. Specific International Agreements and Contracts

Investments made between the two Parties or jointly by the Parties in accordance with special international agreements or contracts shall be subject to such international agreements and contracts if they offer more advantageous conditions than those granted by this Agreement.

Article 5. Transfers

1. Each Contracting Party shall guarantee and authorize without delay the free transfer

(a) profits, interest and any other related sums ;

(b) sums acquired by the sale and total or partial liquidation of the investment;

(c) compensatory sums allocated for the settlement of debts and credits ;

(d) compensation due in accordance with Article 5 of this Agreement;

(e) salaries and other remuneration of nationals of one of the Contracting Parties in the investment

2. The transfers listed in the first paragraph shall be made in a freely convertible currency at the official rates of exchange in accordance with the exchange regulations in force at the time of the transfer.

Article 6. Nationalization and Expropriation

1. In accordance with this Agreement, it is prohibited for each Contracting Party to subject the investments of one of the Parties, or the investments of their nationals established in the territory of either Party, to procedures for restricting the right of ownership or to derive interest from such investments on a permanent or temporary basis except within the limits of the regulations in force or following a judgment given by the competent court.

2. Each Contracting Party shall refrain from nationalizing or expropriating the investments of a national of the other Party made in the territory of the other Party, except where this is in the general interest of that country on the basis of non-discrimination.

3. In the event of nationalisation or expropriation, compensation shall be made on the basis of the principle of the fair commercial value of the direct investment on the day preceding the day on which the arrangements for announcing the decision to the public are made, and the value may be fully recovered and freely transferred out of the territory of the Contracting Party.

4. If the expropriation concerns a joint investment established in the territory of one of the Parties, the value of the compensation to be paid to the investor or to the Joint Investment Company (JIC) shall be calculated by the other Contracting Party on the basis of its share in the joint project. In the event of failure to reach an agreement between the investor and the Party in whose territory the investment is established, both Parties shall have recourse to the dispute settlement procedures provided for in Article 9 of that agreement.

Article 7. Subrogation or Substitution of Creditor

In the event that one of the Contracting Parties or its Representative makes payments to its own investors under the guarantees given to an investment made on the territory of the other Contracting Party, the latter must recognise :

(a) the transfer to the first Contracting Party or to its representative of all the rights and claims of these investors by legal or contractual means.

(b) the subrogation of the other Contracting Party or its representative in all rights which the first Contracting Party or its representative is entitled to exercise or assume all obligations relating to the investments.

Article 8. Settlement of Disputes between One Party and the Investor of the other Party

1. Any dispute arising directly from an investment between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be resolved amicably by negotiation between the two parties to the dispute.

2. If the dispute cannot be resolved by negotiation within six (6) months, one of the Contracting Parties to the dispute shall be entitled to submit the dispute to a competent tribunal of the Contracting Party in whose territory the investment is made.
3. Any dispute which cannot be resolved within six (6) months after recourse to negotiations as provided for in paragraph 1 of this Article shall be submitted, at the request of one of the Contracting Parties :

a. to the International Centre for Settlement of Investment Disputes (ICSID) in accordance with the Convention on the Settlement of Disputes between States and Nationals of Other Countries signed at Washington on 18 March 1965;

b. To the ad hoc Tribunal, provided that the Contracting Party involved in the dispute requests the investor concerned to exhaust the local remedies provided by the laws and regulations in force in the Contracting Party to the dispute before submitting it to the above-mentioned arbitral procedure.

However, if the investor has availed itself of the procedure specified in paragraph 2 of this Article, the provisions of this paragraph shall not apply.

4. Subject to paragraph 3 of this Article, the ad hoc tribunal referred to in paragraph 3 (b) shall be constituted for each individual case in the following manner:

Each Party to the dispute shall appoint one arbitrator, and both Parties shall appoint a national of a third country having diplomatic relations with both Contracting Parties as Chairman.

The first two arbitrators shall be appointed within two (2) months of the written notification requesting arbitration by one of the Parties to the dispute to the other Contracting Party and the Chairman shall be chosen within four (4) months thereafter. If within the above-mentioned period, the tribunal is not constituted, each Party to the dispute may invite the Secretary-General of the International Centre for Settlement of Investment Disputes to make the necessary appointments.

5. The ad hoc tribunal shall determine its own procedure. However, the tribunal may, in the course of the proceedings, take as its guide the Rules of the International Centre for Settlement of Investment Disputes.

6. The tribunal provided for in paragraphs 3 (a) and (b) of this Article shall render its award by a simple majority vote. The award shall be final and binding on the Parties to the dispute. Both Contracting Parties undertake to apply the award in their

respective territories.

7. The tribunal referred to in paragraphs 3 (a) and (b) of this Article shall take its decisions in accordance with the laws and regulations of the Contracting Party in whose territory the investments have been made, including its regulations on conflict of laws, the provisions of this Agreement and the principles of international law.

8. Each Party to the dispute shall bear the costs of its arbitrator and his representation in the arbitral proceedings. The costs of the President and of the Tribunal shall be borne equally by the Parties to the dispute.

The tribunal may determine in its decision that a greater proportion of the costs shall be borne by one of the Parties to the dispute.

Article 9. Settlement of Disputes between the Contracting Parties

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

2. lf a dispute cannot be settled in this way within six (6) months, it shall, at the request of one of the Contracting Parties, be submitted to an ad hoc arbitral tribunal. 3. This tribunal shall consist of three (03) arbitrators. Within two (2) months of receipt of the written notification requesting arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within two months, jointly select a citizen of a third country having diplomatic relations with both Contracting Parties, as Chairman of the arbitral tribunal.

4. lf the arbitral tribunal is not constituted within four (4) months of receipt in writing of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments as it deems necessary. If the President is a citizen of one of the Contracting Parties or is otherwise prevented from exercising the said functions, the member of the International Court of Justice next in seniority who is not a citizen of one of the Contracting Parties or is not otherwise prevented from exercising the said functions shall be invited to make such appointments as are deemed necessary.

5. The Arbitral Tribunal shall choose its own procedure and make its award in accordance with the provisions of this Agreement and with the universally recognized principles of international law.

6. The Arbitral Tribunal shall make its award by a majority of votes. The award shall be final and binding on both Contracting Parties. The tribunal may, at the request of one of the Contracting Parties, give reasons for its decision.

Any dispute arising out of the interpretation or application of this Agreement shall, as far as possible, be resolved by consultation through the channel.

Each Contracting Party shall bear the costs relating to the appointment of the arbitrators and its representation at the arbitral proceedings. The costs relating to the President and the expenses of the Tribunal shall be borne equally by the Contracting Parties.

Article 10. Review and Implementation of the Agreement

1. The provisions of this Agreement may be revised or amended at any time at the initiative of either of the Contracting Parties.

Amendments agreed by common accord shall enter into force in accordance with the provisions of Article 11.

2. This Agreement shall be applied to investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with the legislation in force in the other Contracting Party from the date of its entry into force.

Article 11. Entry Into Force, Duration and Termination

1. This Agreement shall be subject to the internal legal procedures for its entry into force in each of the two countries.

2. It is concluded for a period of ten (10) years, tacitly renewable for a similar period, if neither Party has notified its intention to revise or terminate it one year before the date of its expiry.

3. After the expiry of the ten (10) year period, either Contracting Party may terminate this Agreement at any time by giving one (1) year's written notice to the other Contracting Party.

4. With respect to investments made before the date of termination of this Agreement, the provisions of Articles 1 to 11 shall apply for an additional period of ten (10) years from the date of termination.

In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at Luanda, 09 September 2010

In two (2) original copies in the French and Portuguese languages, both versions being equally authentic.

For the Republic of Congo :

The Minister of the Interior and Decentralization,

Raymond Zéphirin MBOULOU

For the Republic of Angola :

The Minister of the Interior,

Roberto Leal Ramos MONTEIRO