AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALI AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Mali and the Government of the Republic of Turkey hereinafter referred to as "the Contracting Parties";

Desiring to promote dynamic economic cooperation between them, in particular with regard to investments made by investors of one Contracting Party in the territory of "the other Contracting Party ;

Recognising that an investment promotion and protection agreement is designed to stimulate the flow of capital and technology and the economic development of the Contracting Parties;

Recognizing that fair and equitable treatment of investments helps to maintain a stable investment framework and to contribute to maximizing the efficient use of economic resources and improving standards of living; and

Convinced that these objectives do not preclude the implementation of measures of general application relating to health, safety and the environment and to internationally recognized labour rights;

Have decided to conclude an agreement concerning the reciprocal promotion and protection of investments;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement;

1. The term "Investments" means any type of property, in connection with commercial activities, acquired for the purpose of establishing lasting economic relations in the territory of a Contracting Party in accordance with its laws and regulations, and includes in particular, but not exclusively :

(a) movable and immovable property, as well as all other rights such as mortgages, liens, pledges and other similar rights as defined under the laws and regulations of the Contracting Parties in whose territory the property is situated ;

(b) reinvested earnings, claims or any other rights having a financial value in respect of an investment;

(c) shares, capital or any other form of participation in companies;

(d) intellectual property rights, in particular, patents, industrial designs, technical processes and trademarks, goodwill and know-how:

(e) commercial concessions granted by law or by contract, including concessions relating to natural resources;

However, this Agreement does not cover investments related exclusively to the acquisition of shares or voting rights amounting to or representing less than ten (10%) per cent of a company through a stock exchange.

2. The term "Investor" means :

(a) a natural person having the nationality of a Contracting Party under its laws:

(b) companies, corporations, firms, business associations incorporated or constituted under the law in force of a Contracting Party and having their registered office and the greater part of their business activities in the territory of that Contracting Party;

which have invested in the territory of the other Contracting Party.

3. The term "income" means the amounts derived from an investment and includes in particular but not exclusively: profit, interest, capital gains, royalties, fees and dividends.

4. The term "territory" means :

(a) with respect to the Republic of Turkey; land territory, internal waters, territorial sea and airspace above and sea areas over which Turkey has sovereign rights or jurisdiction for the purpose of exploring, exploiting and preserving natural living and non-living resources under international law.

(b) with regard to the Republic of Mali; land territory, internal waters, airspace and all areas over which Mali exercises sovereignty and authority under international law.

Article 2. Scope of Application

This Agreement shall apply to investments in the territory of a Contracting Party made in accordance with national laws and regulations by investors of the other Contracting Party, whether before or after the entry into force of this Agreement. However, this Agreement shall not apply to disputes which have arisen before its entry into force.

Article 3. Investment Promotion and Protection

1. Subject to the laws and regulations, each Party shall in its territory, to the extent possible, promote the investments of investors of each Contracting Party.

2. Investments of investors of one of the Contracting Parties shall, at all times, be accorded the minimum standard of treatment in accordance with international law, including fair and equitable treatment and full protection and security in the territory of the other Contracting Party.

3. Neither Contracting Party shall, in any case, interfere with the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of such investments by unreasonable or discriminatory measures.

Article 4. Treatment of Investments

1. Each Contracting Party shall, in its territory, admit investments on a basis no less favourable than that accorded in similar circumstances to investments by investors from any Third Country in the context of its laws and regulations.

2. Each Contracting Party shall accord to its investments, once constituted, treatment no less favourable than that accorded in like circumstances to investments of investors or to investments of investors of any third country, whichever is more favourable, with respect to the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of such investments.

3. The Contracting Parties shall, in the context of their national legislation, consider applications for entry and residence by nationals of each Party who wish to enter the territory of the other Contracting Party in connection with the preparation and realisation of an investment.

(a) The provisions of this Article shall not be construed so as to require a Contracting Party to grant to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be accorded by the former Contracting Party under any international agreement or arrangement relating in whole or in part to taxation.

(b) The provisions of this Agreement concerning anti-discriminatory principles, national treatment, most-favoured-nation treatment shall not apply to any real or future advantages granted by a Contracting Party by virtue of its affiliation with or relations with customs, economic or monetary union, common market or free trade area to its own nationals or companies of the member States of that union, the common market or free trade area or any other third State.

(c) Paragraphs (1) and (2) of this Article shall not apply with respect to the dispute settlement provisions between an investor and the host Contracting Party as set forth simultaneously in this Agreement and another similar international agreement to which one of the Contracting Parties is a signatory.

(d) The provisions of Articles 3 and 4 of this Agreement shall not require Contracting Parties 4 to accord to investments of investors of the other Contracting Party the same treatment as they accord to investments of its own investors in respect of the acquisition of land, property and land rights relating thereto.

Article 5. General Exceptions

1. Nothing in the Agreement may be interpreted as preventing a Contracting Party from adopting, maintaining or applying non-discriminatory legal measures:

(a) for the protection of human, animal or plant life or health or the environment;

(b) related to the conservation of exhaustible natural resources, whether biological or non-biological.

2. No provision of the Agreement shall be interpreted in such a way as to a:

(a) require any Contracting Party to provide or allow access to any information the disclosure of which is deemed contrary to its essential security interests;

(b) to prevent any Contracting Party from taking such measures as it considers necessary for the protection of its essential security interests;

(i) relating to trafficking in arms, munitions and war material, as well as trafficking in other goods, materials, services and technology carried out directly or indirectly to supply an establishment of the armed forces or other security forces,

(ii) taken in time of war or another emergency in international relations, or

(iii) concerning the implementation of national policies and international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices,

(c) prevent any Contracting Party from taking action in fulfilment of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

Article 6. Expropriation and Compensation

1. Investments shall not be expropriated, nationalized or subjected, directly or indirectly, to similar measures or effects hereinafter referred to as expropriation except in the public interest in a non-discriminatory manner, subject to the payment of prompt, adequate and effective compensation, and in accordance with the law and the general principles of treatment provided for in Article 3 of this Agreement.

2. Non-discriminatory legal measures designed and applied to protect legitimate public welfare objectives such as health, safety and the environment shall not constitute indirect expropriation.

3. Compensation shall be equivalent to the market value of the expropriated investment before the expropriation is decided or made public. Compensation shall be paid without delay and shall be freely transferable, as described in Article 8.

4. Compensation shall be payable in a freely convertible currency, and in the event that payment of compensation is delayed, this shall include a rate of interest equivalent to the highest interest paid in relation to public claims in the host Contracting Party.

Article 7. Compensation for Losses

1. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party as a result of war, insurrection, civil disturbance or similar events shall be accorded by the other Contracting Party treatment no less favourable than that accorded to its own investors, or to investors of a third State, the most favourable treatment in respect of any measure which it adopts in relation to such losses.

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

(a) the requisition of their property by its forces or authorities; or

(b) the destruction of their property by its forces or authorities which was not caused by the fighting or was not required by the situation;

shall be subject to restitution or compensation, which in any case shall be prompt, adequate and effective. The resulting payments must be freely convertible.

Article 8. Repatriation and Transfer

1. Subject to the non-discriminatory and equitable application of their respective laws and regulations, the Contracting

Parties shall ensure in good faith that all transfers relating to an investment are made freely and without delay within or outside its territory. Such a transfer shall include :

(a) The initial capital, and additional amounts to maintain or increase investments:

(b) Returns;

(c) Proceeds from the sale or liquidation of all, or any part of an investment;

(d) Compensation in accordance with Articles 6 and 7;

(e) Repayments and interest payments on loans relating to investments;

(f) wages, salaries and other remuneration received by nationals of a Contracting Party who have obtained in the territory of the other Contracting Party the relevant work permits relating to an investment;

(g) payments resulting from an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment was made or in any other convertible currency at the rate of exchange prevailing on the date of the transfer unless otherwise agreed by the investor and the host Contracting Party.

3. Where, in exceptional circumstances, payments and capital movements which cause or threaten to cause serious balance-of-payments difficulties, each Contracting Party may temporarily restrict transfers provided that such restrictions are imposed on a non-discriminatory basis and in good faith.

(a) Le capital initial, et les montants supplémentaires pour maintenir ou augmenter les investissements :

(b) Les retours ;

(c) Les produits tirés de la vente ou de la liquidation de tout, toute Partie d'un investissement ;

(d) Le dédommagement conformément a l' Article 6 et 7 ;

(e) Les remboursements et paiements d'intérét provenant des préts relatifs aux investissements ;

(f) Les salaires, et autres rémunérations pergus par les ressortissants d'une Partie Contractante, qui ont obtenu sur le territoire de l'autre Partie Contractante les permis de travail correspondant relatif a un investissement ;

(g) Les paiements résultant d'un différend relatif aux investissements.

2. Les transferts doivent étre effectués en devises convertibles dans laquelle l'investissement a été fait ou dans toute autre devise convertible au taux de change en vigueur a la date du transfert, sauf accord contraire par l'investisseur et la Partie Contractante héte.

3. Lorsque, dans des circonstances exceptionnelles, les paiements et les mouvements de capitaux qui causent ou menacent de causer de sérieuses difficultés de la balance des paiements, chaque Partie Contractante peut temporairement limiter les transferts 4 condition que ces restrictions soient imposées sur une base non discriminatoire et de bonne foi.

Article 9. Subrogation

1. If one of the Contracting Parties has a public insurance policy or a guarantee scheme to protect the investments of its own investors against non-commercial risks, and if an investor of that Contracting Party has undertaken to do so, any subrogation of the insurer under the insurance contract between that investor and the insurer shall be recognised by the other Contracting Party.

2. The insurer shall have the right under the subrogation to exercise the rights and enforce the claims of such investor and shall assume the obligations relating to the investment. The rights and claims of subrogation shall not exceed the initial rights and claims of the investor.

3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 10 of this Agreement.

Article 10. Settlement of Disputes between a Contracting Party and Investor of the other Contracting Party

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party in connection with its investment shall be notified in writing, including details of the investor to the Contracting Party receiving the investment. To the extent possible, the investor and the Contracting Party concerned shall endeavour to resolve such disputes through consultations and negotiations in good faith.

2. If such disputes cannot be resolved in this manner within six (6) months from the date of the written notification referred to in paragraph (1), the investor may elect to submit the disputes to the :

(a) the competent court of the Contracting Party in whose territory the investment was made, or

(b) except as provided in subsection (4) of this Article, in :

(i) 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"; or

(ii) an ad hoc arbitral tribunal established under the Internal Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(iii) The International Chamber of Commerce (ICC) Arbitration Tribunal.

3. Once the investor has submitted the dispute to one or other of the dispute settlement bodies referred to in paragraph (2) of this Article, the choice of one of these bodies shall be final.

4. Notwithstanding the provisions relating to paragraph (2) of this Article: only disputes arising directly out of investment activities which have obtained the necessary authorization, if there is a required authorization in accordance with the legislation in force of the Contracting Parties on foreign capital and implementation has commenced, shall be submitted to the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism as agreed by the Contracting Parties.

5. The arbitral tribunal shall decide on the basis of the law taking into account all sources of law in the following order:

(a) The provisions of this Agreement ;

(b) The laws and legislation of the Contracting Party involved in the dispute in whose territory the investment is made, (including rules relating to conflict of laws); and

(c) The applicable principles of international law as accepted by both Contracting Parties.

6. Arbitration decisions relating to disputes shall be final and irrevocable for all parties. Each Contracting Party shall implement the decision in accordance with its national law.

Article 11. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party which is a company of that other Contracting Party and to the investments of that investor if the company does not carry on any substantial business activity in the territory of the other Contracting Party under the law under which it is legally incorporated or organized, and investors of a non-Contracting Party or investors of the Contracting Party denying, owning or controlling the company.

2. The Contracting Party which refuses shall as far as possible notify the other Contracting Party before refusing the benefits.

Article 12. Settlement of Disputes between the Contracting Party

1. The Contracting Parties shall seek, in good faith and in a spirit of cooperation, a rapid and equitable solution to all disputes concerning the interpretation and application of this Agreement. The Parties agree to engage in direct and sincere negotiations in order to reach solutions. If the parties fail to resolve a dispute, within a period of six (6) months through the previous procedure, the matter may be submitted, at the request of a party, to a three-member arbitral tribunal.

2. Each party shall appoint an arbitrator within two (2) months from the date of receipt of the request. The two arbitrators shall choose a third, a national of a third State who shall preside. In the event that a Party fails to appoint an arbitrator within the time limit, another Party may request the President of the International Court of Justice to do so.

3. If the two (2) arbitrators do not agree on the choice of the Chairman within two (2) months, the Chairman shall be

appointed by the President of the International Court of Justice upon request of a Party.

4. If, in the cases indicated in paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from playing this role, or if he is a national of one of the Contracting Parties, the appointment shall be made by the Vice-President. If the Vice-President is unable to perform this function, or if he is a national of one of the Contracting Parties, the senior member of the Court who is not a national of one of the Contracting Parties shall make the appointment.

5. The Tribunal shall have three (3) months from the date of appointment of the President to determine the rules of procedure, subject to compatibility with the other provisions of this Agreement. If necessary, the Tribunal shall request the President of the International Court of Justice to determine the rules of procedure in accordance with the recognized rules of international arbitration procedure.

6. Unless otherwise agreed, all observations and hearings shall be made within eight (8) months from the date of designation of the President and the Court shall render its decision within two (2) months from the date of closure of the observations and hearings. The Arbitration Tribunal shall make its final and binding decision by a majority of votes. It shall take its decision on the basis of this Agreement and in accordance with the international law applicable between the Contracting Parties.

7. The costs incurred by the Chairman, the other arbitrators and the expenses of the proceedings shall be paid equitably by the Contracting Parties. However, the Tribunal, at its discretion, may decide that a party shall pay a large proportion of the costs.

8. A dispute shall not be submitted to an international arbitral tribunal in accordance with the provisions of this Article if the dispute on the same matter has been submitted to another international arbitral tribunal in accordance with the provisions of Article 10, and remains before the tribunal; this shall in no way hinder the engagement in direct and sincere negotiations between the two Contracting Parties.

Article 13. Entry Into Force

1. This Agreement shall enter into force on the date of receipt of the last notification by the Contracting Parties in writing, through diplomatic channels, of the completion of the respective internal legal procedures necessary for this purpose.

2. This Agreement shall remain in force for a period of ten (10) years, and shall continue to be in force unless terminated in accordance with paragraph (4) of this Article.

3. This Agreement may be amended in writing by mutual agreement at any time. Amendments shall enter into force in accordance with the same legal procedures prescribed in paragraph 1 of this Article.

4. Either Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by giving one year's written notice to the other Contracting Party.

5. With respect to investments made or acquired prior to the date of termination of this Agreement, and to which this Agreement otherwise applies, the provisions of all other Articles of this Agreement shall thereafter continue in force for a period of ten (10) years from the date of termination.

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

Done in duplicate at Bamako, on 2 March 2018 in the Turkish, French and English languages, all texts being equally authentic.

In case of divergence of interpretation, the English text shall be authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF MALI

(signature)

Tiéman Hubert COULIBALY

Minister of Foreign Affairs and International Cooperation

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

(signature)

Nihat ZEYBEACI

Minister for the Economy