

**DRAFT AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA**

**AND**

**THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA**

**ON THE RECIPROCAL PROMOTION AND PROTECTION OF**

**INVESTMENTS**

The Government of the Republic of Equatorial Guinea and the Government of the Federal Democratic Republic of Ethiopia, here in after referred to as the "Contracting Parties";

DESIRING to strengthen their traditional ties of friendship and to extend and intensify the economic relation between them and in particular to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with the view to promoting the economic prosperity of both Contracting Parties;

AWARE of the need to establish an adequate juridical frame work which settle and guarantee promotion and reciprocal protection of investments between both contracting parties;

HAVE AGREED as follows:

**Article 1.**

DEFINITIONS

For the purpose of this Agreement:

1. "Investment" means every kind of asset 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, and in particular, though not exclusively, includes:

- a) Movable and immovable property and any other rights such as mortgages, liens or pledges;
- b) Shares, stocks and debentures of companies or interests in the property of such companies;
- c) Claims to money or to other assets or any performance having an economic value;
- d) Intellectual and industrial property rights, including rights with respect to copy rights, patents, trade marked, trade names, industrial designs, trade secrets, technical processes and know-how and goodwill;

e) Business concessions conferred by Law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

A change in the form in which assets or capitals have been invested or reinvested shall not affect their designation as "investments" for the purpose of this Agreement.

2. "Investor" means:

a) Natural person having the nationality of that Contracting Party;

b) Legal person Constituted or otherwise duly organized under the laws of that Contracting Party and have their seat and economic activities in the territory of that same Contracting Party.

3. "Returns" means the amounts yielded by investments such as profits, dividends, interest capital gains, royalties or other fees.

4. "Territory" means:

1. With respect to the Republic of Equatorial Guinea: the territory of the Republic of Equatorial Guinea, including the territorial sea, and the exclusive economic zone over which the Republic of Equatorial Guinea exercises sovereign rights or jurisdiction in conformity with its national law and international law.

2. With respect to the Federal Democratic Republic of Ethiopia, the territory in which the Federal Democratic Republic of Ethiopia exercises sovereign rights or jurisdictions in accordance with its national and international laws.

5. "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

6. "Public purpose" means as established under the national legislation of each of the Contracting Parties.

## **Article 2. Promotion and Protection**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to invest in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party in accordance with its laws and regulations, grant the necessary permits in connection with such an investment.

3. Investments made in accordance with the laws and regulations of each Contracting Party by investors of the other Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy protection and security in the territory of the other Contracting Party. Neither Contracting Party shall impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments.

## **Article 3. Treatments**

1. Each Contracting Party shall in its territory accord investments of the investors of the other Contracting Party treatment no be less favorable than that it accords to investments made by it own investor or investors of any third states in like circumstances, which ever is the more favorable.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment of their investments, treatment no less favorable than that it accords to investments made by it own investor or investors of any third states, which ever is the more favorable.

## **Article 4. Exemptions**

1. The provisions of this Agreement shall not be construed so as to oblige a Contracting Party to extend to the investors and investments of the other Contracting Party the benefits of any treatment, preference or privilege resulting from:

a) Any existing or future customs or economic union, a free trade area, or regional economic cooperation to which either of the Contracting Parties is or may become a member; or

b) Agreement for the avoidance of double taxation or other international agreement relating wholly or partially to taxation; or

c) Multilateral agreement relating wholly or mainly to investments.

## **Article 5. Expropriation**

1. Neither Contracting Party shall take any measures of expropriations, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party unless the following conditions are complied with:

- a) The measures are taken for public purpose or interest and under due process of law;
- b) The measures are non-discriminatory; and
- c) The measures are taken against prompt, adequate and effective Compensation.

2. Such compensation shall amount to the market value of the investments affected immediately before the measures of expropriation or nationalization

Are taken or became public knowledge, and it shall be freely transferable in a freely convertible currency from the contracting Party. Any unreasonable delay in payment of Compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

3. The investor affected shall have a right, under the laws and regulations of the Contracting Party making the expropriation, to prompt review, by the competent judicial or other independent authority of that Contracting Party, of his or its case and to the valuation of his or its investment in accordance with the principles set out in this Article

4. This Agreement shall include the situation where a Contracting Party expropriates the assets of a company or an enterprise, which is incorporated or constituted under the law in force in its territory, in which an investor of the other contracting party has an investment ownership of shares, bonds, or other rights or interests.

5. Where a Contracting Party expropriates the assets of a company or an enterprise, which is incorporated or constituted under the law in force in its territory, in which an investor of the other contracting party has an investment ownership of shares, bonds, or other rights or interests, it shall ensure that this provision is applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the Contracting Party who are share owners.

## **Article 6. Compensation for Losses**

1. Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war, revolution, a state of national emergency, insurrection, or riot shall be accorded by the latter Contracting Party treatment, as regards restitution,

Indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to investors of any third State.

2. Without prejudice to paragraph (1) of this article, investors of one of the Contracting Party who, in any of the situations referred to in this paragraph, suffer losses in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their property by forces or authorities of the other Contracting Party; or
- b) Destruction of their property by forces or authorities of the other Contracting Party,

Which was not required by the necessity of the situation, shall be accorded restitution or adequate compensation in no less favorable than that, which would be accorded under same circumstance to an investor of the other Contracting Party or to an investor of any other state and shall include interest at a commercial rate established on a market basis from the date of requisitioning or destruction until the date of actual payment.

## **Article 7. Transfers**

1. Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the transfer of payments in connection with investments and returns in any freely convertible currency. Such transfers include:

- a) profits, dividends, interests, royalties and other legitimate income.
- b) amounts from total or partial liquidation of investments;

- c) payment pursuant to a loan agreement in connection with investments;
  - d) payment of technical assistance or technical service fee, management fee;
  - e) compensations paid under Articles 5, 6, and 8;
  - f) payments resulting from investment disputes under Article 9 and 10;
  - g) earnings of natural persons of the other Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.
2. The transfer referred above shall be made at the prevailing exchange rate of the Contracting Party in whose territory the investment was made on the date of transfer.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated Agency makes a payment to any of its investor under a guarantee against non-commercial risks in regard to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize:

- a) The assignment to the first Contracting Party or its authorized agency by law or another regulation, of any rights and claims of the indemnified person;
- b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, and shall assume obligations pertaining to the investments.

2. The subrogated right or claim shall not be greater than the original right or claim of the investor.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal of three members.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one Arbitrator of the Tribunal. Those two arbitrators shall within two months, select a third arbitrator who is a national of a third state which has diplomatic relations with both Contracting Parties and upon approval by the two Contracting Parties, shall be appointed as Chairperson of the Arbitration Tribunal.

4. If both arbitrators can't reach an agreement concerning the choice of the Chairperson within two months after their appointment, either Contracting Party may in the absence of any other agreement, invite the president of International Court of Justice to make the necessary appointment. If the President is a national of either contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either contracting Party, or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting party shall be invited to make the necessary appointment.

5. The Arbitral Tribunal shall determine its own procedure. The tribunal shall reach its award by a majority of votes in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. Such awarded shall be final and binding on both Contracting Parties. Each Contracting party shall bear the cost of its appointed arbitrator and its representation in arbitral preceding. The cost of the Chairperson and the remaining costs shall be borne in equal parts by the Contracting Parties.

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

1. Disputes which might arise between one of the Contracting Party and an investor of the other Contracting Party

concerning an investment of that investor in the territory of the former Contracting Party shall, as far as possible, be settled amicably between the parties concerned.

2. If the dispute has not been settled within a period of six months from the date either party to the dispute requested amicable settlement, the dispute shall at the request of the investor concerned be submitted for settlement to:

- a) the competent court of the Contracting Party in the territory of which the investment has been made; or
- b) the International Center for Settlement of Investment Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other states, opened for signature, at Washington, on March 18, 1965, if both Contracting Parties are members of this Convention; or
- c) the International Center for Settlement of Investment Disputes under the Rules Governing Additional Facility for the Administration of Proceedings by the Secretariat of the Center (Additional Facility of Rules) if one of the Contracting party is not a Contracting State of the Convention as mentioned in paragraph 2(b) if this Article; or
- d) an international ad hoc arbitral tribunal which, unless and otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The arbitral awards shall be final and binding on both parties to the dispute and shall be executed according to the national laws of the Contracting Party when the dispute arises.

## **Article 11. Scope of Application**

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its Laws and regulations by investors of the other Contracting Party prior to or after the entry into force of this Agreement. It shall however, not be applicable to claims settled or disputes which occurred prior to its entry into force.

## **Article 12. Application of other Rules**

If the legislations of either Contracting Party or international agreements existing at present or established hereafter between the Contracting Parties or other international agreements whereof the Contracting Parties are signatories contains provisions entitling the investment of the investors of the other Contracting party to treatment more favorable than is provided for by this

Agreements, such legislations and agreements shall to the extent that they are more favorable, prevail over this Agreement.

## **Article 13. General Derogations**

1. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party, or construed as preventing the Contracting Parties from taking any measure necessary for the maintenance of public order.

3. The provisions of this Article shall not apply to sub-article (1) (e) of Article 7.

## **Article 14. Transparency**

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investment of investors of the other Contracting Party in the territory of the former Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate interests of particular investors.

## **Article 15. Consultations**

Representatives of the Contracting Parties shall hold consultations, when necessary, concerning matters related to the application of this Agreement. These consultations shall be held at the proposal of one of the Contracting parties at the time

and place to be agreed upon through diplomatic channels.

## **Article 16. Entry In to Force. Duration and Termination**

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.
2. This Agreement may be amended by the mutual consent of the Contracting Parties Provided that one of the Contracting Parties present written proposal for amendment to the other Contracting Party. Amendments shall be made through the exchange of notes or signing of an amendment agreement.
3. This Agreement shall remain in force for a period of ten (10) years and shall continue in force, unless terminated in accordance with paragraph 4 of this Article.
4. Either Contracting Party may, by giving one (1) year's prior written notice to the other Contracting Party, terminate this Agreement before the expiration of the initial ten (10) year period or any time thereafter.
5. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all the other articles of this Agreement

Shall continue to be effective for a period of ten (10) years from such date of termination.

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

DONE at \_on the \_day of \_20\_ in two

Original versions, in the Arabic and English languages, both texts being equally authentic. In the case of divergence, the English text shall prevail.

FOR THE REPUBLIC OF EQUATORIAL GUINEA

FOR THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA