AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF ETHIOPIA AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of France hereinafter referred to as the Contracting Parties;

Desiring to strengthen the economic cooperation between both States and to create favourable conditions for French investments in Ethiopia and Ethiopian investments in France,

Convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term “investment” means every kind of assets, such as property, rights and interests of whatever nature and in particular though not exclusively:

a) movable and immovable property as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights;

b) shares, stocks, premium on share and other forms of participation, including minority or indirect forms, in a company, and rights derived there from;

c) bonds, debentures, loans and other forms of debt, and rights derived there from;

d) claims to money and claims to performance having an economic value;

e) intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial models, technical processes, know-how, trade names and goodwill;

f) concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their qualifications as investments provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory or in the maritime area of which the investment is made.

2. The term “nationals” means natural persons possessing the nationality of either Contracting Party.

3. The term “company” means any legal person constituted on the territory of one Contracting Party in accordance with the legislation of that Party and having its head office on the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting Party, or by legal persons having their head office in the territory of one Contracting Party and constituted in accordance with the legislation of that Party.

4. The term “returns” means all amounts yielded by an investment, such as profits, dividends, royalties, fees and interest. Investment returns and, in case of re-investment, re-investment returns shall enjoy the same protection as the investment

5. This Agreement shall apply in the territory of each Contracting Party, as well as the maritime area of each Contracting

Party, hereinafter defined as the economic zone and the continental shelf outside the territorial sea of each Contracting Party over which they have in accordance with international law sovereign rights and jurisdiction with a view to prospecting, exploiting and preserving natural resources.

6. Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any measure to regulate investment of foreign companies and the conditions of activities of these companies in the framework of policies designed to preserve and promote cultural and linguistic diversity.

7. For the purpose of this Agreement, it is understood that the Contracting Parties are responsible for the actions or omission of their sub-sovereign entities, including though not exclusively their federal states, regions, local governments or any other entity over which the Contracting Party exercises the control, the representation or the responsibility of its international affairs, or its sovereignty consistent with its internal legislation.

Article 2. Promotion and Admission of Investments

Each Contracting Party shall encourage and admit on its territory and in its maritime area, in accordance with its legislation and with the provisions of this Agreement, investments made by nationals or companies of the other Contracting Party.

Article 3. Fair and Equitable Treatment

Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of international law to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice.

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

Each Contracting Party shall apply to the nationals and companies of the other Contracting Party, with respect to their investments, once admitted in accordance with the legislation of the Contracting Party on the territory or in the maritime area of which the investment is made, and activities related to the investments, a treatment not less favorable than that granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favored nation, if the latter is more favorable.

This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization .

The provisions of this Article do not apply to tax matters.

Article 5. Dispossession and Compensation

1. The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and security on the territory and in the maritime area of the other Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments on its territory and in its maritime area, except in the public interest and provided that these measures are neither discriminatory nor contrary to a particular commitment as mentioned in Article 7 of the present Agreement.

Any measures of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall be equal to the actual value of the investments concerned prior to any threat of dispossession.

The said compensation, the amounts and conditions of payment, shall be set before the date of dispossession. This compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable. Until the date of payment, it shall produce interest calculated at the appropriate market rate of interest.

3. Nationals or companies of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring on the territory or in the maritime area of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own nationals or companies or to those of the most favoured nation.

Article 6. Free Transfer

Each Contracting Party, on the territory or in the maritime area of which the investments have been made by nationals or companies of the other Contracting Party, shall guarantee to these nationals and companies the free transfer of:

a) returns;

b) royalties and service fees related to an investment

c) repayments of loans;

d) value of partial or total liquidation or sale of the investment, including capital gains on the capital invested;

e) compensation for dispossession or loss described in Article 5, Paragraphs 2 and 3;

f) earnings of nationals of either Contracting Party, who have been authorized to work on the territory or in the maritime area of the other Contracting Party, as the result of an approved investment.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the official exchange rate prevailing on the date of transfer.

When, in exceptional circumstances, capital movements from or to third countries cause or threaten to cause a serious disequilibrium to its balance of payments, each Contracting Party may temporarily apply safeguard measures to the transfers, provided that these measures shall be strictly necessary, would be imposed in an equitable, non discriminatory and in good faith basis and shall not exceed in any case a six months period.

Article 7. More Favourable Provisions

Investments made by nationals or companies of one Contracting Party having formed the subject of a particular commitment from the other Contracting Party, according to its legislation, to a specific contract, or to any other form of agreement, shall be governed, without prejudice to the provisions of this Agreement, by the terms of this said commitment if the latter includes provisions more favorable than those of this Agreement

Article 8. Guarantees and Subrogation

1. In the event that the regulations of one Contracting Party contain a guarantee for investments made abroad, this guarantee may be accorded, after examining case by case, to investments made by nationals or companies of this Party on the territory or in the maritime area of the other Party.

2. Investments made by nationals or companies of one Contracting Party on the territory or in the maritime area of the other Contracting Party may obtain the guarantee referred to in the foregoing paragraph only if they have been previously agreed to by the other Party.

3. If one Contracting Party, as a result of a guarantee given for an investment made on the territory or in the maritime area of the other Contracting Party, makes payments to its own nationals or companies, the first mentioned Party has in this case full rights of subrogation with regard to the rights and actins of the said national or company.

4. The said payments hall not affect the rights of the beneficiary of the guarantee to recourse to the arbitration procedure mentioned in Article 9 of the present Agreement or to continue proceedings until completion of the said procedure.

Article 9. Settlement of Disputes between a National or Company of One Contracting Party and the other Contracting Party

Any dispute concerning the investment s occurring between one Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two Parties concerned.

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 national or the company concerned be submitted to:

a) the competent court of the Contracting Party in the territory of which investment was made; or

b) the International Center for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Dispute between States and Nationals of Other States opened for signature in Washington on March 18, 1965 if the Contracting Party, party to the dispute, has acceded to it; or

c) the International Center for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Center (Additional Facility Rules); or

d) an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commissions on International Trade law (UNCITRAL).

Article 10. Settlement of Disputes between Contracting Parties

1. Disputes relating to the interpretation or application of this Agreement shall be settled, if possible, by diplomatic channels.

2. If the dispute has not been settled within a period of six months from the date on which the matter was raised by either Contracting Party, it may be submitted at the request of either Contacting Party to an Arbitral Tribunal.

3. The said Tribunal shall be created as follows for each specific case each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a national of a third country, who shall be designated as Chairman of the Tribunal by the two contracting Parties. All the arbitrators must be appointed with in two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.

4. If the periods specified in Paragraph 3 above have not been met, either Contacting Party, in the absence of any other agreement, shall invite the Secretary General of the Permanent Court of Arbitration to make the necessary appointments. If the Secretary General is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the judge next in seniority to the Secretary General, who is not a national of either Contracting Party, shall make the necessary appointments.

5. The tribunal shall reach its decisions by a majority of votes, in accordance with the principles of international Law. These decisions shall be final and legally binding upon the Contracting Parties.

The Tribunal shall set its own rules of procedure. It shall interpret the judgment at the request of either Contacting Party. Unless otherwise decided by the tribunal, in accordance with special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two Contracting Parties.

Article 11. Application of the Agreement

This Agreement shall also apply to investments already existing at the date of its entry into force and that were made by nationals or companies of either Contracting Party on the territory or in the maritime area of the other Contracting Party in accordance with the latter’s relevant legislation.

Article 12. Entry Into Force and Termination

Each Party shall notify the other of the completion of the constitutional procedures required concerning the entry into force of this Agreement, which shall enter into force one month after the date of receipt of the notification.

The Agreement shall be in force for an initial period of twenty years. It shall remain in force thereafter, unless one of the Contracting Parties gives one year’s written notice of termination through diplomatic channels.

In case of termination of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Signed in Paris on 25th June 2003 in duplicate in the French and English languages, both texts being equally authentic.

For the Government of the French Republic:

Pierre-André Wiltzer

Minister Delegate for Cooperation and Francophonie

For the Government of the Federal Democratic Republic of Ethiopia:

Sufian Ahmed

Minister of Finance

PROTOCOL

On signing the Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of France on the Reciprocal Promotion and Protection of Investments, the Contracting Parties have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

As regards Article 1, paragraph 1

In particular thought not exclusively, the term “interests” shall include beneficial, contingent as well as proprietary interest.

As regards Article 1, paragraph 3

Direct or indirect control of a legal person may be established in particular in the following cases

- the status of subsidiary;

- a percentage of direct or indirect equity participation, notably exceeding 50% allowing an effective control;

- direct or indirect possession by nationals or companies of a Contracting Party of voting rights allowing for a decisive position in the executive bodies, or a decisive influence on its activity.

As regards Article 3

In particular though not exclusively, shall be considered as de jure or de facto impediments to fair and equitable treatment any restriction on the purchase or transport of raw materials and auxiliary materials, energy and fuels, as well as the means of production and operation of all types, any hindrance of the sale or transport of products within the country and abroad, as well as any other measures that have a similar effect.

Within the framework of their internal legislation, the Contracting Parties shall favorably examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment made on the territory or in the maritime area of the other Contracting Party.

As regards Article 4, paragraph 1

In particular though not exclusively, activities related to an investment shall include expansion, operation, management, maintenance, use, enjoyment and sale or other disposition of the said investment.

In this respect, nationals authorized to work on the territory and in the maritime area of one Contracting Party shall enjoy the appropriate conditions relevant to the exercise of their professional activities, including issuance of all necessary authorizations.

Signed in Paris on 25th June 2003 in duplicate in the French and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF FRANCE

Pierre-André Wiltzer

FOR THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Sufian Ahmed

MINISTRE DES FINANCES MINISTRE DE LA COOPERATION