# AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF GUINEA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Guinea, hereinafter referred to as "the Contracting Parties,"

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Guinea and Guinean investments in France,

Convinced that the promotion and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development,

Have agreed upon the following provisions:

## Article 1. Definitions and Scope of the Agreement

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights, and interests of any kind, and, more specifically but not exclusively:

a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, sureties, and all similar rights;

(b) shares, stock premiums, and other forms of equity interest, including minority or indirect interests, in companies incorporated in the territory of one of the contracting parties;

(c) bonds, receivables, and rights to any benefits having economic value;

(d) intellectual, commercial, and industrial property rights, such as copyrights, patents, licenses, registered trademarks, industrial designs and models, technical processes, know-how, registered names, and client bases;

(e) concessions granted by law or under a contract, in particular concessions relating to the exploration, cultivation, extraction, or exploitation of natural resources, including those located in the maritime zone of the Contracting Parties.

It is understood that such assets must be or have been invested in accordance with the laws of the Contracting Party in whose territory the investment is made, whether before or after the entry into force of this Agreement.

No change in the form of investment of such assets shall affect their classification as an investment, provided that such change is not contrary to the laws of the Contracting Party in whose territory the investment is made.

2. The term "investor" means:

(a) nationals, that is, natural persons who are nationals of one of the Contracting Parties and who invest in the territory of the other Contracting Party;

(b) companies, that is, any legal entity incorporated in the territory of one of the Contracting Parties in accordance with its laws and having its registered office there, or controlled directly or indirectly by nationals of one of the contracting parties, or by legal entities having their principal place of business in the territory of one of the contracting parties and incorporated in accordance with the laws of that party.

In particular, legal entities within the meaning of this Article include, on the one hand, companies and, on the other hand, nonprofit organizations with legal personality.

3. The term “income” means all sums derived from an investment, such as profits, royalties, or interest, during a given period.

Income from the investment and, in the event of reinvestment, income from such reinvestment shall enjoy the same protection as the investment.

4. This Agreement applies to the territory of each Contracting Party, defined as the area bounded by its land borders as well as its maritime zone, understood to mean the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each Contracting Party and over which they have, in accordance with international law, sovereign rights and jurisdiction for the purposes of exploring, exploiting, and conserving natural resources.

5. No provision of this Agreement shall be construed as preventing either Contracting Party from adopting measures to regulate investments made by foreign investors and the conditions under which such investors operate, as part of measures designed to preserve and promote cultural and linguistic diversity.

6. For the purposes of this Agreement, it is understood that the Contracting Parties are responsible for the acts or omissions of their public authorities, including their federal states, regions, local authorities, or any other entity over which the Contracting Party exercises oversight, representation, or responsibility for its international relations or sovereignty.

## Article 2. Promotion and Admission of Investments

Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, promote and admit investments made by investors of the other Party in its territory.

## Article 3. Fair and Equitable Treatment

Each Contracting Party undertakes to ensure, within its territory, fair and equitable treatment, in accordance with the principles of international law, for investments made by investors of the other Party, and to ensure that the exercise of the right thus recognized is not impeded either in law or in fact. In particular, though not exclusively, the following are considered to be legal or factual impediments to fair and equitable treatment: any restriction on the purchase and transport of raw materials and auxiliary materials, energy and fuels, as well as means of production and operation of any kind; any impediment to the sale and transport of products within the country and abroad; and any other measures having a similar effect.

The Contracting Parties shall give favorable consideration, within the framework of their domestic legislation, to applications for entry, residence, work, and movement submitted by nationals of one Contracting Party in connection with an investment made in the territory of the other Contracting Party.

## Article 4. National Treatment and Most-Favored-Nation Treatment

Each Contracting Party shall accord, within its territory to investors of the other Contracting Party, with respect to their investments and activities related to such investments, treatment no less favorable than that accorded to its own investors, or the treatment accorded to investors of the most-favored nation, whichever is more favorable. In this regard, nationals authorized to work in the territory of one of the Contracting Parties shall be entitled to appropriate material facilities for the exercise of their professional activities.

This treatment does not, however, extend to privileges that a Contracting Party grants to investors from a third country by virtue of its participation in or association with a free trade area, a customs union, a common market, or any other form of regional economic organization.

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

## Article 5. Expropriation and Compensation

1. Investments made by investors of either Contracting Party shall enjoy full and complete protection and security in the territory of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures having the effect of depriving, directly or indirectly, investors of the other Party of investments belonging to them in their territory, except for reasons of public interest and provided that such measures are neither discriminatory nor contrary to a specific commitment.

Any measures of dispossession that may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which—equal to the actual value of the investments concerned—shall be assessed in relation to a normal economic situation prior to any threat of dispossession.

Such compensation, its amount, and the terms of payment shall be determined no later than the date of expropriation. Such compensation shall be effectively realizable, paid without delay, and freely transferable. It shall accrue interest at the appropriate market interest rate until the date of payment.

3. Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, national state of emergency, or insurrection occurring in the territory of the other Contracting Party shall be accorded by the latter treatment no less favorable than that accorded to its own investors or to those of the most-favored nation.

## Article 6. Free Transfer

Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall grant such investors, in accordance with the procedures provided for by its laws, the free transfer of:

(a) capital and additional amounts intended for the maintenance or expansion of the investment;

(b) interest, dividends, profits, and other current income;

(c) royalties arising from the intangible rights referred to in Article 1, paragraph 1, subparagraphs (d) and (e);

(d) payments made to repay loans lawfully contracted;

(e) the proceeds from the sale or total or partial liquidation of the investment, including capital gains on the invested capital;

(f) compensation for expropriation or loss as provided for in Article 6, paragraphs 2 and 3, above.

Nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an approved investment shall also be authorized to transfer an appropriate portion of their remuneration to their country of origin.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal exchange rate officially applicable on the date of the transfer.

Where, in exceptional circumstances, capital movements to or from third countries cause or threaten to cause a serious imbalance in the balance of payments, either Contracting Party may temporarily apply safeguard measures with respect to such transfers, provided that such measures are strictly necessary, applied on an equitable, non-discriminatory, and good-faith basis, and do not exceed a period of six months.

The provisions of the preceding paragraphs of this Article shall not preclude the exercise in good faith by a Contracting Party of its international obligations, as well as its rights and obligations arising from its participation in or association with a free trade area, a customs union, a common market, an economic and monetary union, or any other form of regional cooperation or integration.

## Article 7. Guarantee and Subrogation

1. To the extent that the laws and regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such a guarantee may be granted, on a case-by-case basis, to investments made by investors of that Party in the territory of the other Party.

2. Investments by investors of one of the Contracting Parties in the territory of the other Party shall be eligible for the guarantee referred to in the preceding paragraph only if they have first obtained the approval of the latter Party.

3. If one of the Contracting Parties, pursuant to a guarantee provided for an investment made in the territory of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and claims of that investor.

4. Such payments shall not affect the rights of the beneficiary of the guarantee to resort to the arbitration procedure referred to in Article 8 of this Agreement or to continue proceedings initiated before it until the conclusion of the proceedings.

## Article 8. Specific Commitment

Investments that are the subject of a specific commitment by one Contracting Party toward investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that commitment to the extent that it contains provisions more favorable than those provided for in this Agreement.

## Article 9. Settlement of Disputes between an Investor and a Contracting Party

Any dispute concerning investments between one of the Contracting Parties and an investor of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute cannot be settled within six months from the time it was raised by either party to the dispute, it shall be submitted, at the request of the investor in question:

- either to arbitration before 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, signed in Washington on March 18, 1965;

- or to an ad hoc arbitral tribunal constituted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

In the event that the dispute involves liability for the acts or omissions of public entities or agencies subordinate to one of the two contracting parties, within the meaning of Article 1, paragraph 6 of this Agreement, such public entity or body shall be required to give its unconditional consent to arbitration before the International Centre for Settlement of Investment Disputes (ICSID), within the meaning of Article 25 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

## Article 10. Settlement of Disputes between Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If, within six months of the dispute being raised by either Contracting Party, the dispute remains unresolved, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. Said tribunal shall be constituted for each specific case as follows: each Contracting Party shall appoint one member, and the two members shall, by mutual agreement, designate a national of a third State who shall be appointed Chairman of the tribunal by both Contracting Parties. All members must be appointed within two months from the date on which one of the Contracting Parties notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set forth in paragraph 3 above have not been observed, either Contracting Party, in the absence of any other agreement, shall request the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to perform this function, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitral tribunal shall render its decisions by a majority vote. These decisions shall be final and automatically binding on the contracting parties.

The tribunal shall establish its own rules of procedure. It shall interpret the award at the request of either contracting party. Unless the tribunal decides otherwise, taking into account special circumstances, the costs of the arbitration proceedings, including the arbitrators' fees, shall be shared equally between the contracting parties.

## Article 11. Consultations

Each contracting party may propose consultations to the other contracting party on any matter relating to this Agreement, its interpretation, and its implementation. The contracting parties shall agree on the place and date of the consultation through diplomatic channels, and the other contracting party shall take all appropriate measures to facilitate such consultation without delay.

## Article 12. Entry Into Force and Duration

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This Agreement is concluded for an initial term of ten years. It shall remain in force beyond that term unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration 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.

Done at Conakry, on July 10, 2007, in two original copies in the French language.

For the Government of the French Republic: Jean-Michel Berrit,

Ambassador of France to Guinea

For the Government of the Republic of Guinea: Mamady TRAORE,

Minister of Industry, Commerce, Tourism, and Crafts