AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA AND THE GOVERNMENT THE REPUBLIC OF GUINEA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Ghana and the Government of the Republic of Guinea (hereinafter referred to as the "Contracting Parties").

Desiring to create favourable conditions for greater investment by nationals and companies of one state in the territory of the other.

Recognizing that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States.

Have agreed as follows:

Article 1. Definitions

1. For the purpose of this Agreement:

(a) "investments" means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stocks and debentures of a company and any other form of participation in a company;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, goodwill, technical processes and know-how and all similar rights recognized by the national laws of both Contracting Parties;

(v) 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 are invested does not affect their character as investments, provided such change is not contrary to the laws of the Contracting Party in whose territory the investment has been made. The term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement.

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees, and fees subject, where applicable to the payment of any relevant taxes on such returns in accordance with the laws of the Contracting Party in whose territory an investment has been made.

(c) "national" means:

(i) In respect of the Republic of Ghana: natural persons deriving their status as Ghanaian nationals from the law in force in the Republic of Ghana;

(ii) In respect of the Republic of Guinea: natural persons deriving their status as Guinean nationals from the law in force in the Republic of Guinea.

(d) "companies" means:

(i) In respect of the Republic of Ghana: corporations, firms and associations incorporated or constituted under the law in force in the Republic of Ghana;

(ii) In respect of the Republic of Guinea: corporations, firms and associations incorporated or constituted under the law in

force in the Republic of Guinea.

(e) "territory" means:

(i) In respect of the Republic of Ghana: the present territory of the Republic of Ghana including the territorial sea, the air space and any maritime area situated beyond the territorial sea of the Republic of Ghana which has been or might in the future be designated under the national law of the Republic of Ghana in accordance with international law as an area within which the Republic of Ghana may exercise rights with regard to the sea-bed and subsoil and the natural resources;

(ii) In respect of the Republic of Guinea: the present territory of the Republic of Guinea including the territorial sea, the air space and any maritime area situated beyond the territorial sea of the Republic of Guinea which has been or might in the future be designated under the national law of the Republic of Guinea in accordance with international law as an area within which the Republic of Guinea may exercise rights with regard to the sea-bed and subsoil and the natural resources;

Article 2. Promotion of Investments

Each Contracting Party shall encourage and create favourable conditions for nationals and companies of the other Contracting Party to invest capital in its territory and, subject to its rights to exercise powers conferred by its laws, shall admit such investments.

Article 3. Protection of Investments

1. Investments of nationals and companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full and adequate protection and security in the territory of the other Contracting Party.

2. Neither Contracting Party shall, in any way, impair by unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.

3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 4. Most-favoured-nation Provisions

1. Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals or companies of any third state.

2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which is accorded to nationals or companies of any third state.

3. The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other, the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, common market, free trade area, or regional economic organization or measures leading to the formation of a customs union or free trade area of which either Contracting Party is or may become a member, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Compensation for Losses

Nationals or companies of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to companies or to nationals of companies of any third State. Resulting payments shall be freely transferable.

Article 6. Compensation for Expropriation

1. Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except where for a public purpose related to its internal needs, a Contracting Party expropriates the investments of nationals or companies of the other Contracting Party, the following conditions shall be complied with:

(a) The measures shall be accompanied by provision for the payment of compensation amounting to the full and genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge whichever is the earlier.

(b) The compensation shall be paid without undue delay. If the compensation is not paid within six months from the date of its determination, it shall after that date attract interest at the normal commercial rate until the date of payment.

2. A national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, the provisions of paragraphs (1) and (2) of this Article shall apply.

Article 7. Repatriation of Investment and Returns

1. Each Contracting Party shall, in respect of investments, guarantee to nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns as defined in Article 1 of this Agreement. Transfers of currency shall be effected without undue delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the national or company and the Contracting Party concerned, subject, however, to the right of the former Contracting Party to impose equitably and in good faith such measures as may be necessary to safeguard the integrity and independence of its currency, its external financial position and balance of payments. Unless otherwise agreed by the national or company concerned, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

2- For the avoidance of doubt, the transfers of investments and returns referred to in paragraph 1 shall include in particular, but not exclusively, all claims of financial value related to the following:

a) Capital and additional capital and funds necessary for the maintenance of an investment;

b) Income and returns from investment activities;

c) Funds required for the repayment of loans;

d) The proceeds of the sale or of the partial or total liquidation of an investment; and

e) Compensation for losses and/or expropriation as specified under Articles 5 and 6 of this Agreement.

Article 8. Subrogation

1. If one Contracting Party or its designated agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, recognise the assignment to the former Contracting Party or its designated agency by law or any legal transaction of all the rights and claims of the party indemnified and that former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of its subrogation, to the same extent as the party indemnified.

2. The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

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

1. Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this agreement in relation to an investment of the former which have not been amicably settled shall, after a period of six months from written notification of a claim, be submitted at the first instance to the competent court of the Contracting Party for decision, or to international arbitration if either party to the dispute so wishes.

2. Where the dispute is referred to international arbitration, the national or company and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) The International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between states and nationals of other states, opened for signature at Washington DC on 18th March, 1965 and the Additional Facility for the Administration of conciliation, Arbitration and Fact-Finding proceedings); or

(b) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement between the parties or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

3. If after a period of six months from written notification of the claim there is no agreement to one of the above alternative procedures, the parties to the dispute shall be bound to submit it to arbitration under the arbitration rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these rules.

4. The Contracting Party which is a Party to a dispute may at no time during the procedure relating to the investment dispute invoke in its defence its immunity or the fact that a national or company has received, pursuant to an insurance contract, an indemnity covering all or part of the damages or losses incurred.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he 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 appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision, direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Consultations

The representatives of the Contracting Parties shall, whenever needed, hold meetings in order to review the implementation of this Agreement. These meetings shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 12. Application of other Rules

If the provision of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 13. Application of this Agreement

This Agreement shall apply to investments made prior to and after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party. It shall not, however, apply to investment disputes arising before its entry into force.

Article 14. Entry Into Force, Duration and Termination

1- This agreement is subject to ratification and shall enter into force thirty (30) days after the exchange of instruments of ratification. It shall remain in force for an initial period of ten (10) years. It may be revised in writing by either Contracting Party twelve (12) months after notification to the other Contracting Party. Unless abrogated by one of the Contracting Parties at least six (6) months before its period of validity, it shall be extended tacitly each time for a further period of ten (10) years on the same terms and conditions.

2- In the case where official notification has been provided for abrogation of this Agreement, the provisions of Articles 1 to 13 of this Agreement shall remain in force for an additional period of ten (10) years in respect of investments made prior to the date of termination of this Agreement.

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

Done in ..... on .....in duplicate in the English language and French language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF GHANA

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA