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

The Government of the Arab Republic of Egypt and the Government of the Republic of Guinea, hereinafter referred to as the Contracting Parties.

Desiring to develop and strengthen their economic and industrial cooperation in the long term and in particular to create favourable 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 the two Contracting Parties and to stimulate the flow of capital and individual initiatives in respect of matters with a view to promoting economic prosperity of both Contracting Parties.

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the legislation in force of the latter, including but not limited to:

(i) Movable and immovable property as well as any other property rights in rem such as mortgages, liens or guarantees;

(ii) Shares, stocks and other securities and any other forms of participation in a company;

(iii) Financial assets and liabilities and claims under other contracts to economic value;

(iv) Intellectual property rights, such as copyrights and other similar rights, industrial property rights, such as patents, licences, plans or models, trademarks, intangible assets, processes, and technical know-how;

(v) Concessions granted in accordance with the legislation in force of the Contracting Party in whose territory the investments were made, including concessions to prospecting, extraction, and exploitation of natural resources.

A change in the form of investment does not change in its character as an investment.

2. The term "returns" means income arising out of investments. It covers, inter alia, capital gains, interests, profits, dividends, royalties, fees, patents and licences, and other similar fees.

3. The term "investor" means:

(i) Any natural person who is a national of one of the Contracting Parties investment on the territory of the other party.

(ii) Any legal person established based or otherwise duly organized under the law in force of either of the Contracting Parties with headquarters in its territory investments on the territory of the other party.

4. The term "territory" means the area within the land boundaries, the area of the sea, the seabed and its subsoil outside the territorial waters under the sovereign right or jurisdiction of the Contracting Party in accordance with its national law or international law.

## Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and create favourable conditions for investors of the other Contracting Party in its territory and promote investment in question in accordance with the legislation in force.

2. Investments thus made by investors of each Contracting Party shall enjoy at all times in the territory of the other fair and equitable treatment, and full protection and security.

## Article 3. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall accord in its territory to investments of the other Party treatment no less favourable than that accorded to domestic investors or to those of a third State, whichever is the more favourable.

2. Each Contracting Party shall ensure in its territory to investors of the other Party, with respect to the management, maintenance, operation and enjoyment of their investments, treatment no less favourable than that accorded to domestic investors or to investors of a third State, whichever is the more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed as an obligation on the part of either Contracting Party to grant to investors of the other a more favourable, preferential or privileged treatment which the first contracting party may grant under:

(i) A customs union, a free trade area or a monetary union or other similar international agreement establishing such unions or other forms of regional cooperation to which either Contracting Party is or may become a party;

(ii) Any international agreement or arrangement relating wholly or partly on matters of taxation.

## Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other party have suffered losses due to armed conflict, a national state of emergency, revolt, insurrection or disturbances in that territory, are awarded in respect of compensation, indemnification, compensation or other forms of compensation for losses, treatment no less favourable than that accorded to its national investors or those of any third country. Payments under the above will be carried out within the agreed time frame and shall be freely transferable.

2. Without prejudice to the provisions of paragraph (1), investors of one Contracting Party who has suffered, in any of the situations referred to above, losses in the territory of the other party as a result of:

(i) Seizure, by the authorities of the other Contracting Party, of their property,

(ii) Destruction of their property by the authorities of the other Contracting Party which was not caused by the fighting and was not required by the necessity of the situation would be given the opportunity to transfer funds or will be entitled to compensation. Payments under the above shall be carried out within the agreed time and shall be freely transferable.

## Article 5. The Expropriation

1. The funds invested by investors of either party shall not be expropriated or nationalized, subject to any other measure having equivalent effect to nationalization or expropriation (hereinafter: "expropriation") in the territory of the other Contracting Party, except in the public interest. The expropriation shall be carried out in accordance with due process of law, on a non-discriminatory basis in exchange for compensation will correspond to the market value of the expropriated investment into force immediately before the expropriation or before the impending expropriation became known as the case may be the first to enter into force. It shall include interest calculated on the LIBOR six months for the period until the date of payment. The payment made shall be effected within the agreed time and be freely transferable.

2. The investor who has suffered the loss shall be entitled, in accordance with the law of the Contracting Party implementing the expropriation, to an immediate review of its claim by the competent authorities of that Party and to an assessment of its investments in accordance with the principles set out in this paragraph.

## Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other, after the fulfilment of their tax obligations and other, subject to the laws in force in the first, the free transfer of payments in connection with investments in question and, in particular, though not exclusively:

a. Capital and additional funds to maintain or increase the investment;

b. Returns;

c. Funds from the repayment of loans;

d. The proceeds from the sale or liquidation of investments;

e. The amounts paid pursuant to articles 4 and 5 of this Agreement.

2. The transfers referred to in paragraph 1 of this article shall be carried out within the time period agreed upon in convertible currency at the rate of exchange applicable on the date of transfer in the territory of the Contracting Party in which the investment is made.

## Article 7. Subrogation

1. Where one of the Contracting Parties or its representative has made payments to its own investors as a guarantee in respect of investments made in the territory of the other Contracting Party, the latter shall recognize:

(i) the rights or claims of the investors of the first Contracting Party or of the institution designated by it, and the assignment to the first Contracting Party or its representative of any rights and interests of the investor so compensated.

(ii) The first Contracting Party or the institution subrogated to it, as having the power to exercise the rights or claims due to the investors, and shall assume the obligations relating to the investments.

2. The rights or claims subrogated shall not be superior to those of the investor.

3. Subrogation of the rights and obligations of an indemnified investor shall also cover transfers of payments made in accordance with the provisions of Article 6 of this Agreement.

## Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute concerning the interpretation or application of this Agreement shall be settled as far as possible through negotiations between the parties.

2. If after a period of six months from the beginning of negotiations, they have not been successful, the matter shall be submitted, at the request of either of the Parties to the arbitration.

3. The Arbitral Tribunal referred to in paragraph 2 above shall be imposed on an ad hoc basis, on a case-by-case basis, in the following manner: within three (3) months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the arbitration court. These two (2) Members shall designate, within two (2) months, a third member who shall be a national of a third country. With the agreement of the two (2) Contracting Parties, the latter shall assume the chair of the arbitration.

4. In the event that the Arbitral Tribunal is not constituted within the time limits provided for in the preceding paragraph, either Contracting Party may, in the absence of any other agreement, have recourse to the International Court of Justice and request the President to make the necessary appointments. If the President is a national of either party or prevented from discharging his or her duties, the Vice-President shall be requested to make the appointment of the staff listed above. Should the latter again turn out to be a national of one of the Contracting Parties or be prevented from performing the task entrusted to him, the request for appointment shall be addressed to the first in order of seniority - the members of the International Court of Justice who are not nationals of any of the Contracting Parties.

5. The Arbitral Tribunal shall take its decisions in accordance with the provisions of this Agreement and in conformity with the principles and rules of international law as accepted. Decisions of the arbitration shall be taken by a majority of votes. They shall be final and have a duty to both Contracting Parties. The tribunal is required to establish its own rules of procedure.

6. Each Contracting Party shall bear the costs of its own member and of its participation in the work of the arbitration. The cost of the Chairman and the remaining costs of the arbitration shall be taken, in equal parts by the two parties.

## Article 9. Settlement of Disputes between One of the Contracting Parties and the Investors of the other

1. Settlement of disputes between one Contracting Party and investors of the other Party concerning the latter's obligations under this Agreement in respect of investments made by investors of the former Party shall be sought, to the greatest extent possible, by negotiation.

2. If the dispute referred to in paragraph 1 of this article cannot be settled within six (6) months of negotiations, either party shall be entitled to submit the case to the competent court of the Contracting Party that is at the same time a Party to the dispute.

3. A failure to implement the provisions of paragraph 2 of this article, either party to the dispute may submit the claim to arbitration:

(i) An ad hoc court of arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or

(ii) The International Centre for Settlement of Investment Disputes; in the event that both parties are Contracting Parties to the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington on 18 March 1995 (ICSID Convention).

4. The decision thus pronounced shall be final and binding on both (2) Parties to the dispute, and shall be enforced in accordance with the legislation in force of the Contracting Party in whose territory the investments took place.

## Article 10. Application of other Provisions

Where the national laws of the Contracting Parties, or existing or future agreements between the Contracting Parties, or international agreements signed by the Contracting Parties, contain provisions reserving to investments made by investors of any of them more favourable treatment than that provided for in this Agreement, such laws and agreements shall - to the extent that they prove to be more favourable - take precedence.

## Article 11. Consultations

Where necessary, the representatives of the Contracting Parties shall meet in consultations on issues relating to the implementation of this Agreement. The consultations shall be held on the proposal of one of the Parties, at the place and date to be agreed upon through diplomatic channels.

## Article 12. The Implementation of the Agreement

The provisions of this Agreement relating to investments made by investors of one Contracting Party in the territory of the other party before and after the entry into force of this Agreement, but shall be applied as from the date of its entry into force.

## Article 13. Entry Into Force , Duration and Termination of the Agreement

1. This Agreement is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification.

2. This Agreement is concluded for a period of ten (10) years which may be renewed tacitly renewed for further periods of five (5) years unless one of the Contracting Parties have notified each other in writing and twelve (12) months at least before the expiration, that it wishes to terminate the Agreement.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 12 shall continue to be valid for a period of ten years from that date.

In WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have affixed their signatures to this Agreement.

Done at Conakry on 6 March 1998 in two originals in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA

LE MINISTRE DE LA PROMOTION DU SECTEUR PRIVE, INDUSTRIE ET COMMERCE

M. MADIKABA CAMERA

FOR THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPTE

LE MINISTRE DES AFFAIRES ETRANGERES

S.E.M. AMRE MOUSSA