AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MADAGASCAR AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE PROMOTION AND PROTECTION OF RECIPROCAL INVESTMENTS

The Government of the Republic of Madagascar and the Government of the Republic of South Africa, (hereinafter jointly referred to as the contracting parties "Contracting Party" and a separate;

Wishing to create favourable conditions for a more substantial investment by investors of either Contracting Party in the territory of the other contracting party; and

Recognising that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territory of the two contracting parties;

By this hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

The term means every kind of investment assets invested by investors of one Contracting Party, in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and particularly but not limited to:

a) Movable and immovable property as well as any other rights in rem such as mortgages, liens or right of retention;

b) Stocks, shares and debentures of a company and any other form of participation in companies formed in the territory of one of the contracting parties;

c) Monetary claims and rights to any performance having an economic value;

d) Intellectual property rights, including copyrights, patents, trademarks, trade names, industrial designs or models, technical processes, business, trade secrets and know-how and good-will.

e) The rights conferred by law or contract from those legally trained, including concessions granted for the purpose of exploration, culture, extract or exploit natural resources.

Any modification of the legal form of investment in assets which have been invested or reinvested shall not affect their character as investments within the meaning of the present agreement, provided that such change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

The term refers investor with regard to either Contracting Party:

a) Natural persons having the nationality of that Contracting Party in accordance with the laws and regulations in force in the territory of that Contracting Party having made an investment in the territory of the other contracting party; and

b) Legal entities, including companies, firms or associations formed in accordance with the laws in force in the territory of the Contracting Party having its head office in the Territory and effectively exercises an economic activity in the territory of that Contracting Party and has made an investment in the territory of the other contracting party;

The term "

The term "means the amounts reported by an investment and includes in particular but not exclusively, interests, capital gains profits, dividends, royalties and fees." means:

a) For the Republic of South Africa, the territory of that Contracting Party including the territorial waters, airspace and any maritime area situated beyond the territorial sea which has been or might in the future be designated under the legislation in force in the territory of the Party concerned, in accordance with international law as an area within which the party may exercise rights and jurisdiction of a sovereign State;

b) The Republic of Madagascar for the entire territory, including its maritime area and Islands, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters of the Republic of Madagascar and over which it exercises sovereign rights and jurisdiction in accordance with its national laws and international law for the purpose of exploration and exploitation and preservation of natural resources.

Article 2. Investment Promotion

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote investments in its territory by investors of the other Contracting Party and subject to its right to exercise the powers conferred by laws and regulations in force in the country, admit such investments.

(2) Each Contracting Party, in accordance with the laws and regulations in force in its territory, it shall grant the necessary permits for activities related to investment and in the case of licensing agreements and contracts for commercial, administrative or technical assistance.

(3) In order to create favourable conditions for assessing the financial position and results of activities of investments made in the territory of a Contracting Party, that Contracting Party shall, notwithstanding its own requirements for bookkeeping and control to the investment accounting and auditing standards according to which the investor is subjected by the national requirements or according to internationally accepted standards (such as international accountancy standards (LAS) drawn up by the international accountancy standards committee (IASA).

Article 3. Right to Take Measures

Notwithstanding the provisions of this Agreement, the contracting parties reserves the right to adopt measures necessary for the benefit of the environment, public health and the prevention of diseases affecting animals or plants, in a non-discriminatory and non-arbitrary manner, in accordance with the laws and regulations of the Contracting Parties.

Article 4. Treatment of Investments

(1) Returns of investments and investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other contracting party. neither Contracting Party shall in any way impair unreasonable or discriminatory measures by the management, maintenance, use, enjoyment or disposal of investments of investors in its territory of the other contracting party.

(2) Each Contracting Party shall accord in its territory to returns of investments and investors of the other contracting party treatment no less favourable than that accorded to investments and returns of its own investors or to those of a third State.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party treatment no less favourable than that accorded to its own investors to investors or of any third State.

(4) The provisions of paragraphs (2) and (3) shall not be construed so as to oblige one contracting party to extend to investors of the other contracting party preference, benefit or privilege resulting from:

(a) Membership or association with any existing or future customs union, a free trade area, Common Market, or any other form of regional economic organization or an interim arrangement leading up to such customs union, free trade area, Common Market to either Contracting Party which is or may become part; or

(b) Any international agreement or convention wholly or partially directly related to taxation or any domestic legislation directly wholly or partially related to taxation;

(c) Domestic law or other measure the purpose of which is to promote the achievement of equality in its territory or designed to protect or promote the development of individuals or categories of persons disadvantaged by unfair discrimination in its territory.

(5) If a Contracting Party grants advantages to foreign participation with development finance institutions and established for the exclusive purpose of development assistance, mainly through non-profit activities that Contracting Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other contracting party.

Article 5. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, revolution, a national state of emergency, revolt, riot or insurrection in the territory of the latter Contracting Party, shall be accorded by the latter, as regards restitution, indemnification, compensation or other arrangements which treatment shall not be less favourable than that accorded to investors of that Contracting Party to investors or of any third State.

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

(a) A requisition of property by their forces or the authorities of the latter Contracting Party; or

(b) Destruction of their property by the authorities or forces of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation;

Receive restitution or compensation not less favourable than that accorded to investors of any third State.

Article 6. Compensation for Expropriation

(1) Investments of investors of either Contracting Party shall not be subjected to measures of expropriation, nationalization or other measures having effect nationalisation or equivalent to expropriation in the territory of the other contracting party except for public purposes, under due process, on a non-discriminatory basis and against an effective and adequate compensation. such compensation shall correspond to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation is known to the public interest and shall include at a normal commercial rate until the date of payment, without undue delay and be effectively realizable.

(2) The Investor affected by the expropriation shall have a right, under the laws and regulations of the expropriating contracting party to conduct a review by a judicial or other independent and impartial authority of that Contracting Party of its case and of the valuation of its investment in accordance with the principles set out in paragraph (1).

Article 7. Transfer of Investments and Returns

(1) Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of payments relating to their investments including the payment of compensation in accordance with the principles set out in articles 5 and 6.

(2) Transfers shall be effected without undue delay and in a freely convertible currency at the market rate of exchange applicable on the date of transfer. in the absence of a market for foreign exchange, the rate to be used shall be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into special drawing rights (SDRs) which the most favourable rate shall apply to the investor.

(3) Transfers shall be made in accordance with the laws and regulations in force in the territory of the Contracting Party where the investment has been admitted. such laws shall not, however, regarding either the requirements or the application thereof, impair or derogate from the free transfer allowed under the provisions contained in paragraphs (1) and (2).

(4) In the event of exceptional difficulties in the balance of payments, either Contracting Party may carry out restrictions on the free transfer of payments related to investments and returns for a limited period, either for a period not exceeding six months, or by another period if the restrictions fall within the framework of a programme with the International Monetary Fund. these restrictions should be implemented in a manner that is fair, non-discriminatory and in good faith.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

(1) Any dispute between a Contracting Party and an investor of the other contracting party concerning an investment shall be settled amicably between the two parties concerned.

(2) If the dispute has not been settled within the period of six (6) months from the date on which either party to the dispute has arisen in writing, it shall be submitted, at the choice of the investor and upon notice in writing to the Party concerned,:

(a) The competent courts of the Contracting Party in whose territory the investment is made;

(b) In an arbitration by the International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the

Settlement of Investment Disputes between States and investors of other States, opened for signature at Washington on 18 March 1965; or

(c) An ad hoc arbitration tribunal which, unless the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

(3) If the investor submits the dispute to the courts of the Contracting Party concerned or to international arbitration mentioned in paragraph (2), the choice of one of these procedures is final.

(4) The arbitral award shall be made on the basis of the provisions of the laws and regulations in force including the rules relating to conflicts of law of the Contracting Party, Party to the dispute, in the territory of which the investment is made on the basis of the provisions of this Agreement as well as the terms of specific agreements that are entered into regarding the investment as well as the Principles of International Law.

(5) The arbitral awards shall be final and binding upon the parties to the dispute and shall be executed in accordance with its laws and regulations.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled through negotiation or consultation between the parties.

(2) If the dispute cannot be settled within six (6) months following the negotiations, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case in the following way:

a) Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal;

b) The two members shall select a national of a third State who, by mutual agreement, shall be appointed Chairman of the Tribunal by both contracting parties.

c) The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) above, the appointment has not been made, either of the Contracting Parties, 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 carrying out the said function, the Vice-President shall be invited to make the necessary appointments. if he is a national of either Contracting Party or is prevented from carrying out the said function, the following member of the Court 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 decide on the basis of the provisions of this Agreement and the rules and principles of international law. it shall reach its decisions by a majority of votes. such decisions shall be final and binding on the contracting parties. in recent bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. the Tribunal may however be laid down in its decision that a large proportion of the costs shall be borne by one of the two parties. the tribunal shall determine its own procedures unless otherwise specified by the contracting parties.

Article 10. Subrogation

If one contracting party or its designated agency makes a payment to its own investors under a guarantee given in respect of an investment in the territory of the other contracting party, the latter Contracting Party shall recognize the assignment, either by law or by legal transaction, Contracting Party to the first of all the rights and claims of indemnified the investor, and acknowledges that the former Contracting Party or its designated agency has the power to exercise such rights and enforce the claims, the issue by virtue of subrogation to the same extent as the investor.

Article 11. Application of other Rules

(1) If the provisions of the laws and regulations of either Contracting Party or international obligations existing at present or future undertaken by the parties in addition to this Agreement contain rules whether general or specific to accord returns of investments and investors of the other contracting party to more favourable treatment than that provided for by this

Agreement, such provisions on the latter shall prevail to the extent that they are more favourable.

(2) Each Contracting Party shall comply with any other obligation which may be entered into with regard to investments of investors of the other contracting party.

Article 12. Agreement

This Agreement shall apply to all investments made before or after its entry into force, but shall not apply to disputes that may arise before its entry into force.

Article 13. Entry Into Force

This Agreement shall enter into force on the date on which either contracting party notifies the other in writing through the diplomatic channel and after the completion of the constitutional formalities required. the date of entry into force shall be the date of the last notification.

Article 14. Duration and Termination

(1) This Agreement shall remain in force for a period of ten (10) years and shall remain valid until the expiry of a period of twelve (12) months from the date on which either of the Contracting Parties have notified each other in writing through the diplomatic channel of its intention to terminate it.

(2) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 12 shall continue to be valid with respect to such investments for a further period of fifteen (15) years from that date.

Article 15. Amendment

The terms of the Agreement may be amended by mutual consent of the contracting parties through an exchange of Notes between the two Contracting Parties through diplomatic channels.

In WITNESS WHEREOF the undersigned duly authorized thereto by their respective Governments, have affixed their signature and seal on this agreement in two originals in the English and French languages, both texts being authentic and being equally authentic.

Done at...., this..... 2006

For the Promotion and Reciprocal Protection of Investments

Has the signing of the Agreement between the Government of the Republic of Madagascar and the Government of the Republic of South Africa for the Promotion and Reciprocal Protection of Investments, the undersigned representatives, have agreed as follows, which shall form an integral part of this Agreement:

1. With respect to article 7 of this Agreement

a) With regard to the Republic of South Africa the provisions relating to transfer under Article 6 of the Agreement do not apply to natural persons who are foreign nationals and who, after five years of residence in South Africa, have applied for permanent residency connected with immigration to South Africa, and who are, after having completed the formalities necessary for the control of charges accordingly deemed to be permanent residents of South Africa,

b) The exemptions to Article 7 as contemplated in paragraph will be automatically cancelled in respect of each restriction, upon removal of the relevant restriction as part of the domestic law of South Africa,

c) The Republic of South Africa shall make every effort to remove the said restrictions from their domestic law as soon as possible,

d) With respect to the Republic of Madagascar, the provisions relating to transfer under Article 6 of the Agreement do not

apply to natural persons who have been granted the status of a resident, shall be deemed to be permanent residents of Madagascar for purposes of exchange controls.

2. Paragraphs 1 (a) and (d) of this Protocol shall not apply to the transfer of payments of compensation paid pursuant to Articles 5 and 6 of this Agreement.

3. This Protocol shall enter into force at the same time as the Agreement.

In WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have affixed their signature and seal on this agreement in the two authentic copies in English and French languages, both texts being equally authentic.

Done AT, this.... day of..... 200.