

**INVESTMENT INCENTIVE AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**  
**AND**  
**THE GOVERNMENT OF THE REPUBLIC OF TUNISIA**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA and THE  
GOVERNMENT OF THE REPUBLIC OF TUNISIA;**

**AFFIRMING** their common desire to encourage economic activities in the Republic of Tunisia that promote the development of the economic resources and productive capacities of the Republic of Tunisia; and

**RECOGNIZING** that this objective can be promoted through investment support provided by the Overseas Private Investment Corporation ("OPIC"), a development institution and an agency of the United States of America, in the form of investment insurance, reinsurance, debt and equity investments and investment guaranties;

**HAVE AGREED** as follows:

**ARTICLE 1**

As used in this Agreement, the following terms have the meanings herein provided. The term "Investment Support" refers to any debt or equity investment, any investment guaranty and any investment insurance or reinsurance which is provided by the Issuer in connection with a project in the territory of the Republic of Tunisia. The term "Issuer" refers to OPIC and any successor that is an agency of the United States of America, and any agent of either. The term "Taxes" means all present and future taxes, levies, imposts, stamps, duties and charges, whether direct or indirect, imposed in the Republic of Tunisia and all liabilities with respect thereto.

**ARTICLE 2**

The two Governments confirm their understanding that the Issuer's activities are governmental in nature and therefore:

(a) The Issuer shall not be subject to regulation under the laws of the Republic of Tunisia applicable to insurance or financial organizations, unless, and only to the extent, that the Issuer maintains an office, branch or permanent establishment in the Republic of Tunisia, but, in the provision of

Investment Support, shall be afforded all rights and have access to all remedies of any such entity, whether domestic, foreign or multilateral.

(b) The Issuer, all operations and activities undertaken by the Issuer in connection with any Investment Support, and all payments, whether of interest, principal, fees, dividends, premiums or the proceeds from the liquidation of assets or of any other nature, that are made, received or guaranteed by the Issuer in connection with any Investment Support shall be exempt from Taxes, whether imposed directly on the Issuer or payable by others, provided, however, that the Issuer shall be subject to Taxes in connection with the receipt of services other than legal or other specialized consulting services rendered to the Issuer in connection with Investment Support. Neither projects receiving Investment Support nor investors in such projects (whether or not such investors are receiving Investment Support) shall be exempt from Taxes by operation of this Article, provided, however, that any Investment Support shall be accorded tax treatment no less favorable than that accorded to the investment support of any other national or multilateral development institution which operates in the Republic of Tunisia. The Issuer shall not be subject to Taxes in connection with any transfer, succession or other acquisition which occurs pursuant to paragraph (c) of this Article or Article 3(a) hereof, unless such transfer, succession or acquisition (i) occurs pursuant to paragraph (c) of this Article, (ii) involves Taxes levied on the Issuer in respect of the registration of the transfer to the Issuer of title to real estate or the right to business operations (other than cash, accounts, credits, instruments or rights represented by share capital or other forms of ownership interests in a business entity) required under Tunisian legislation, and (iii) is not necessary in order for the Issuer to exercise its rights as a creditor or subrogee or transferee or successor in respect of a payment or exercise of such right in connection with Investment Support; provided that obligations for Taxes previously accrued and unpaid with respect to interests received by the Issuer shall not be extinguished as a result of such transfer, succession or other acquisition.

(c) If the Issuer makes a payment to any person or entity, or exercises its rights as a creditor or subrogee, in connection with any Investment Support, the Government of the Republic of Tunisia shall recognize the transfer to, or acquisition by, the Issuer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, as well as the succession of the Issuer to any right, title, claim, privilege or cause of action existing, or which may arise, in connection therewith.

(d) With respect to any interests transferred to the Issuer or any interests to which the Issuer succeeds under this Article, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received, provided that nothing in this Agreement shall limit the right of the Government of the United States of America to assert a claim under international law in its sovereign capacity that is distinct from any rights it may have as the Issuer pursuant to paragraph (c) of this Article.

(e) This Agreement shall not preclude the Government of the Republic of Tunisia from requiring that investments and associated activities be established in accordance with the terms and conditions set forth in its legislation provided that such terms and conditions do not impair any right set forth in the Treaty between the United States of America and the Republic of Tunisia Concerning the Reciprocal Encouragement and Protection of Investment, signed May 15, 1990, or any successor to such Treaty.

### ARTICLE 3

(a) Amounts in the currency of the Republic of Tunisia, including cash, accounts, credits, instruments or otherwise, acquired by the Issuer upon making a payment, or upon the exercise of its rights as a creditor, in connection with any Investment Support for a project in the Republic of Tunisia, shall be accorded treatment in the territory of the Republic of Tunisia no less favorable as to use and conversion than the treatment to which such funds would have been entitled in the hands of the person or entity from which such amounts were acquired.

(b) Such currency and credits may be transferred to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of the Republic of Tunisia in accordance with its laws.

### ARTICLE 4

(a) Any dispute between the Government of the United States of America and the Government of the Republic of Tunisia regarding the interpretation of this Agreement or which, in the opinion of either party hereto, presents a question of international law arising out of any project or activity for which Investment Support has been provided shall be resolved, insofar as possible, through negotiations between the two Governments. If, six months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute, including the question of whether such dispute presents a question of international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with paragraph (b) of this Article.

(b) The arbitral tribunal referred to in paragraph (a) of this Article shall be established and shall function as follows:

(i) Each Government shall appoint one arbitrator. These two arbitrators shall by agreement designate a president of the tribunal who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months, and the president

within six months, of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-General of the International Centre for the Settlement of Investment Disputes to make the necessary appointment or appointments. Both Governments hereby agree to accept such appointment or appointments.

(ii) Decisions of the arbitral tribunal shall be made by majority vote and shall be based on the applicable principles and rules of international law. Its decision shall be final and binding.

(iii) During the proceedings, each Government shall bear the expense of its arbitrator and of its representation in the proceedings before the tribunal, whereas the expenses of the president and other costs of the arbitration shall be paid in equal parts by the two Governments. In its award, the arbitral tribunal may reallocate expenses and costs between the two Governments.

(iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

#### ARTICLE 5

(a) This Agreement shall enter into force on the date on which the Government of the Republic of Tunisia notifies the Government of the United States of America that all legal requirements for entry into force of this Agreement have been fulfilled.

(b) This Agreement shall continue in force until six months from the date of a receipt of a note by which one Government informs the other of an intent to terminate this Agreement. In such event, the provisions of this Agreement shall, with respect to Investment Support provided while this Agreement was in force, remain in force so long as such Investment Support remains outstanding, but in no case longer than twenty years after the termination of this Agreement.

(c) Upon entry into force, this Agreement shall supersede, without retroactive effect, the agreement on investment guaranties between the Government of the United States of America and the Government of the Republic of Tunisia effected by exchange of notes signed on March 17 and March 18, 1959, as amended by exchanges of notes on January 22 and March 6, 1963 and May 10 and August 3, 1993, respectively. Any matter concerning the Republic of Tunisia relating to support by OPIC of investments in the territory of the Republic of Tunisia made after the entry into force of this Agreement shall be resolved under the terms of this Agreement.

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

DONE at Washington, on the 17th day of February, 2004, in duplicate, in the English and Arabic languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA**



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**Peter S. Watson**  
President and CEO

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF TUNISIA**



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**Mohamed Nouri Jouini**  
Minister of Development and  
International Cooperation