AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Kenya and the Government of the United Arab Emirates (hereinafter collectively referred to as the "Contracting Parties")

Desiring to create conditions favourable for fostering— greater investments by investors of one contracting Party in the territory of the other contracting Party;

Recognizing that the promotion and reciprocal protection of such investments, made in accordance with the laws and regulations of the host contracting party will stimulate individual business initiative and increase prosperity in both States:

Have agreed as follows:

Article 1. Definitions

1. For the purposes of this Agreement:

(a) The term 'investment' means every kind of asset invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

i) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

ii) Shares, stocks, bonds, debentures and any other similar forms of participation in a company and other debts and loans and securities issued by an investor of a Contracting Party.

iii) Rights or claims to money or to any performance under contract having financial or economic value;

iv) Intellectual, commercial and industrial property rights such as copyrights, patent, licenses, trade mark and goodwill.

v) Any concessions conferred by law, under contract or by virtue of any licenses or permits granted pursuant to law. Natural resources shall not be covered by this Agreement ;

Any change of the form in which assets are invested or reinvested does not affect their character as investment provided that in case of such change, the investor will get the legal permission from the competent authorities of the host Contracting Party.

(b) The term "investor" means, for either Contracting Party,

i) Nationals, or

ii) Any legal entity such as company, corporation, firm, partnership, business association, institution or organization, incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party, whether or not for profit and whether its liabilities are limited or not.

(c) "nationals" means natural persons holding the nationality or citizenship of a Contracting Party in accordance with its applicable law;

(d) "returns" means the monetary amounts yielded by an investment such as profits, interest, capital gains, dividends, royalties, reinvestment returns, management, technical fees and any other similar income;

(e) "territory" means:

i) In the case of Kenya: the land territory, internal waters and territorial sea of the Republic of Kenya and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Kenya exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas;

ii) In respect of United Arab Emirates: the territory of the United Arab Emirates its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in conformity with international law and the law of United Arab Emirates sovereign rights, including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute concerning an investment that arise before the entry into force of this agreement nor any claim that was settled before the entry into force of this Agreement.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit such investments.

2. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party in accordance with the domestic laws of the host Contracting Party and the applicable rules of international law. Neither Contracting Party shall in its territory impair by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment, or disposal of investments of investors of the other Contracting Party.

3. Each Contracting Party shall endeavor to make public all laws, regulations, policies and procedures that pertain to or directly affect investments in its territory of investors of the other Contracting Party.

4. Once established, investments shall not be subjected in the host Contracting Party to additional performance requirements which may hinder or restrict the management, maintenance, use, enjoyment or disposal of investments unless such requirements are deemed vital for reasons of public order, public health or environmental concerns and are enforced by law of general application.

5. Investors of the other Contracting Party shall have the right of access to its courts of justice, administrative tribunals, and agencies, and all other bodies exercising adjudicatory authority.

Article 4. Treatment of Investments

1. Each Contracting Party shall accord investments made in its territory by investors of the other Contracting Party, fair and equitable treatment. Such treatment shall not be less favorable than that which it accords to investments of its own investors or investors of any third Party, whichever is the most favourable.

2. Each Contracting Party shall accord to investors of the other Contracting Party as regards compensation, transfers, management, use, enjoyment or disposal of their investments treatment no less favorable than that which it accords to investments by its own investors or by investors of any third Party, whichever is the most favourable.

3. However, the Most Favoured Nation (MFN) shall not apply to any procedural or judicial matters.

4. In order to promote small and medium sized enterprises and infant industries in its territory, the Government of the Republic of Kenya may grant incentives, treatment, preferences or privileges through special policies or measures to its own investors in accordance with its laws and regulations.

5. However, the provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from:

(a) Any customs union, common market, economic Union, free trade area, monetary union or other form of regional economic integration agreement or other similar international agreement, to which either of the Contracting Parties, is or may become a party, or

(b) Any international, regional or bilateral agreement or other similar arrangement relating wholly or mainly to taxation.

Article 5. Agreements Signed between Government Entities of Contracting States

Each Contracting Party or its Local Government or County Government or entities or its designated agency may enter into an Agreement with an investor of the other Contracting Party. Such agreement shall govern the specific legal relationship related to the investment of the investor concerned.

Article 6. Compensation for Damages or Losses

1. When Investment made by investors of either contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third Party Whichever, according to the investor, is more favourable.

2. Without prejudice to Paragraph (1) of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) Requisition of their investments or property by its forces or authorities; or

(b) Destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation;

Shall be expeditiously accorded full compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property.

Resulting payments shall be in a freely convertible currency and be freely transferable without delay in accordance with article 8 (l) (g) of this Agreement.

Article 7. Expropriation

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against prompt and full compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with the procedures established under law.

(b) Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date'). Such compensation shall include interest at the prevailing commercial market rate, however, in no event less than the prevailing six month LIBOR—rate of interest or equivalent, from the date of expropriation until the date of payment.

(c) Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, book value and goodwill. The amount of compensation finally determined shall be expeditiously paid to the investor in a freely convertible currency and allowed to be freely transferable without delay in accordance with article 8(1) (g) of this Agreement.

2. Without prejudice to his rights under this Article, the investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 1. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its applicable law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, stocks, debentures or other rights of interest it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to ensure prompt and full compensation in respect of their investment to such investors of the other Contracting Party who are owners of such rights or interest.

Article 8. Transfer of Payments Related to Investments

1. Each Contracting Party shall permit investors of the other Contracting Party, the transfer of payments in connection with the investments after payment of tax in accordance with the Avoidance of Double Taxation Agreement that was signed between the Contracting Parties. Such transfers include:

(a) The initial capital and any additional capital for the maintenance, management and development of the investment;

(b) Returns;

(c) Payments under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;

(d) Royalties and fees referred to in Article 1, paragraph 1 (d);

(e) Proceeds from sale or liquidation of the whole or any part of the investment, including shares;

(f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(g) Payments of compensation pursuant to Articles 6 and 7 ;

(h) Payments referred to in Article 9; and

(i) Payments arising out of the settlement of disputes pursuant to articles 10 and 11.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency. In case of such delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

3. Transfers shall be made at the spot market rate of exchange prevailing on the date of transfer for the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund or the exchange rate for conversion of currencies into special drawing rights or United States dollars, whichever is the most favorable to the investor.

Article 9. Subrogation

1. If a Contracting Party, its designated agency or a company or other enterprise constituted or incorporated in that Contracting Party other than an investor (the "Indemnifying Party") makes a payment under an indemnity or guarantee against non-commercial risk it has assumed in respect of an investment in the territory of the other Contracting Party the (host Contracting Party), or otherwise acquires part or all of the rights and claims of such an investment as a result of the complete or partial default of the investor, the host Contracting Party shall recognize:

(a) The assignment to the Indemnifying Party by law or by legal transaction or part or all of the rights and claims resulting from such an investment;

(b) That the Indemnifying Party is entitled to exercise such rights and claims and shall assume all obligations related to the investment by virtue of subrogation, to the same extent as its predecessor in title or the original investor; and

(c) The subrogated rights or claims shall not exceed the original rights or claims of such investor.

2. The Indemnifying Party shall be entitled in all circumstances to:

(a) The same treatment in respect of the rights and claims acquired and the obligations assumed by it by Virtue of the assignment referred to in paragraph 1 above; and

(b) Any payments received in pursuance of those rights and claims;

As the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

3. Notwithstanding the provisions of paragraph 1 of this Article, subrogation shall take place in either of the Contracting Parties only after the approval of the Contracting Party, if such an approval is required.

4. Without prejudice to Article 8 any payments received in local currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any expenditure

incurred in the territory of the host Contracting Party.

Article 10. Settlement of Disputes between Contracting Party and the Investor

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. With respect to paragraph 1 of this Article, if the dispute cannot be settled amicably within the period of six months, the parties to the dispute should pursue the following procedures:

(a) If the dispute cannot be settled within six months from the date when the request for the settlement has been submitted, it shall be filed to the competent courts or arbitration centers thereof, constituted under the laws of the Contracting Party, in whose territory the investment was made.

(b) If the dispute cannot be settled according to the provisions of subparagraph (a) of this Article within six months from the date of submission, either party to the dispute may submit the dispute to the International Centre for the Settlement of Investment Disputes (the Centre);

3. At any stage during the cooling off period or the proceeding of the tribunals, the parties to the dispute shall withdraw the case if they come to an agreement for settlement of the dispute amicably.

Article 11. Settlement of Disputes between Contracting Parties

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application or execution of this Agreement through consultations or other diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested 'by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state with whom both the Contracting Parties have diplomatic relations, as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties.

Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been complied with, either Contracting party may, in the absence of any other arrangement, invite the president of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-president of the International Court of Justice shall be invited to make necessary appointments. If the Vice -President of the International Court of Justice 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 State shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with the provisions of this Agreement and applicable rules of international law and shall be final and binding on both contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by the Contracting Party, as well as the costs of its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedures.

Article 12. Entry and Sojourn of Personnel

The Contracting Parties shall in accordance with their national laws and regulations facilitate entry and sojourn of persons of either Contracting Parties in connection with an investment; the same shall apply to employed persons of either Contracting Parties who in connection of an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment.

Article 13. Amendment

This Agreement may be amended at any time at the request of either Contracting Party and the requesting Party has to submit its request in the written form explaining the grounds on which the amendment shall be made.

Article 14. Consultation

Either Contracting Party may request consultation with the other Contracting Party with respect to any dispute regarding the interpretation, application and execution or any other dispute including investment disputes and the other Contracting Party shall respond promptly.

Article 15. Entry Into Force

Each Contracting Party shall notify the other Contracting Party that its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the latter notification.

Article 16. Duration and Termination

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in witting of its intention to terminate this Agreement.

2. In respect of investment made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination of this Agreement.

3. The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

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

DONE in duplicate at Abu Dhabi on 23 November 2014, in the Arabic and English languages, all texts being equally authentic. In case of divergency of the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KENYA

Henry K. Rotich

Cabinet Secretary

The National Treasury

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

Obaid Humaid Al Tayer

Minister of State for Financial Affairs