AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA

PREAMBLE

We, Member States of the African Union,

DESIROUS to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia from 29th-30th January, 2012 (Assembly/AU/Dec. 394(XVIII) of the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade;

COGNISANT of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the Abuja Treaty during the Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from 14-15 June 2015 (Assembly/AU/Dec. 569(XXV);

DETERMINED to strengthen our economic relationship and build upon our respective rights and obligations under the Constitutive Act of the African Union of 2000, the Abuja Treaty and, where applicable, the Marrakesh Agreement Establishing the World Trade Organization of 1994;

HAVING REGARD to the aspirations of Agenda 2063 for a continental market with the free movement of persons, capital, goods and services, which are crucial for deepening economic integration, and promoting agricultural development, food security, industrialisation and structural economic transformation;

CONSCIOUS of the need to create an expanded and secure market for the goods and services of State Parties through adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff barriers to trade and investment;

ALSO CONSCIOUS of the need to establish clear, transparent, predictable and mutually-advantageous rules to govern Trade in Goods and Services, Competition Policy, Investment and Intellectual Property among State Parties, by resolving the challenges of multiple and overlapping trade regimes to achieve policy coherence, including relations with third parties;

RECOGNISING the importance of international security, democracy, human rights, gender equality and the rule of law, for the development of international trade and economic cooperation;

REAFFIRMING the right of State Parties to regulate within their territories and the State Parties' flexibility to achieve legitimate policy objectives in areas including public health, safety, environment, public morals and the promotion and protection of cultural diversity;

FURTHER REAFFIRMING our existing rights and obligations with respect to each other under other agreements to which we are parties; and

ACKNOWLEDGING the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA),

HAVE AGREED AS FOLLOWS:

PARTI DEFINITIONS Article 1 DEFINITIONS For the purpose of this Agreement, (a) "Abuja Treaty" means the Treaty Establishing the African Economic Community of 1991; (b) "Agreement" means this Agreement Establishing the African Continental Free Trade Area and its Protocols, Annexes and Appendices which shall form an integral part thereof; (c) "Annex" means an instrument attached to a Protocol, which forms an integral part of this Agreement; (d) "Appendix" means an instrument attached to an Annex which forms an integral part of this Agreement; (e) "Assembly" means the Assembly of Heads of State and Government of the African Union; (f) "AU" means the African Union; (g) "AfCFTA" means the African Continental Free Trade Area; (h) "Commission" means the African Union Commission; (i) "Constitutive Act" means the Constitutive Act of the African Union of 2000;

3 U) "Continental Customs Union" means the Customs Union at the continental level by means of adopting a common external tariff, as provided by the Treaty Establishing the African Economic Community of 1991; (k) "Council of Ministers" means the Council of African Ministers of State Parties responsible for Trade; (l) "Dispute Settlement Body" means the body established to administer the provisions of the Protocol on Rules and Procedures on the Settlement of Disputes except as otherwise provided in this Agreement; (m) "Executive Council" means the Executive Council of Ministers of the Union; (n) "GATS" means the WTO General Agreement on Trade in Services of 1994; (o) "GATT" means the WTO General Agreement on Tariffs and Trade of 1994; (p) "Instrument" unless otherwise specified in this Agreement refers to Protocol, Annex or Appendix; (q) "Member States" means the Member States of the African Union; (r) "Non-Tariff Barriers" means barriers that impede trade through mechanisms other than the imposition of tariffs; (s) "Protocol" means an instrument attached to this Agreement, which forms an integral part of the Agreement; (t) "RECs" means the Regional Economic Communities recognised by the African Union, namely, the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC); (u) "Secretariat" means the Secretariat established pursuant to Article 13 of this Agreement; (v) "State Party" means a Member State that has ratified or acceded to this Agreement and for which the Agreement is in force;

4 (w) "Third Party" means a State(s) that is not a party to this Agreement except as otherwise defined in this Agreement; and (x) "WTO" means the World Trade Organization, as established in terms of the Marrakesh Agreement Establishing the World Trade Organization of 1994. PART II ESTABLISHMENT, OBJECTIVES, PRINCIPLES AND SCOPE Article 2 Establishment of the African Continental Free Trade Area The African Continental Free Trade Area (hereinafter referred to as "the AfCFTA") is hereby established. Article 3 General Objectives The general objectives of the AfCFTA are to: (a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063; (b) create a liberalised market for goods and services through successive rounds of negotiations; (c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs; (d) lay the foundation for the establishment of a Continental Customs Union at a later stage; (e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties; (f) enhance the competitiveness of the economies of State Parties within the continent and the global market; (g) promote industrial development through diversification and regional value chain development, agricultural development and food security; and t!)

5 (h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes. Article 4 Specific Objectives For purposes of fulfilling and realising the objectives set out in Article 3, State Parties shall: (a) progressively eliminate tariffs and non-tariff barriers to trade in goods; (b) progressively liberalise trade in services; (c) cooperate on investment, intellectual property rights and competition policy; (d) cooperate on all trade-related areas; (e) cooperate on customs matters and the implementation of trade facilitation measures; (f) establish a mechanism for the settlement of disputes concerning their rights

and obligations; and (g) establish and maintain an institutional framework for the implementation and administration of the AfCFT A. Article 5 Principles The AfCFTA shall be governed by the following principles: (a) driven by Member States of the African Union; (b) RECs' Free Trade Areas (FTAs) as building blocs for the AfCFTA; (c) variable geometry; (d) flexibility and special and differential treatment; (e) transparency and disclosure of information; (f) preservation of the acquis; (g) Most-Favoured-Nation (MFN) Treatment; (h) National Treatment; (i) reciprocity;

6 0) substantial liberalisation; (k) consensus in decision-making; and (I) best practices in the RECs, in the State Parties and International Conventions binding the African Union. Article 6 Scope This Agreement shall cover trade in goods, trade in services, investment, intellectual property rights and competition policy. Article 7 Phase II Negotiations 1. In pursuance of the objectives of this Agreement, Member States shall enter into Phase II negotiations in the following areas: (a) intellectual property rights; (b) investment; and (c) competition policy. 2. The negotiations referred to in paragraph 1 of this Article shall commence after the adoption of this Agreement by the Assembly and shall be undertaken in successive rounds. Article 8 Status of the Protocols, Annexes and Appendices 1. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall, upon adoption, form an integral part of this Agreement. 2. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the single undertaking, subject to entry into force. 3. Any additional instruments, within the scope of this Agreement, deemed necessary, shall be concluded in furtherance of the objectives of the AfCFTA and shall, upon adoption, form an integral part of this Agreement.

7 PART Ill ADMINISTRATION AND ORGANISATION Article 9 Institutional Framework for the Implementation of the AfCFTA The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFT A shall consist of the following: (a) the Assembly; (b) the Council of Ministers; (c) the Committee of Senior Trade Officials; and (d) the Secretariat. Article 10 The Assembly 1. The Assembly, as the highest decision-making organ of the AU, shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT). 2. The Assembly shall have the exclusive authority to adopt interpretations of this Agreement on the recommendation of the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus. Article 11 The Composition and Functions of the Council of Ministers 1. The Council of Ministers is hereby established and shall consist of the Ministers responsible for Trade or such other ministers, authorities, or officials duly designated by the State Parties. 2. The Council of Ministers shall report to the Assembly through the Executive Council. 3. The Council of Ministers shall within its mandate: (a) take decisions in accordance with this Agreement; (b) ensure effective implementation and enforcement of the Agreement; (c) take measures necessary for the promotion of the objectives of this Agreement and other instruments relevant to the AfCFTA;

8 (d) work in collaboration with the relevant organs and institutions of the African Union; (e) promote the harmonisation of appropriate policies, strategies and measures for the effective implementation of this Agreement; (f) establish and delegate responsibilities to ad hoe or standing committees, working groups or expert groups; (g) prepare its rules of procedure and those of its subsidiary bodies created for the implementation of the AfCFTA and submit them to the Executive Council for approval; (h) supervise the work of all committees and working groups it may establish pursuant to this Agreement; (i) consider reports and activities of the Secretariat and take appropriate actions; U) make regulations, issue directives and make recommendations in accordance with the provisions of this Agreement; (k) consider and propose for adoption by the Assembly, the staff and financial regulations of the Secretariat; (l) consider the organisational structure of the Secretariat and submit for adoption by the Assembly through the Executive Council; (m) approve the work programs of the AfCFTA and its institutions; (n) consider the budgets of the AfCFTA and its institutions and submit them to the Assembly through the Executive Council; (o) make recommendations to the Assembly for the adoption of authoritative interpretation of this Agreement; and (p) perform any other function consistent with this Agreement or as may be requested by the Assembly. 4. The Council of Ministers shall meet twice a year in ordinary session and may meet as and when necessary in extraordinary sessions. 5, Decisions taken by the Council of Ministers, while acting within its mandate, shall be binding on State Parties. Decisions that have legal, structural or financial implications shall be binding on State Parties upon their adoption by the Assembly. 6. The State Parties shall take such measures as are necessary to implement the decisions of the Council of Ministers.

9 Article 12 Committee of Senior Trade Officials 1. The Committee of Senior Trade Officials shall consist of Permanent or Principal Secretaries or other officials designated by each State Party. 2. The Committee of Senior Trade Officials shall: (a) implement the decisions of the Council of Ministers as may be directed; (b) be responsible for the development of programmes and action plans for the implementation of the Agreement; (c) monitor and keep under constant review and ensure proper functioning and development of the AfCFTA in accordance with the provisions of this Agreement; (d) establish committees or other working groups as may be required; (e) oversee the implementation of the provisions of this Agreement and for that purpose, may request a Technical Committee to investigate any particular matter; (f) direct the Secretariat to undertake specific assignments; and (g) perform any other function consistent with this Agreement or as may be requested by the Council of Ministers. 3. Subject to directions given by the Council of Ministers, the Committee of Senior Trade Officials shall meet at least twice a year and shall operate in accordance with the rules of procedures as adopted by the Council of Ministers. 4. The Committee shall submit its report, which may include recommendations, to the Council of Ministers following its meetings. 5. The RECs shall be represented in the Committee of Senior Trade Officials, in an advisory capacity. Article 13 The Secretariat 1. The Assembly shall establish the Secretariat, decide on its nature, location and approve its structure and budget. 2. The Commission shall be the interim Secretariat, until it is fully operational;

10 3. The Secretariat shall be a functionally autonomous institutional body within the African Union system with an independent legal personality; 4. The Secretariat shall be autonomous of the African Union Commission; 5. The Funds of the Secretariat shall come from the overall annual budgets of the African Union; 6. The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers of Trade. Article 14 Decision-Making 1. Decisions of the AfCFTA institutions 1 on substantive issues shall be taken by consensus. 2. Notwithstanding paragraph 1, the Committee of Senior Trade Officials shall refer, for consideration by the Council of Ministers, matters on which it has failed to reach consensus. The Council of Ministers shall refer the matters to the Assembly where consensus could not be reached. 3. Decisions on questions of procedure shall be taken by a simple majority of State Parties, eligible to vote. 4. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of State Parties, eligible to vote. 5. Abstention by a State Party eligible to vote shall not prevent the adoption of decisions. Article 15 Waiver of Obligations 1. In exceptional circumstances, the Council of Ministers may waive an obligation imposed on a State Party to this Agreement, upon request by a State Party, provided that any such decision shall be taken by three fourths2 of the States Parties, in the absence of consensus. 1 The Assembly, the Council of Ministers and the Committee of Senior Trade Officials. 2 A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting State Party has not performed by the end of the relevant period shall be taken only by consensus.

11 2. A request for a waiver from a State Party concerning this Agreement shall be submitted to the Council of Ministers for consideration pursuant to the practice of decision-making by consensus. The Council of Ministers shall establish a time period, which shall not exceed ninety (90) days, to consider the request. If consensus is not reached during the time period, any decision to grant a waiver shall be taken by three fourths of the State Parties. 3. A decision by the Council of Ministers granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one (1) year shall be reviewed by the Council of Ministers not later than one (1) year after it is granted, and thereafter annually until the waiver terminates. In each review, the Council of Ministers shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Council of Ministers, on the basis of the annual review, may extend, modify or terminate the waiver. PART IV TRANSPARENCY Article 16 Publication 1. Each State Party shall promptly publish or make publicly available through accessible mediums 3 its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement. 2. The provisions of this Agreement shall not require any State Party to disclose confidential information which would impede law enforcement or otherwise be contrary to public interest or will prejudice the legitimate commercial interest of particular enterprises, public or private. 3 "For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages."

12 Article 17 Notification 1. Laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement adopted after the entry into force of this Agreement shall be notified by State Parties in one (1) of the African Union working languages to other State Parties through the Secretariat. 2. Each State Party shall notify, through the Secretariat, in accordance with this Agreement, the other State Parties of any actual or proposed measure that the State Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other State Party's interests under this Agreement. 3. At the request of another State Party, a State Party, through the Secretariat,

shall promptly provide information and respond to questions pertaining to an actual or proposed measure, irrespective of whether or not the other State Party was previously notified of that measure. 4. Any notification or information provided pursuant to this Article is without prejudice to whether the measure is consistent with this Agreement. PARTV CONTINENTAL PREFERENCES Article 18 Continental Preferences 1. Following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties. 2. A State Party shall afford opportunity to other State Parties to negotiate preferences granted to Third Parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis. In the case where a State Party is interested in the preferences in this paragraph, the State Party shall afford opportunity to other State Parties to negotiate on a reciprocal basis, taking into account levels of development of State Parties.

13 3. This Agreement shall not nullify, modify or revoke rights and obligations under pre-existing trade agreements that State Parties have with Third Parties. Article 19 Conflict and Inconsistency with Regional Agreements 1. In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement. 2. Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves. PART VI DISPUTE SETTLEMENT Article 20 Dispute Settlement 1. A Dispute Settlement Mechanism is hereby established and shall apply to the settlement of disputes arising between State Parties. 2. The Dispute Settlement Mechanism shall be administered in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes. 3. The Protocol on Rules and Procedures on the Settlement of Disputes shall establish, inter a/ia, a Dispute Settlement Body. PART VII FINAL PROVISIONS Article 21 Exceptions No provision of this Agreement shall be interpreted as derogating from the principles and values contained in other relevant instruments for the establishment and sustainability of the AfCFTA, except as otherwise provided for in the Protocols to this Agreement.

14 Article 22 Adoption, Signature, Ratification and Accession 1. This Agreement shall be adopted by the Assembly. 2. This Agreement shall be open for signature and ratification or accession by the Member States, in accordance with their respective constitutional procedures. Article 23 Entry into Force 1. This Agreement and the Protocols on Trade in Goods, Trade in Services, and Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification. 2. The Protocols on Investment, Intellectual Property Rights, Competition Policy and any other Instrument within the scope of this Agreement deemed necessary, shall enter into force thirty (30) days after the deposit of the twenty second (22nd) instrument of ratification. 3. For any Member State acceding to this Agreement, the Protocols on Trade in Goods, Trade in Services, and the Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force in respect of that State Party on the date of the deposit of its instrument of accession. 4. For Member States acceding to the Protocols on Investment, Intellectual Property Rights, Competition Policy, and any other Instrument within the scope of this Agreement deemed necessary, shall enter into force on the date of the deposit of its instrument of accession. 5. The Depositary shall inform all Member States of the entry into force of this Agreement and its Annexes. Article 24 Depositary 1. The Depositary of this Agreement shall be the Chairperson of the Commission. 2. This Agreement shall be deposited with the Depositary, who shall transmit a certified true copy of the Agreement to each Member State.

15 3. A Member State shall deposit an instrument of ratification or accession with the Depositary. 4. The Depositary shall notify Member States of the deposit of the instrument of ratification or accession. Article 25 Reservation No reservations shall be made to this Agreement. Article 26 Registration and Notification 1. The Depositary shall upon the entry into force of this Agreement, register it with the United Nations Secretary General in conformity with Article 102 of the Charter of the United Nations. 2. State Parties shall, where applicable notify this Agreement to the WTO individually or collectively. Article 27 Withdrawal 1. After five (5) years from the date of entry into force in respect of a State Party, a State Party may withdraw from this Agreement by giving written notification to State Parties through the Depositary. 2. Withdrawal shall be effective two (2) years after receipt of notification by the Depositary, or on such later date as may be specified in the notification. 3. Withdrawal shall not affect any pending rights and obligations of the withdrawing State Party prior to the withdrawal. Article 28 Review 1. This Agreement shall be subject to review every five (5) years after its entry into force, by State Parties, to ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments.

16 2. Following the process of review, State Parties may make recommendations for amendments, in accordance with Article 29 taking into account experience acquired and progress achieved during the implementation of this Agreement. Article 29 Amendments 1. Any State Party may submit proposal(s) for amendment to this Agreement to the Depositary. 2. The Depositary shall within thirty (30) days of receipt of the proposal, circulate the proposal to State Parties and the Secretariat. 3. A State Party that wishes to comment on the proposal may do so within sixty (60) days from the date of circulation and submit the comments to the Depositary and the Secretariat. 4. The Secretariat shall circulate the proposal and comments received to members of the appropriate AfCFTA committees and sub-committees for consideration. 5. The relevant committees and sub-committees shall present, through the Secretariat, recommendations to the Council of Ministers, for consideration, following which a recommendation may be made to the Assembly through the Executive Council. 6. Amendments to the Agreement shall be adopted by the Assembly. 7. The amendments to this Agreement shall enter into force in accordance with Article 23 of this Agreement. Article 30 Authentic Texts This Agreement is drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all of which are equally authentic.

17 PROTOCOL ON TRADE IN GOODS PREAMBLE We, Member States of the African Union, DESIROUS to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia from 29th-30th January, 2012 (Assembly/AU/Dec. 394(XVIII) of the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade; COGNISANT of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the Abuja Treaty during the Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from 14-15 June 2015 (Assembly/AU/Dec. 569(XXV); DETERMINED to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development and thereby boosting intra-African trade; RESOLVED to enhance competitiveness at the industry and enterprise level through exploiting opportunities for economies of scale, continental market access and an efficient allocation of resources; CONFIDENT that a comprehensive Protocol on Trade in Goods will deepen economic efficiency and linkages, improve social welfare, progressively eliminate trade barriers, increase trade and investment with greater opportunities for economies of scale for the businesses of State Parties; COMMITTED to expanding intra-African trade through the harmonisation, coordination of trade liberalisation and implementation of trade facilitation instruments across Africa, and cooperation in the area of quality infrastructure, science and technology, the development and implementation of trade related measures; and RECOGNISING the different levels of development among the State Parties and the need to provide flexibilities, special and differential treatment and technical assistance to State Parties with special needs, HAVE AGREED AS FOLLOWS:

18 PARTI DEFINITIONS, OBJECTIVES AND SCOPE Article 1 Definitions For purposes of this Protocol, the following definitions shall apply: (a) "Anti-dumping Agreement" means the WTO Agreement on the implementation of Article VI of the GATT 1994; (b) "Committee" means the Committee for Trade in Goods established in Article 31 of this Protocol; (c) "Customs duty" means a duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation; (d) "Harmonised System" means the Harmonised Commodity Description and Coding System established by the International Convention on the Harmonised Commodity Description and Coding System; (e) "Non-Tariff Barriers" means barriers that impede trade through mechanisms other than the imposition of tariffs; (f) "Originating products" means goods that qualify as originating products under the rules of origin set out in Annex 2 on Rules of Origin; (g) "Preferential Trade Arrangements" means any trade arrangement by which a State Party grants preferences to imports from another State Party or a Third Party and includes non-reciprocal preferential scheme granted by way of waiver; (h) "Safeguards Agreement" means the WTO Agreement on Safeguards; (i) "Schedule of tariff concessions" means a list of negotiated specific tariff concessions and commitments by each State Party. It sets out, transparently, the terms, conditions and qualifications under which goods may be imported under the AfCFTA; U) "TBT" means Technical Barriers to Trade; and (k) "TBT Agreement" means the WTO Agreement on Technical Barriers to Trade.

19 Article 2 Objectives 1. The principal objective of this Protocol is to create a liberalised market for trade in goods in accordance with Article 3 of the Agreement. 2. The specific objective of this Protocol is to boost intra-African trade in goods through: (a) progressive elimination of tariffs; (b) progressive elimination of non-tariff barriers; (c) enhanced efficiency of customs procedures, trade facilitation and transit; (d) enhanced cooperation in the areas of technical barriers to trade and sanitary

and phytosanitary measures; (e) development and promotion of regional and continental value chains; and (f) enhanced socio-economic development, diversification and industrialisation across Africa. Article 3 Scope 1. The provisions of this Protocol shall apply to trade in goods between the State Parties. 2. Annex 1 on Schedules of Tariff Concessions, Annex 2 on Rules of Origin, Annex 3 on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation, Annex 5 on Non-Tariff Barriers, Annex 6 on Technical Barriers to Trade, Annex 7 Sanitary and Phytosanitary Measures, Annex 8 on Transit and Annex 9 on Trade Remedies shall, upon adoption form an integral part of this Protocol.

20 PART II NON-DISCRIMINATION Article 4 Most-Favoured-Nation Treatment 1. State Parties shall accord Most-Favoured-Nation Treatment to one another in accordance with Article 18 of the Agreement. 2. Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis. 3. Nothing in this Protocol shall prevent two or more State Parties from extending to one another preferences which aim at achieving the objectives of this Protocol among themselves, provided that such preferences are extended to the other State Parties on a reciprocal basis. 4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, a State Party shall not be obliged to extend to another State Party, trade preferences extended to other State Parties or Third Parties before the entry into force of the Agreement. A State Party shall afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis, taking into account levels of development of State Parties. Article 5 National Treatment A State Party shall accord to products imported from other State Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs. This treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article lll of GATT 1994. Article 6 Special and Differential Treatment In conformity with the objective of the AfCFTA in ensuring comprehensive and mutually beneficial trade in goods, State Parties shall, provide flexibilities to other State Parties at different levels of economic development or that have individual specificities as recognised by other State Parties. These flexibilities

21 shall include, among others, special consideration and an additional transition period in the implementation of this Agreement, on a case by case basis. PART lll LIBERALISATION OF TRADE Article 7 Import Duties 1. State Parties shall progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State Party in accordance with their Schedules of Tariff Concessions contained in Annex 1 to this Protocol. 2. For products subject to liberalisation, State Parties shall not impose any new import duties or charges having equivalent effect on goods originating from the territory of any other State Party, except as provided for under this Protocol. 3. An import duty shall include any duty or charge of any kind imposed on or in connection with the importation of goods consigned from any State Party to a consignee in another State Party, including any form of surtax or surcharge, but shall not include any: (a) charges equivalent to internal taxes imposed consistently with Article 111(2) of GATT 1994 and its interpretative notes in respect of like or directly competitive or substitutable goods of the State Party or in respect of goods from which imported goods have been manufactured or produced in whole or in part; (b) antidumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and Article 17 of this Protocol; (c) duties or levies imposed in relation to safeguards, in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Protocol; and (d) other fees or charges imposed consistently with Article VIII of GATT 1994. Article 8 Schedules of Tariff Concessions 1. Each State Party shall apply preferential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions 00

22 contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities. The Schedules of Tariff Concessions, the adopted tariff modalities and outstanding work on tariff modalities to be negotiated and adopted, shall be an integral part of this Protocol. 2. Notwithstanding the provisions of this Protocol, State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves. Article 9 General Elimination of Quantitative Restrictions The State Parties shall not impose quantitative restrictions on imports from or exports to other State Parties except as otherwise provided for in this Protocol, its Annexes and Article XI of GA TT 1994 and other relevant WTO Agreements. Article 10 Export Duties 1. State Parties may regulate export duties or charges having equivalent effect on goods originating from their territories. 2. Any export duties or taxes, imposed on or in connection with, the exportation of goods, applied pursuant to this Article shall be applied to goods exported to all destinations on a non-discriminatory basis. 3. A State Party that introduces export duties or taxes on, or in connection with, the exportation of goods in accordance with paragraph 2 of this Article, shall notify the Secretariat ninety (90) days from the introduction of the said export duties or taxes. Article 11 Modification of Schedules of Tariff Concessions 1. In exceptional circumstances, a State Party may request for modification of its Schedules of Tariff Concessions. 2. In such exceptional circumstances, a State Party (hereinafter referred to as the "modifying State Party") shall submit to the Secretariat, a written request, together with evidence of the exceptional circumstances for such a request.

23 3. Upon receipt of the request, the Secretariat shall immediately circulate the request to all State Parties. 4. Where a State Party considers that it has a substantial interest (hereinafter referred to as the "State Party with substantial interest") in the tariff schedule of the modifying State Party, it should communicate in writing, with supporting evidence, to the modifying State Party through the Secretariat within thirty (30) days. The Secretariat shall immediately circulate all such requests to all State Parties. 5. The modifying State Party and any State Party with substantial interest, as determined under paragraph 3, shall enter into negotiations to be coordinated by the Secretariat with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties shall maintain a general level of commitments not less favourable than the initial commitments. 6. The outcome of the negotiations and the subsequent modification of the tariff schedule and any compensation thereof, shall only be effected upon approval by State Parties with substantial interest and notification to the Secretariat which shall transmit to other State Parties. The compensatory adjustments shall be made in accordance with Article 4 of this Protocol. 7. The modifying State Party shall not modify its commitment until it has made compensatory adjustments as provided for in paragraph 6 and endorsed by the Council of Ministers. The outcome of the compensatory adjustment shall be notified to State Parties. Article 12 Elimination of Non-Tariff Barriers Except as may be provided for in this Protocol, the identification, categorisation, monitoring and elimination of Non-Tariff Barriers by State Parties shall be in accordance with the provisions of Annex 5 on Non-Tariff Barriers. Article 13 Rules of Origin Goods shall be eligible for preferential treatment under this Protocol, if they are originating in any of the State Parties in accordance with the criteria and conditions set out in Annex 2 on Rules of Origin, and in accordance with the Appendix to be developed on General and Product Specific Rules. tv

24 PART IV CUSTOMS COOPERATION, TRADE FACILITATION AND TRANSIT Article 14 Customs Cooperation and Mutual Administrative Assistance State Parties shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance in accordance with the provisions of Annex 3 on Customs Cooperation and Mutual Administrative Assistance. Article 15 Trade Facilitation State Parties shall take appropriate measures including arrangements regarding trade facilitation in accordance with the provisions of Annex 4 on Trade Facilitation. Article 16 Transit State Parties shall take appropriate measures including arrangements regarding transit in accordance with the provisions of Annex 8 on Transit. PARTV TRADE REMEDIES Article 17 Anti-dumping and Countervailing Measures 1. Subject to the provisions of this Protocol, nothing in this Protocol shall prevent State Parties from applying anti-dumping and countervailing measures. 2. In applying this Article, State Parties shall be guided by the provisions of Annex 9 on Trade Remedies and the AfCFTA Guidelines on Implementation of Trade Remedies in accordance with relevant WTO Agreements. Article 18 Global Safeguard Measures The implementation of this Article shall be in accordance with Annex 9 on Trade Remedies and Guidelines on Implementation of Trade Remedies, Article XIX of GA TT 1994 and the WTO Agreement on Safeguards. tt)

25 Article 19 Preferential Safeguards 1. State Parties may apply safeguard measures to situations where there is a sudden surge of a product imported into a State Party, under conditions which cause or threaten to cause serious injury to domestic producers of like or directly competing products within the territory. 2. The implementation of this Article shall be in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies. Article 20 Cooperation relating to Anti-dumping, Countervailing and Safeguards Investigations State Parties shall cooperate in the area of trade remedies in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies. PART VI PRODUCT STANDARDS AND REGULATIONS Article 21 Technical Barriers to Trade The implementation of this Article shall be in accordance with the provisions of Annex 6 on Technical Barriers to Trade. Article 22 Sanitary and Phytosanitary Measures The implementation of this Article shall be in accordance with the provisions of Annex 7 on Sanitary and Phytosanitary Measures. PART VII COMPLEMENTARY POLICIES Article 23 Special Economic Arrangements/Zones 1. State Parties may support the establishment and operation of special economic arrangements or zones for the purpose of accelerating development.

26 2. Products benefiting from special economic arrangements or zones shall be subject to any regulations that shall be developed by the Council of Ministers. Regulations under this paragraph shall be in support of the continental industrialisation programmes. 3. The trade of products manufactured in special economic arrangements or zones within the AfCFTA shall be subject to the provisions of Annex 2 on Rules of Origin. Article 24 Infant Industries 1. For the purposes of protecting an infant industry having strategic importance at the national level, a State Party may, provided that it has taken reasonable steps to overcome the difficulties related to such infant industry, impose measures for protecting such an industry. Such measures shall be applied on a non-discriminatory basis and for a specified period of time. 2. Council of Ministers shall adopt guidelines for implementation of this Article as an integral part of this Protocol. 1. Article 25 Transparency and Notification requirements for State Trading Enterprises In order to ensure the transparency of the activities of State Trading Enterprises (STE), State Parties shall notify such enterprises to the Secretariat for transmission to other State Parties. 2. For the purpose of this Article, STE refers to governmental, non�governmental enterprises, including Marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports with reference to provisions of Article XVII of GATT 1994. PART VIII EXCEPTIONS Article 26 General Exceptions Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination

27 between State Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Protocol shall be construed as preventing the adoption or enforcement of measures by any State Party that are: (a) necessary to protect public morals or to maintain public order; (b) necessary to protect human, animal or plant life or health; (c) relating to the importations and exportations of gold or silver; (d) relating to the products of prison labour; (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices; (f) imposed for the protection of national treasures of artistic, historic or archaeological value; (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the State Parties; (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan, provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Protocol relating to non-discrimination; and U) essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply, provided that any such measures shall be consistent with the principle that all State Parties are entitled to an equitable share! of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Protocol shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

28 Article 27 Security Exceptions Nothing in this Protocol shall be construed to: (a) require any State Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests: i. relating to fissionable materials or the materials from which they are derived; ii. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials taking place either directly or indirectly for the purpose of supplying a military establishment; and iii. taken in time of war or other emergency in international relations; or (c) prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. Article 28 Balance of Payments 1. Where a State Party is in critical balance of payments difficulties, or under imminent threat thereof, or has the need to safeguard its external financial position difficulties and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate restrictive measures in accordance with international rights and obligations of the State Party concerned, including those under the wro Agreement, the Articles of Agreement of the International Monetary Fund and the African Development Bank respectively. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. 2. The State Party concerned, having adopted or maintained such measures shall inform the other State Parties forthwith and submit, as soon as possible, a time schedule for their removal.

29 PART IX TECHNICAL ASSISTANCE, CAPACITY BUILDING AND COOPERATION Article 29 Technical Assistance, Capacity Building and Cooperation 1. The Secretariat, working with State Parties, RECs and partners, shall coordinate and provide technical assistance and capacity building in trade and trade related issues for the implementation of this Protocol. 2. State Parties agree to enhance cooperation for the implementation of this Protocol. 3. The Secretariat shall explore avenues to secure resources required for these programmes. PARTX INSTITUTIONAL PROVISIONS Article 30 Consultation and Dispute Settlement Except as otherwise provided in this Protocol, the relevant provisions of the Protocol on Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol. Article 31 Implementation, Monitoring and Evaluation 1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Goods, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions. 2. This Committee and its subsidiary bodies, shall be open to participation by representatives of all State Parties unless otherwise decided. 3. The Chairperson of the Committee shall be elected by the State Parties. 4. In accordance with Article 13(5) of the Agreement, the Secretariat shall, in consultation with State Parties, prepare annual factual reports to facilitate the process of implementation, monitoring and evaluation of this Protocol.

30 5. These reports should be considered and adopted by the Council of Ministers. Article 32 Amendment Amendment to this Protocol shall be in accordance with Article 29 of the Agreement.

31 PROTOCOL ON TRADE IN SERVICES PREAMBLE WE, Member States of the African Union, DETERMINED to establish a continental framework of principles and rules for trade in services with a view to boosting intra-African trade in line with the objectives of the African Continental Free Trade Area (AfCFT A) and promoting economic growth and development within the continent; DESIROUS to create, on the basis of progressive liberalisation of trade in services, an open, rules based, transparent, inclusive and integrated single services market which provides economic, social and welfare-enhancing opportunities across all sectors for the African people; MINDFUL of the urgent need to consolidate and build on achievements in services liberalisation and regulatory harmonisation at the Regional Economic Community (REC) and continental levels; DESIRING to harness the potential and capacities of African services suppliers, in particular at the micro, small and medium levels, to engage in regional and global value chains; RECOGNISING the right of State Parties to regulate in pursuit of national policy objectives, and to introduce new regulations, on the supply of services, within their territories, in order to meet legitimate national policy objectives, including competitiveness, consumer protection and overall sustainable development with respect to the degree of the development of services regulations in different countries, the particular need for State Parties to exercise this right, without compromising consumer protection, environmental protection and overall sustainable development; COGNISANT of the serious difficulty of the least developed, land locked, island states and vulnerable economies in view of their special economic situation and their development, trade and financial needs; ACKNOWLEDGING the African Union Assembly Decision Assembly/AU/666 (XXX) adopted at the 30th Ordinary Session of the Assembly of Heads of State and Government of the AU, in Addis Ababa, Ethiopia on 28 January 2018 on the Establishment of a Single African Air Transport Market through the Implementation of the Yamoussoukro Decision; FURTHER RECOGNISING the potentially significant contribution of air transport services and, in particular, the Single African Air Transport Market to boost intra-African trade and fast track the African Continental Free Trade Area (AfCFTA),

32 HAVE AGREED AS FOLLOWS: PARTI DEFINITIONS For the purposes of this Protocol: Article 1 Definitions (a) "Commercial presence" means any type of business or professional establishment, including through: i. the constitution, acquisition or maintenance of a juridical person, or ii. the creation or maintenance of a branch or a representative office, within the territory of a State Party for the purpose of supplying a service; (b) "Direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation; (c) "Juridical person" means any legal entity duly constituted or otherwise organised under applicable law of State Parties, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association; (d) A juridical person is: i. "Affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person; ii. "Controlled" by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and iii. "Owned" by persons of a State Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that State Party; (e) "Juridical person of another State Party" means a juridical person which is either:

33 i. constituted or otherwise organised under the law of that other State Party, and is engaged in substantive business operations in the territory of that State Party or any other State Party; or ii. in the case of the supply of a service through commercial presence, owned or controlled by: 1. natural persons of that State Party; or 2. juridical persons of that other State Party identified under subparagraph (i); (f) "Measure" means any measure by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form; (g) "Measures by State Parties affecting trade in services" include measures in respect of: i. the purchase, payment or use of a service; ii. the access to and use of, in connection with the supply of a service, services which are required by those State Parties to be offered to the public generally; iii. the presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party; (h) "Monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a State Party operates as or is authorised or established formally or in effect by that State Party as the sole supplier of that service; (i) "Natural person of another State Party" means a natural person who resides in the territory of that other State Party or any other State Party and who under the law of that other State Party: i. is a national; or ii. has the right of permanent residence; U) "Person" means either a natural person or a juridical person; (k) "Sector" of a service means: i. with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a State Party's schedule of specific commitments;

34 ii. otherwise, the whole of that service sector, including all of its subsectors; (I) "Service of another State Party" means a service which is supplied: i. from or in the territory of that other State Party, or in the case of maritime transport, by a vessel registered under the laws of that other State Party, or by a person of that other State Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or ii. in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other State Party; (m) "Service consumer" means any person that receives or uses a service; (n) "Service supplier" means any person that supplies a service4; (o) "Supply of a Service" includes the production, distribution, marketing, sale and delivery of a service; (p) "Trade in services" means the supply of service: i. from the territory of one State Party into the territory of any other State Party; ii. in the territory of one State Party to the service consumer of any other State Party; iii. by a service supplier of one State Party, through commercial presence in the territory of any other State Party; iv. by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party. 4 Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside of the territory where the service is supplied.

35 PART II SCOPE OF APPLICATION Article 2 Scope of Application 1. This Protocol applies to measures by State Parties affecting trade in services. 2. For the purposes of this Protocol, trade in services is based on the four modes of supply of a service as defined in Article 1 (p) of this Protocol. 3. For the purposes of this Protocol: (a) "Measures by State Parties" means measures taken by: i. State Parties' central, regional or local governments and authorities; and ii. Non-governmental bodies in the exercise of powers delegated by State Parties' central, regional or local governments or authorities. In fulfilling its obligations and commitments under the Protocol, each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory; (b) "Services" includes any service in any sector except services supplied in the exercise of governmental authority; and (c) "A service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers. 4. Procurement by governmental agencies purchased for governmental purposes and not with a view to commercial re-sale are excluded from the scope of this Protocol. 5. This Protocol shall not apply to measures affecting: (a) air traffic rights, however granted; and (b) services directly related to the exercise of air traffic rights;

36 6. This Protocol shall apply to measures affecting: (a) aircraft repair and maintenance services; (b) the selling and marketing of air transport services; and (c) computer reservation system (CRS) services. PART Ill OBJECTIVES Article 3 Objectives 1. The principal objective of this Protocol is to support the objectives of the AfCFTA, as set out in Article 3 of the Agreement particularly to create a single liberalised market for trade in services. 2. The specific objectives of this Protocol are to: (a) enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure; (b) promote sustainable development in accordance with the Sustainable Development Goals (SDGs); (c) foster domestic and foreign investment; (d) accelerate efforts on industrial development to promote the development of regional value chains; (e) progressively liberalise trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services; (f) ensure consistency and complementarity between liberalisation of trade in services and the various Annexes in specific services sectors; (g) pursue services trade liberalisation in line with Article V of the GATS by expanding the depth and scope of liberalisation and increasing, improving and developing the export of services, while fully preserving the right to regulate and to introduce new regulations;

37 (h) promote and enhance common understanding and cooperation in trade in services amongst State Parties in order to improve the capacity, efficiency and competitiveness of their services markets; and (i) promote research and technological advancement in the field of services to accelerate economic and social development. PART IV GENERAL OBLIGATIONS AND DISCIPLINES Article 4 Most-Favoured-Nation Treatment 1. With respect to any measure covered by this Protocol, each State Party shall, upon entry into force, accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than that it accords to like services and service suppliers of any Third Party. 2. Nothing in this Protocol shall prevent a State Party from entering into a new preferential agreement with a Third Party, in accordance with Article V of the GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Such preferential treatment shall be extended to all State Parties on a reciprocal and non-discriminatory basis. 3. Notwithstanding paragraph 1, two (2) or more State Parties may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives in this Protocol. Other State Parties shall be afforded opportunity to negotiate the preferences granted therein on a reciprocal basis. 4. Notwithstanding the provisions of paragraph 2, a State Party shall not be obliged to extend preferences agreed with any Third Party prior to the entry into force of this Protocol, of which that State Party was a member or a beneficiary. A State Party may afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis. 5. The provisions of this Protocol shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

38 6. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. States Parties shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated. Article 5 Transparency 1. Each State Party shall, in a medium 5 that is accessible, publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Protocol. International and regional agreements pertaining to or affecting trade in services to which a State Party is a signatory shall also be published. 2. Each State Party shall notify the Secretariat of any international and regional agreements pertaining to or affecting trade in services with Third Parties to which they are signatory prior to or after entry into force of this Protocol. 3. Each State Party shall promptly and at least annually notify the Secretariat of the introduction of any new, or any changes to, existing laws, regulations or administrative guidelines which significantly affect trade in services under this Protocol. 4. Where a State Party submits a notification to the Secretariat, the latter shall promptly circulate the said notification to all State Parties. 5. Each State Party shall respond promptly to all requests by any other State Party for specific information on any of its measures of general application or international and/or regional agreements within the meaning of paragraph 1. State Parties shall also reply to any question from any other State Party relating to an actual or proposed measure that might substantially affect the operation of this Protocol. 6. Each State Party shall designate the relevant enquiry points to provide State Parties with specific information, upon request, on all such matters related to trade in services as well as those subject to the notification requirement above. 5 For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages.

39 Article 6 Disclosure of Confidential Information Nothing in this Protocol shall require any State Party to disclose confidential information and data, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private. Article 7 Special and Differential Treatment In order to ensure increased and beneficial participation in trade in services by all parties, State Parties shall: (a) provide special consideration to the progressive liberalisation of service sectors commitments and modes of supply which will promote critical sectors of growth, social and sustainable economic development; (b) take into account the challenges that may be encountered by State Parties and may grant flexibilities such as transitional periods, within the framework of action plans, on a case by case basis, to accommodate special economic situations and development,

trade and financial needs in implementing this Protocol for the establishment of an integrated and liberalised single market for trade in services; and (c) accord special consideration to the provision of technical assistance and capacity-building through continental support programmes. Article 8 Right to Regulate Each State Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol. Article 9 Domestic Regulation 1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner. c:v

40 2. Each State Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review. 3. Where authorisation is required for the supply of a service liberalised under this Protocol, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application. Article 10 Mutual Recognition 1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 3 of this Article, a State Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another State Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously. 2. A State Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 of this Article, whether existing or future, shall afford adequate opportunity for other interested State Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other State Party's territory should be recognised. 3. A State Party shall not accord recognition in a manner which would constitute a means of discrimination between State Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

41 4. Each State Party shall: (a) within twelve (12) months from the date on which the Agreement enters into force for it, inform the Secretariat of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1 of this Article; (b) promptly inform the State Parties through the Secretariat as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 of this Article in order to provide adequate opportunity to any other State Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and (c) promptly inform the States Parties through the Secretariat when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1 of this Article. 5. Wherever appropriate, recognition should be based on AfCFTA agreed criteria by State Parties. In appropriate cases, State Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common continental standards and criteria for recognition and common continental standards for the practice of relevant services trades and professions. Article 11 Monopolies and Exclusive Service Suppliers 1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations and specific commitments under this Protocol. 2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's specific commitments, the State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments. 3. A State Party which has a reason to believe that a monopoly supplier of a service of any other State Party is acting in a manner inconsistent with paragraphs 1 and 2 of this Article, may request the State Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

42 4. If, after the date of entry into force of this Protocol, a State Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that State Party shall notify the Secretariat no later than three (3) months before the intended implementation of the grant of monopoly rights and the provisions concerning modification of specific commitments will apply. 5. The provisions of this Article shall also apply to cases of exclusive service suppliers where a State Party, formally or in effect: (a) authorises or establishes a small number of service suppliers; and (b) substantially prevents competition among those suppliers in its territory. Article 12 Anti-competitive Business Practices 1. State Parties recognise that certain business practices of service suppliers, other than those concerning monopolies and exclusive service suppliers, may restrain competition and thereby restrict trade in services. 2. Each State Party shall, at the request of any other State Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. The State Party addressed shall respond to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The State Party addressed shall also provide other information available to the requesting State Party, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting State Party. Article 13 Payments and Transfers 1. Except under the circumstances envisaged in Article 14 of this Protocol, a State Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments. 2. Nothing in this Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a State Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such tV

43 transactions, except as provided under Article 14 of this Protocol, or at the request of the Fund. Article 14 Restrictions to Safeguard the Balance of Payments 1. In the event of serious balance of payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition. 2. The restrictions referred to in paragraph 1 of this Article shall: (a) not discriminate among State Parties; (b) be consistent with the Articles of Agreement of the International Monetary Fund; (c) avoid unnecessary damage to the commercial, economic and financial interests of any other State Party; (d) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves. 3. In determining the incidence of such restrictions, State Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector. 4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the Secretariat. 5. State Parties applying the provlsIons of this Article shall consult promptly within the Committee on Trade in Services on restrictions adopted under this Article.

44 6. The Committee on Trade in Services shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the State Party concerned as it may deem appropriate. 7. Such consultations shall assess the balance-of-payment situation of the State Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as: (a) the nature and extent of the balance-of-payments and the external financial difficulties; (b) the external economic and trading environment of the consulting State Party; and (c) alternative corrective measures which may be available. 8. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article, in particular the progressive phase-out of restrictions in accordance with paragraph 2(e) of this Article. 9. In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting State Party. 10. If a State Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Council of Ministers shall establish a review procedure and any other procedures necessary. Article 15 General Exceptions Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between State Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of measures: (a) necessary to protect public morals or to maintain public order6; 6 The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

45 (b) necessary to protect human, animal or plant life or health; (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol including those relating to: i. the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts; ii. the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; iii. safety; (d) inconsistent with National Treatment, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other States Parties; and7 (e) inconsistent with the Most Favoured Nation obligation provided that the difference in treatment is the result of an agreement on avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the State Party is bound. 7Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a State Party under its taxation system which: a. Apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the State Party's territory; or b. Apply to non-residents in order to ensure the imposition or collection of taxes in the State Party's territory; or c. Apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or d. Apply to consumers of services supplied in or from the territory of another State Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the State Party's territory,&#65533; or e. Distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or f. Determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the State Party's tax base. Tax terms or concepts in paragraph (d) of Article 15 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the State Party taking the measure.

46 Article 16 Security Exceptions 1. Nothing in this Protocol shall be construed: (a) to require any State Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests: i. relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment; ii. relating to fissionable and fusionable materials or the materials from which they are derived; and iii. taken in time of war or other emergency in international relations; or (c) to prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. 2. The Secretariat shall be informed, to the fullest extent possible, of measures taken under paragraphs 1 (b) and 1 (c) of this Article, and of their termination. Article 17 Subsidies 1. Nothing in this Protocol shall be construed to prevent State Parties from using subsidies in relation to their development programmes. 2. State Parties shall decide on mechanisms for information exchange and review of all subsidies related to trade in services that State Parties provide to their domestic service suppliers. 3. Any State Party which considers that it is adversely affected by a subsidy of another State Party may request consultations with that State Party on such matters. Such requests shall be accorded sympathetic consideration.

47 PARTV PROGRESSIVE LIBERALISATION Article 18 Progressive Liberalisation 1. State Parties shall undertake successive rounds of negotiations based on the principle of progressive liberalisation accompanied by the development of regulatory cooperation, and sectoral disciplines, taking into account the objectives of the 1991 Abuja Treaty that aim to strengthen integration at the regional and continental levels in all fields of trade, and in line with the general principle of progressivity towards achievement of the ultimate goal of the African Economic Community. 2. State Parties shall negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the best practices and acquis from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. State Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services. 3. The liberalisation process shall focus on the progressive elimination of the adverse effects of measures on trade in services as a means of providing effective market access with a view to boosting intra-African trade in services. 4. The list of Priority Sectors and the Modalities on Trade in Services shall be annexed to this Protocol and shall form an integral part hereof. 5. The Transitional Implementation Work Programme developed by Member States shall guide the finalisation of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement. Article 19 Market Access 1. With respect to market access through the modes of supply identified in Article 1 (p) of this Protocol, each State Party shall accord services and service suppliers of any other State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.8 8/f a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply defined in Article 1 (p) and if the cross-border movement of capital is

48 2. In sectors where market-access commitments are undertaken, the measures which a State Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as: (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;9 (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment. Article 20 National Treatment 1. In all sectors inscribed in the schedule, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1 (p) (iii), it is thereby committed to allow related transfers of capital into its territory. 9 Article 1 (g) (iii) does not cover measures of a State Party which limit inputs for the supply of services.

49 suppliers, subject to the conditions and qualifications agreed and specified in its Schedule of Specific Commitments. 2. A State Party may meet the requirement of paragraph 1 of this Article, by according to services and service suppliers of any other State Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the State Party compared to like services or service suppliers of any other State Party. Article 21 Additional Commitments The State Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 19 or 20 of this Protocol, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments. Article 22 Schedules of Specific Commitments 1. Each State Party shall set out in a schedule, the specific commitments that it undertakes under Articles 19, 20 and 21 of this Protocol. 2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify: (a) terms, limitations and conditions on market access; (b) conditions and qualifications on national treatment; (c) undertakings relating to additional commitments; and (d) where appropriate the time-frame for implementation of such commitments, including their date of entry into force. 3. Measures inconsistent with both Articles 19 and 20 of this Protocol shall be inscribed in the column relating to Article 19 of this Protocol. In this case the inscription will be considered to provide a condition or qualification to Article 20 of this Protocol as well. 4. The Schedules of Specific Commitments, the Modalities for Trade in Services and the list of Priority Sectors shall, upon adoption, form an integral part of this Protocol.

50 5. The Transitional Implementation Work Programme developed by Member States shall guide the finalisation of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement. Article 23 Modification of Schedules of Specific Commitments 1. A State Party (referred to in this Article as the "modifying State Party") may modify or withdraw any commitment in its schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. 2. A modifying State Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Secretariat no later than three (3) months before the intended date of implementation of the modification or withdrawal. The Secretariat shall promptly circulate this information to State Parties. 3. At the request of any State Party the benefits of which under this Protocol may be affected (referred to in this Article as an "affected State Party"), by a proposed modification or withdrawal notified under paragraph 2 of this Article, the modifying State Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in commitments prior to such negotiations. 4.

Compensatory adjustments shall be made on a most-favoured-nation basis. 5. If agreement is not reached between the modifying State Party and any affected State Party before the end of the period provided for negotiations, such affected State Party may refer the matter to dispute settlement. Any affected State Party that wishes to enforce a right that it may have to compensation must participate in the dispute process. 6. If no affected State Party has requested dispute settlement, the modifying State Party shall be free to implement the proposed modification or withdrawal, within a reasonable period of time. 7. The modifying State Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the dispute settlement. t!)

51 8. If the modifying State Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected State Party that participated in the dispute settlement may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding the obligations under Article 4 of this Protocol, such a modification or withdrawal may be implemented solely with respect to the modifying State Party. 9. The Committee on Trade in Services shall facilitate such negotiations and establish related appropriate procedures. Article 24 Denial of Benefits Subject to prior notification and consultation, a State Party may deny the benefits of this Protocol to service suppliers of another State Party where the service is being supplied by a juridical person of a non-State Party, without real and continuous link with the economy of the State Party or with negligible or no business operations in the territory of the other State Party or any other State Party. PART VI INSTITUTIONAL PROVISIONS Article 25 Consultation and Dispute Settlement The provisions of the Protocol on the Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol. Article 26 Implementation, Monitoring and Evaluation 1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Services, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions. 2. The Chairman of the Committee shall be elected by the State Parties. 3. The Committee shall prepare annual reports for State Parties to facilitate the process of implementation, monitoring and evaluation of this Protocol.

52 Article 27 Technical Assistance, Capacity Building and Cooperation 1. State Parties recognise the importance of technical assistance, capacity building and cooperation in order to complement the liberalisation of services, to support State Parties' efforts to strengthen their capacity in the supply of services and to facilitate implementation and attainment of the objectives of this Protocol. 2. State Parties agree, where possible, to mobilise resources, in collaboration with development partners, and implement measures, in support of the domestic efforts of State Parties, with a view to, inter alia: (a) building capacity and training for trade in services; (b) improving the ability of service suppliers to gather information on and to meet regulations and standards at international, continental, regional and national levels; (c) supporting the collection and management of statistical data on trade in services; (d) improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers; (e) supporting the negotiation of mutual recognition agreements; (f) facilitating interaction and dialogue between service suppliers of State Parties with a view to promotion of information sharing with respect to market access opportunities, peer learning and the sharing of best practices; (g) addressing quality and standards needs in those sectors where State Parties have undertaken commitments under this Protocol with a view to supporting the development and adoption of standards; and (h) developing and implementing regulatory regimes for specific services sectors at continental, regional and national levels, in particular in those sectors in which State Parties have undertaken specific commitments. 3. The Secretariat, working with State Parties, RECs and partners, shall coordinate the provision of technical assistance. "

53 Article 28 Annexes to this Protocol 1. Member States may develop annexes for the implementation of this Protocol relating, inter alia, to: (a) Schedules of Specific Commitments; (b) MFN Exemption(s); (c) Air Transport Services; (d) List of Priority Sectors; and (e) A framework document on Regulatory Cooperation. 2. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol. 3. State Parties may develop additional annexes for the implementation of this Protocol for adoption by the Assembly. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol. Article 29 Amendment This Protocol shall be amended in accordance with the provisions of Article 29 of the Agreement. ~

54 PROTOCOL ON RULES AND PROCEDURES ON THE SETTLEMENT OF DISPUTES WE Member States of the African Union, HAVE AGREED AS FOLLOWS: Article 1 Definitions (a) "AB" means the Appellate Body established under Article 20 of this Protocol; (b) "Complaining Party" means a State Party that has initiated a dispute settlement procedure under the Agreement; (c) "Consensus" means if no State Party present at the meeting of the DSB when a decision is taken, formally objects to the decision; (d) "Days" means working days save for cases involving perishable goods where Days shall mean calendar days; (e) "Dispute" means a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations; (f) "DSB" means the Dispute Settlement Body established under Article 5 of this Protocol; (g) "Panel" means a Dispute Settlement Panel established under Article 9 of this Protocol; (h) "Party to a dispute or proceedings" means a State Party to a dispute or proceedings; (i) "State Party concerned" is a State Party to which rulings and recommendations of the DSB are directed; and U) "Third Party" means a State Party with a substantial interest in a dispute. Article 2 Objective This Protocol provides for the administration of the Dispute Settlement Mechanism established in accordance with Article 20 of the Agreement and aims at ensuring that the dispute settlement process is transparent,

55 accountable, fair, predictable and consistent with the provisions of the Agreement. Article 3 Scope of Application 1. This Protocol shall apply to disputes arising between State Parties concerning their rights and obligations under the provisions of the Agreement. 2. This Protocol shall apply subject to such special and additional rules and procedures on dispute settlement contained in the Agreement. To the extent that there is a difference between the rules and procedures of this Protocol and the special or additional rules and procedures in the Agreement, the special or additional rules and procedures shall prevail. 3. For the purposes of this Article, a dispute settlement proceeding shall be considered to have been initiated in accordance with this Protocol when the Complaining Party requests consultations pursuant to Article 7 of this Protocol. 4. A State Party which has invoked the rules and procedures of this Protocol with regards to a specific matter, shall not invoke another forum for dispute settlement on the same matter. Article 4 General Provisions 1. The dispute settlement mechanism of the AfCFTA is a central element in providing security and predictability to the regional trading system. The dispute settlement mechanism shall preserve the rights and obligations of State Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary rules of interpretation of public international law. 2. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of a dispute in accordance with rights and obligations under the Agreement. 3. Mutually agreed solutions to matters formally raised in accordance with the consultation and dispute settlement provisions of this Protocol shall be notified to the DSB, where any State Party may raise any point relating thereto.

56 4. All resolutions to matters formally raised in accordance with the consultations and dispute settlement provisions of this Protocol, including arbitration awards, shall be consistent with the Agreement. 5. Requests for conciliation, good offices, mediation and the use of dispute settlement procedures should not be intended or considered as contentious acts. If a dispute arises, State Parties will engage in these procedures in good faith in an effort to resolve the dispute. Further, complaints and counter-complaints in regard to separate matters should not be linked. 6. In their findings and recommendations, the Panel and AB shall not add to or diminish the rights and obligations of State Parties pursuant to the Agreement. Article 5 Dispute Settlement Body 1. The Dispute Settlement Body is hereby established in accordance with Article 20 of the Agreement to administer the provisions of this Protocol except as otherwise provided for in the Agreement. 2. The DSB shall be composed of representatives of the State Parties. 3. The DSB shall have the authority to: (a) establish Dispute Settlement Panels and an Appellate Body; (b) adopt Panel and Appellate Body reports; (c) maintain surveillance of implementation of rulings and recommendations of the Panels and Appellate Body; and (d) authorise the suspension of concessions and other obligations under the Agreement. 4. The DSB shall have its own Chairperson and shall establish such rules of procedure as it deems necessary for the fulfilment of its responsibilities. The DSB Chairperson shall be elected by the State Parties. 5. The DSB shall meet as often as necessary to discharge its functions as provided for in this Protocol. 6. Where the rules and procedures of this Protocol provide for the DSB to take a decision, it shall do so by consensus. 7. The DSB shall inform the Secretariat of any dispute related to the provisions of the Agreement.

57 Article 6 Procedures under the Dispute Settlement Mechanism 1. Where a dispute arises between or among the State Parties, in the first instance, recourse shall be had to consultations, with a view to finding an amicable resolution to the dispute. 2. Where an amicable resolution is not achieved, any party to the dispute shall, after notifying the other parties to the dispute, refer the matter to the DSB, through the Chairperson and request for the establishment of a Dispute Settlement Panel, (hereinafter referred to as the "Panel") for purposes of settling the dispute. 3. The DSB shall adopt Rules of Procedure for the selection of the Panel, including the issues of conduct, to ensure impartiality. 4. The Panel shall set in motion the process of a formal resolution of the dispute as provided for in this Protocol and the parties to the dispute shall, in good faith, observe in a timely manner, any directions, rulings and stipulations that may be given to them by the Panel in relation to procedural matters and shall make their submissions, arguments and rebuttals in a format prescribed by the Panel. 5. The DSB shall make its determination of the

matter and its decision shall be final and binding on the parties to a dispute. 6. Where the parties to a dispute consider it expedient to have recourse to arbitration as the first dispute settlement avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this Protocol. Article 7 Consultations 1. State Parties with a view to encouraging amicable resolution of disputes, affirm their resolve to strengthen and improve the effectiveness of consultation procedures employed by State Parties. 2. Each State Party undertakes to accord consideration to, and afford adequate opportunity for consultations regarding any representation made by another State Party concerning measures affecting the operation of the Agreement. 3. Requests for consultations shall be notified to the DSB through the Secretariat in writing, giving the reasons for the request, including identification of the issues and an indication of the legal basis for the complaint.

58 4. Where a request for consultations is made pursuant to this Protocol, the State Party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten (10) days after the date of its receipt and shall enter into consultations in good faith within a period not exceeding thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. 5. Where a State Party to which the request is made does not respond within ten (10) days after the date of receipt of the request, or does not enter into consultations within a period of thirty (30) days, or a period otherwise mutually agreed, after the date of receipt of the request, the State Party that requested for the consultations may refer the matter to the DSB requesting for the establishment of a Panel. 6. In the course of consultations and before resorting to further action under this Protocol, State Parties shall attempt to obtain satisfactory settlement of the dispute. 7. Consultations shall be: (a) confidential; and (b) without prejudice to the rights of any State Party in any further proceedings. 8. Where State Parties to a dispute fail to settle a dispute through consultations within sixty (60) days after the date of receipt of the request for consultations, the complaining party may refer the matter to the DSB, for establishment of a Panel. Consultations may be held in the territory of the party complained against unless the Parties agree otherwise. Unless State Parties to a dispute agree to continue or suspend consultations, consultations shall be deemed concluded within the sixty (60) days. 9. In cases of urgency, including cases of perishable goods: (a) the State Party shall within ten (10) days after the date of receipt of the request enter into consultations; (b) where the parties fail to settle the dispute through consultations within twenty (20) days after the date of receipt of the request, the complaining party may refer the matter to the DSB for establishment of a Panel; (c) pursuant to the provisions of Annex 5 on Non-Tariff Barriers (Appendix 2: Procedures for Elimination and Cooperation in the Elimination of Non-Tariff Barriers), where a State Party fails to

59 resolve an NTB after a mutually agreed solution was reached and after issuing the factual report, the requesting State Party shall resort to the dispute settlement panel stage. Notwithstanding the provisions herein, the above Parties to a dispute may agree to submit the matter to arbitration in accordance with the provisions of Article 27 of this Protocol; and (d) the parties to the dispute, the DSB and the Panel and Appellate Body shall make every effort to expedite the proceedings to the greatest extent possible. 10. Where a State Party that is not party to a dispute considers that it has substantial trade interest in consultations, that State Party may, within ten (10) days of the circulation of the request for consultations, request the Parties to a dispute to be joined in the consultations. 11. Where the Parties to the dispute agree that the claim of substantial interest is well founded, the Third Party shall be so joined to the consultations. If the request to join the consultations is not accepted, the disputing State Party shall inform the DSB and in this event the applicant State Party shall be free to request consultation. Article 8 Good Offices, Conciliation and Mediation 1. State Parties to a dispute may at any time voluntarily undertake good offices, conciliation, or mediation. Proceedings that involve good offices, conciliation, or mediation shall be confidential and be without prejudice to the rights of the State Parties in any other proceedings. 2. Good offices, conciliation or mediation may be requested at any time by any State Party to a dispute. They may begin at any time and be terminated at any time by any of the State Parties to the dispute. Once procedures for good offices, conciliation or mediation are terminated, a Complaining Party may then proceed with a request for the establishment of a panel. 3. When good offices, conciliation or mediation are entered into after the date of receipt of a request for consultations, the Complaining Party must allow for a period of sixty (60) days after the date of receipt of the request for consultations before requesting the establishment of a panel. The Complaining Party may request for the establishment of a Panel during the sixty (60) day period, if the State Parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

60 4. State Parties participating in proceedings under this Article may suspend or terminate those proceedings, at any time, if they consider that the good offices, conciliation or mediation process has failed to settle the dispute. 5. lf the State Parties to a dispute agree, the procedures for good offices, conciliation or mediation may continue while the Panel process proceeds. 6. The Head of the Secretariat may be requested by any State Party to a dispute to facilitate the process of good offices, conciliation or mediation, including offering the same. Such a request shall be notified to the DSB and the Secretariat. Article 9 Establishment of Panels 1. Where an amicable resolution is not achieved through consultations, the Complaining Party shall, in writing refer the matter to the DSB and request for the establishment of a Panel. Parties to a dispute shall be informed promptly of the composition of the Panel. 2. The request referred to in paragraph 1 of this Article shall indicate whether consultations were held, identify the specific measures at issue and provide a summary of the legal basis of the complaint sufficient to present the problem clearly. 3. In case the applicant requests the establishment of a Panel with terms of reference other than the standard terms, the written request shall include the proposed text of special terms of reference. 4. A meeting of the DSB shall be convened within fifteen (15) days of the request to establish a Panel, provided that at least ten (10) days advance notice of the meeting is given to the DSB. 5. The Panel shall be constituted within ten (10) days of the meeting of the DSB referred to in paragraph 4 of this Article. Article 10 Composition of the Panel 1. The Secretariat shall, upon entry into force of the Agreement, establish and maintain an indicative list or roster of individuals who are willing and able to serve as Panellists. 2. Each State Party may annually nominate two (2) individuals to the Secretariat for the inclusion in the indicative list or roster, indicating '

61 their area (s) of expertise related to the Agreement. The indicative list or roster of individuals shall be submitted by the Secretariat for consideration and approval by the DSB. 3. Individuals listed on the indicative list or roster shall: (a) have expertise or experience in law, international trade, other matters covered by the Agreement or the resolution of disputes arising under international trade agreements; (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; (c) be impartial, independent of, and not be affiliated to or take instructions from, any Party; and (d) comply with a code of conduct to be developed by the DSB and adopted by Council of Ministers. 4. The Panellists shall be selected with a view to ensuring their independence and integrity and shall have a sufficiently diverse background and a wide spectrum of experience in the subject matter of the dispute, unless the Parties to the dispute agree otherwise. 5. In order to ensure and preserve the impartiality and independence of the Panellists, nationals of the disputing State Parties shall not serve on a Panel concerned with that dispute, unless the Parties to the dispute agree otherwise. 6. The Secretariat, shall propose nominations for the Panel to the Parties to the dispute. The Parties to the dispute shall not oppose nominations except for compelling reasons. 7. If no agreement is reached on the composition of a Panel within thirty (30) days after the date of the establishment of a Panel, at the request of either Party, the Head of the Secretariat, in consultation with the Chairperson of the DSB and with the consent of the disputing State Parties, shall determine the composition of the Panel by appointing the Panellists considered to be most appropriate. 8. The Chairperson of the DSB shall inform the State Parties of the composition of the Panel no later than ten (10) days after the date the Chairperson receives such a request. 9. Where there are two (2) disputing State Parties, the Panel shall comprise three (3) members. Where there are more than two (2) disputing State Parties, the Panel shall comprise five (5) members.

62 10. Panellists shall serve in their individual capacities and not as Government representatives, nor as representatives of any organisation. 11. Panellists shall not receive instructions or be influenced by any State Party when considering matters before them. Article 11 Terms of Reference of the Panel 1. Panellists shall have the following terms of reference unless the Parties to a dispute agree otherwise, within twenty (20) days from the establishment of the Panel: (a) to examine, in the light of the relevant provlsions in the Agreement, cited by the Parties to the dispute, the matter referred to the DSB by the Complaining Party; and (b) to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the Agreement. 2. Panels shall address the relevant provisions in the Agreement cited by the Parties to the dispute. 3. In establishing a Panel, the DSB may authorise its Chairperson to draw up the terms of reference of the Panel in consultation with the State Parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all State Parties. If other than standard terms of reference are agreed upon, any State Party may raise any point relating thereto in the DSB. Article 12 Functions of a Panel 1. The principal function of a Panel is to assist the DSB in discharging its responsibilities under the Agreement. 2. In performing this function, a Panel shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant provisions of the Agreement and make findings to assist the DSB in making recommendations and rulings. 3. The Panel shall consult widely and regularly with the Parties to a dispute and give them an adequate opportunity to develop a mutually satisfactory solution.

63 Article 13 Third Parties 1. The interests of all Parties to a dispute including Third Parties shall be taken into account during the Panel process. 2. A Third Party shall,

after notification of its substantial interests to the Panel through the DSB, provided that disputing parties agree that the claim of substantial interest is well founded, have an opportunity to be heard and to make written submissions to the Panel. 3. Copies of the submissions shall be served on the Parties to the dispute and shall be reflected in the report of the Panel. 4. If a Third Party considers that a measure already the subject of a Panel proceeding impairs or nullifies benefits accruing to it under the Agreement, that Third Party may have recourse to normal dispute settlement procedures under this Protocol. Such a dispute shall be referred to the original Panel wherever possible. 5. Third Parties shall receive the submissions of the Parties to a dispute at the first meeting of the Panel. Article 14 Procedures for Multiple Complaints 1. Where more than one (1) State Party requests for the establishment of a Panel related to the same matter, a single Panel may be established to examine these complaints, taking into account the rights of all State Parties concerned. A single Panel shall be established to examine such complaints whenever feasible. 2. The single Panel shall organise its examination and present its findings to the DSB in such a manner that the rights, which the Parties to the dispute would have enjoyed had separate Panels examined the complaints, are in no way impaired. If one of the Parties to the dispute so requests, the Panel shall submit separate reports on the dispute concerned. The written submissions by each of the Complaining Parties shall be made available to the other Complaining Parties, and each Complaining party shall have the right to be present when any one of the other Complaining Party presents its views to the Panel. 3. If more than one Panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as Panellists on each of the separate Panels and the timetable for the Panel process in such disputes shall be harmonised.

64 Article 15 Procedures for the Panel 1. The procedures of the Panel shall provide sufficient flexibility to ensure an effective and timely resolution of disputes by the Panels. 2. After consulting the Parties to a dispute, the Panellists shall, within seven (7) days after the composition of the Panel and the determination of its terms of reference, fix the timetable for the proceedings of the Panel. The timetable thus drawn up shall be circulated to all State Parties. 3. In determining the timetable for the proceedings of the Panel, the Panel shall, within ten (10) working days, upon the expiry of the seven (7) days referred to in paragraph 2, set precise time limits for written submissions by the Parties to a dispute. Parties to a dispute shall comply with the set time limits. 4. The period in which the Panel shall conduct its business, from the date of establishment of the Panel to the date of issuance of the final report to the Parties to a dispute, shall not exceed five (5) months and in cases of urgency, including cases of perishable goods, the period shall not exceed one and a half (1) months. 5. Where the Parties to the dispute have failed to develop a mutually satisfactory solution, the Panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of the Panel shall set out the findings of the fact, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes. 6. Where a settlement of the matter among the Parties to the dispute has been found, the report of the Panel shall be confined to a brief description of the case and to reporting that a solution has been reached. 7. Where a Panel determines that it cannot issue its report within five (5) months, or within one and a half (1) months in cases of urgency, the Panel shall immediately inform the DSB in writing of the reasons for the delay together with an estimation of the period within which the Panel shall be ready to issue its report. Where a Panel cannot issue a report within the period specified in paragraph 4 of this Article, the Panel shall issue the report within nine (9) months from the date of its composition.

65 8. The reports of the Panel shall be drafted in the absence of the Parties to the dispute and shall be based on information and evidence provided by the parties and any other person, expert or institution in accordance with this Protocol. 9. The Panel shall produce a single report reflecting the views of the majority of the Panellists. 10. Without prejudice to the provisions of this Article, the Panel shall follow the working procedures specified in the Annex on Working Procedures of the Panel unless the Panel decides otherwise after consulting the Parties to the dispute. ' 11. The Panel shall, at the request of both Parties to a dispute, suspend its work at any time for a period agreed by the Parties not exceeding twelve (12) months and shall resume its work at the end of this agreed period at the request of the Complaining Party. If the Complaining Party does not request the resumption of the Panel's work before the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the Panel's work are without prejudice to the rights of either Party to a dispute in another proceeding on the same matter. Article 16 Right to Seek Information 1. The Panel shall have the right to seek information and technical advice from any source that it deems appropriate, after informing the relevant authorities of State Parties to the dispute. 2. The Panel shall have the right to seek information and technical advice from any State Party provided that the State Party is not a Party to the dispute. 3. Where a Panel seeks information or technical advice from a State Party, such State Party shall, within the time set by the Panel, respond to the request made for such information. 4. Confidential information that is provided shall not be disclosed without formal authorisation from the source providing the information. 5. Where a Party to a dispute raises a factual issue concerning a scientific or other technical matter, the Panel may request for an advisory report in writing from an expert review group with relevant qualifications and experience on the issue.

66 6. Rules for the establishment of the expert review group and its procedures are set forth in the Annex on Expert Review. 7. The Panel may seek information from any relevant source and may consult experts to obtain their opinion on any matter that may be brought before it. Article 17 Confidentiality 1. The deliberations of the Panels shall be confidential. 2. A Party to a dispute shall treat as confidential any information submitted to a Panel and designated as such, by another Party to a dispute. 3. Nothing in this Protocol shall preclude a Party to a dispute from disclosing statements of its own positions to the public. 4. The reports of the Panels shall be drafted without the presence of the parties to the dispute in light of the information provided and the statements made. 5. Opinions expressed in the Panel report by the individual panellists shall be anonymous. Article 18 Reports of a Panel 1. A Panel shall consider the rebuttal submissions and arguments of the Parties to a dispute and issue a draft report containing descriptive sections of the facts and arguments of the dispute, to the Parties to a dispute. 2. The Parties to a dispute shall submit their comments on the draft report in writing to the Panel, within a period set by the Panel. 3. Taking into account any comments received under paragraph 2 of this Article, or on the expiration of the time set for the receipt of comments from the Parties to a dispute, the Panel shall issue an interim report to the Parties to a dispute, containing descriptive sections and its findings and conclusions. 4. Within a period set by a Panel, any Party to a dispute may submit a written request for review of specific aspects of the interim report prior to the issuance and circulation of the final report to the Parties to a dispute.

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any government. The AB shall broadly represent the membership within the AfCFT A. All persons serving on the AB shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the AfCFTA. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

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74 8. When the situation described in paragraph 4 of this Article occurs, the DSB, shall grant authorisation to suspend concessions or other obligations within thirty (30) days from the date of request unless the DSB decides by consensus to reject the request. However, if the State Party concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 5 have not been followed where a complaining party has requested authorisation to suspend concessions or other obligations pursuant to paragraph 5(b) or (c) of this Article, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original Panel, if Panellists are available, or by an arbitrator appointed by the chairperson of the DSB and shall be completed within sixty (60) days from the date of appointment of the arbitrator. Concessions or other obligations shall not be suspended during the course of the arbitration. 9. The arbitrator acting pursuant to paragraph 7 of this Article, shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the Agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 of this Article, have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 5 of this Article. The Parties to a dispute shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorisation to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request. Article 26 Costs 1. The DSB shall determine the remuneration and expenses of the Panellists, arbitrators and experts in accordance with the financial rules and regulations of the AU. 2. The remuneration of the Panellists, arbitrators and experts, their travel and lodging expenses, shall be borne in equal parts by the Parties to a dispute, or in proportions determined by the DSB. 3. A Party to a dispute shall bear all other costs of the process as determined by the DSB.

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