AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF CÔTE D'IVOIRE CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Mauritius

And

The Government of the Republic of Côte d'Ivoire

(hereinafter referred to as the 'Contracting Parties'),

Desiring to create conditions favourable to the growth of investment and to intensify economic cooperation in the mutual interest of both States,

With the intention of creating and maintaining favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising the need to encourage and protect foreign investments with a view to promoting the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

(1) For the purposes of this Agreement:

(A) The term 'investment' means any kind of asset, in connection with commercial activities, acquired with the aim of establishing lasting economic relations within the territory of a Contracting Party, in accordance with its relevant laws and regulations, and shall include, without limitation:

(i) ownership of movable and immovable property, as well as all other rights in rem, such as land charges, mortgages and pledges on movable property;

(ii) shares, partnership interests and other forms of participation in a company;

(iii) monetary claims and rights to any performance under a contract of economic value;

(iv) industrial and intellectual property rights (such as copyrights, patents, utility models, industrial designs or models, trade marks, service marks, trade names, indications of origin), technical processes, know-how and customer bases;

(v) concessions granted by law or by contract, including concessions for the prospecting, cultivation, extraction or exploitation of natural resources, as well as any other right conferred by law, by contract or by a decision of the authority pursuant to the law.

(B) The term 'income' means amounts derived from an investment and includes, in particular but not exclusively, profits, interest, capital gains, dividends, royalties and remuneration.

(C) The term 'investors' means, in relation to each Contracting Party:

(i) natural persons who, under the legislation of that Contracting Party, are regarded as its nationals;

(ii) legal entities, including companies, registered companies, partnerships or other organisations, which are incorporated in

accordance with the laws of that Contracting Party;

(D) The term “territory” means,

(i) in relation to the Republic of Côte d’Ivoire, the land territory, internal waters, territorial sea and airspace above them, as well as the exclusive economic zone and the continental shelf over which Côte d’Ivoire exercises, in accordance with international law, sovereign rights for the purposes of exploring and exploiting natural, biological and mineral resources found in the waters of the sea, and in the seabed and subsoil thereof;

(ii) in respect of the Republic of Mauritius:

(a) all territories and islands which, in accordance with the legislation of Mauritius, constitute the State of Mauritius;

(b) the territorial waters of Mauritius; and

(c) any area beyond the territorial waters of Mauritius which, in accordance with international law, is or will be defined by the laws of Mauritius as an area, including the continental shelf, over which Mauritius may exercise its rights with regard to the sea, the seabed and its subsoil, as well as their natural resources.

Article 2. Scope

(1) The provisions of this Agreement shall apply solely:

(a) in the case of investments in the territory of the Republic of Côte d’Ivoire, to all investments made by investors or companies of the Republic of Mauritius;

(b) in the case of investments in the territory of Mauritius, to all investments made by investors or companies of Côte d’Ivoire.

Article 3. Encouragement and Authorisation

(1) Each Contracting Party shall, having regard to its general practice in respect of foreign investment, encourage and facilitate investments by investors of the other Contracting Party in its territory and shall authorise or approve such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall endeavour to issue, in accordance with its laws and regulations, the necessary authorisations in relation to such investments, including for the purposes of implementing licence agreements and providing technical, commercial or administrative assistance, as well as the authorisations required for the activities of consultants and experts.

(3) Investments which have been authorised in accordance with Article 2 above shall be accorded fair and equitable treatment and protection, in accordance with the provisions of this Agreement.

Article 4. Treatment of Investments

(1) Investments and the returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full and complete protection and security within the territory of the other Contracting Party. No Contracting Party shall in any way, through unjustified or discriminatory measures, impede the management, maintenance, use, enjoyment, growth or disposal of such investments.

(2) Each Contracting Party shall accord, within its territory, to investments and to the income of investors of the other Contracting Party, treatment no less favourable than that which it accords to investments and to the income of its own investors or to investments and to the income of investors of any third State, the most favourable treatment for the investor concerned being decisive.

(3) Each Contracting Party shall, within its territory, accord to investors of the other Contracting Party, with regard to the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, the most favourable treatment for the investor in question being decisive.

(4) If a Contracting Party grants special advantages to investors from any third State pursuant to an agreement establishing a free trade area, a customs union or a common market, to which it is already a party or will become a party, or pursuant to an agreement to avoid double taxation, it shall not be obliged to grant such advantages to investors of the other Contracting

Party.

(5) For the avoidance of doubt, it is confirmed that the principles referred to in paragraphs (2) and (3) of this Article shall not apply in respect of special benefits granted to development finance institutions, for example in tax matters.

(6) Each Contracting Party shall honour all its commitments relating to investments, as well as those undertaken by its investors in respect of investments of the other Contracting Party, in accordance with the provisions set out in this Agreement and with its own laws.

Article 5. Compensation for Losses

(1) Investors of a Contracting Party whose investments in the territory of the other Contracting Party have suffered losses due to war or any other armed conflict, revolution, national state of emergency, revolt, insurrection or riot occurring in the territory of that Contracting Party shall, in respect of restitution, indemnification, compensation or any other form of settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State. The resulting payments shall be freely transferable at the exchange rate applicable on the date of transfer in accordance with the foreign exchange rules in force.

(2) Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who, in one of the situations referred to in that paragraph, have suffered losses in the territory of the other Contracting Party as a result of:

(a) the requisition of their assets by its forces or authorities, or

(b) the destruction of their assets by its forces or authorities, which did not result from hostilities or was not required by the circumstances, shall be granted restitution or adequate compensation. The resulting payments shall be freely transferable at the exchange rate applicable on the date of transfer in accordance with the exchange control rules in force.

Article 6. Expropriation

(1) Investments by investors of a Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as ‘expropriation’) in the territory of the other Contracting Party, except for reasons of public interest and provided that such measures are in accordance with the law, are non-discriminatory and give rise to the prompt payment of effective and adequate compensation. The compensation shall amount to the actual value of the expropriated investment immediately prior to the expropriation being carried out or becoming known to the public, whichever occurs first. It shall include interest calculated at a normal commercial rate up to the date of payment, shall be paid without delay, shall be fully realisable and freely transferable on the basis of the exchange rate applicable on the date of transfer in accordance with the foreign exchange regulations in force.

(2) An investor affected by expropriation shall be entitled to seek a prompt review, in accordance with the law of the Contracting Party which expropriates, by a judicial authority or other independent authority of that Party, of his case and of the valuation of his investment in accordance with the principles set out in this Article.

(3) If a Contracting Party expropriates the assets of a company registered or incorporated in accordance with the legislation in force in its territory and in which investors from the other Contracting Party hold shares, it shall ensure, to the extent necessary and in accordance with its legislation, that such investors are compensated in accordance with paragraph (1) of this Article.

Article 7. Free Transfer

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party, in accordance with its laws and regulations, the prompt transfer in a freely convertible currency of amounts relating to an investment, including:

(a) income;

(b) amounts relating to loans or other obligations incurred for the investment;

(c) additional capital contributions necessary for the maintenance or development of the investment;

(d) the proceeds from the partial or total sale or liquidation of an investment, including any capital gains;

(e) compensation due pursuant to Articles 4 and 5 of this Agreement.

(2) Transfers shall be made at the market exchange rate prevailing on the date of the transfer. In the absence of a foreign

exchange market, the rate to be used shall be the most recent rate applied to domestic investments or the most recent rate for the conversion of the currency concerned into Special Drawing Rights, the rate to be adopted being that which is most favourable to the investor.

Article 8. Disputes Relating to Investment

(1) Subject to the provisions of Paragraph (3) below, any dispute between an investor of one Contracting Party and an investor of the other Contracting Party, relating to an investment in either territory, shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) Where the dispute cannot be settled through negotiations within six months, either party may initiate legal proceedings before the competent court of the Contracting Party which received the investment.

(3) Where a dispute concerning the amount of compensation arising from expropriation, nationalisation or any other measure having an equivalent effect, as provided for in Article 6, has not been settled within six months of the initiation of the amicable settlement attempts referred to in Paragraph 1 of this Article by the investors, the said dispute may be submitted to an international arbitral tribunal constituted by the two parties.

The provisions of this Paragraph shall not apply in the event that the investors concerned resort to the procedure provided for in Paragraph (2) of this Article.

(4) The international arbitral tribunal referred to above shall be constituted as follows: each party to the dispute shall appoint one arbitrator. The two arbitrators thus appointed shall proceed to appoint a third arbitrator to act as chair of the tribunal. The arbitrators shall be appointed within two months, and the chair of the tribunal within four months, from the date on which one of the two parties has notified the other party of its intention to submit the dispute to arbitration.

(5) If the necessary appointments are not made within the time limit prescribed in Paragraph (4) above, either party may, in the absence of any other agreement, request the President of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

(6) Subject to the provisions set out below, the arbitral tribunal shall determine its own procedure by reference to the 'Convention on the Settlement of Investment Disputes between States and Nationals of Other States', drawn up in Washington on 18 March 1965.

(7) The tribunal shall take its decision by a majority of votes.

(8) The decision of the arbitral tribunal shall be final and binding on the parties, who undertake to comply with the provisions of the award.

(9) The arbitral tribunal shall state the basis of its decision and shall provide the grounds therefor at the request of either party.

(10) Each party shall bear the costs of its arbitrator and its advisers in relation to the arbitration proceedings. The costs incurred by the Chair of the tribunal in the performance of his or her duties, as well as the other costs of the arbitral tribunal, shall be borne equally by each of the parties. The tribunal may, however, decide in its award that a greater proportion of the costs shall be borne by one of the two parties, and such an award shall be binding on both parties.

(11) The provisions of this Article shall not affect the right of the Contracting Parties to have recourse to the procedures provided for in Article 9, if the dispute relates to the interpretation or implementation of this Agreement.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or implementation of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If the dispute cannot be settled in this manner within six months, it shall be submitted to arbitration at the request of either Contracting Party Contracting Parties.

(3) The arbitral tribunal (hereinafter referred to as 'the tribunal') shall consist of three arbitrators, with each Party appointing one arbitrator and the third, who shall be the Chairperson of the tribunal and a national of a third State, being appointed by mutual agreement of the Contracting Parties. Such a tribunal shall be constituted for each claim. Within two months of receiving the request for arbitration, each Contracting Party shall appoint an arbitrator and, within two months of the appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) Should the tribunal not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to appoint the arbitrator(s) not yet appointed. If the President is a national of either of the Contracting Parties or is unable to make such an appointment, the Vice-President may be called upon to do so. If the Vice-President is a national of either of the Contracting Parties or is unable to do so, the member who, in the hierarchy of the International Court, is next in line and who is not a national of either Contracting Party, may be called upon to make the necessary appointments, and so on.

(5) The tribunal shall take its decision by a majority of votes. The decision of the arbitral tribunal shall be final and binding on the parties, who undertake to comply with the provisions of the award. Each Contracting Party shall bear the costs of its own arbitrator and advisers in relation to the arbitration proceedings, as well as half of the costs of the President of the tribunal and other costs. The tribunal may, however, decide in its award that a greater proportion of the costs shall be borne by one or other of the two parties, and such an award shall be binding on both parties.

(6) Except as provided above, the tribunal shall itself establish its own rules of procedure.

Article 10. Principle of Subrogation

(1) If a Contracting Party or a body designated by it makes a payment by way of compensation for an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the first Contracting Party or to the body designated by it, by virtue of law or contract, of all the rights and claims of the investor so compensated, and the right of the first Contracting Party or the body designated by it to exercise those rights and to enforce those claims by way of subrogation, to the same extent as the investor.

(2) No payment made by a Contracting Party (or any representative, institution, statutory body or legal person designated by it) to its investors shall affect the right of such investors to bring claims against the other Contracting Party, in accordance with the provisions of Article 8, provided that the exercise of such a right does not duplicate or contradict the exercise of a right by virtue of subrogation, as provided for in Paragraph (1) above.

Article 11. Other Specific Rules and Commitments

(1) If provisions of the legislation of a Contracting Party or of the rules of international law accord to investments made by investors of the other Contracting Party treatment more favourable than that provided for by this Agreement, they shall prevail over this Agreement to the extent that they are more favourable.

(2) Each Contracting Party shall comply with any specific obligation entered into in respect of an investment made in its territory by an investor of the other Contracting Party.

Article 12. Prohibitions and Restrictions

Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any measure necessary to protect its essential security interests, or on grounds of public health or the prevention of diseases affecting animals and plants.

Article 13. Entry Into Force

(1) This Agreement shall apply to investments made in the territory of a Contracting Party, in accordance with its laws and regulations, by investors of the other Contracting Party, whether before or after its entry into force. For the avoidance of doubt, it is agreed that any investment, subject to the provisions of this Agreement, shall be subject to the laws in force in the territory of the Contracting Party in which the investment has been made.

(2) Each Contracting Party shall notify the other Contracting Party of the completion of the procedures required by its legislation for the entry into force of this Agreement. This Agreement shall enter into force on the day following the receipt of the last of such notifications.

(3) This Agreement shall remain in force for a period of ten years. After this period, it shall remain in force until the expiry of a period of twelve months from the date on which a Contracting Party has given notice of termination in writing to the other.

(4) With regard to investments made prior to the expiry of this Agreement, the provisions of the Agreement shall continue to apply for a further period of ten years from the said expiry or for any longer period agreed between the investor and the Contracting Party in whose territory the investment was made.

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

Done at Abidjan, on 20 April 2016, in duplicate, both texts being equally authentic.

For the Government of the Republic of Mauritius

Hon. Charles Gaëtan Xavier-Luc DUVAL, GCSK, F.C.A

Deputy Prime Minister,

Minister for Tourism and External Communications

For the Government of the Republic of Côte d'Ivoire

Daniel Kablan DUNCAN

Prime Minister, Minister for the Economy Finance and the Budget