AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR THE PROMOTION AND PROTECTION OF INVESTMENT

The Government of Japan and the Government of the Republic of Kenya,

Desiring to further promote investment in order to strengthen the economic relationship between Japan and the Republic of Kenya (hereinafter referred to as "the Contracting Parties");

Intending to further create stable, equitable, favourable and transparent conditions for greater investment by investors of a Contracting Party in the Area of the other Contracting Party;

Recognising the growing importance of the progressive liberalisation of investment for stimulating initiative of investors and for promoting prosperity in the Contracting Parties;

Recognising that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Recognising the importance of the cooperative relationship between labour and management in promoting investment between the Contracting Parties;

Convinced that this Agreement will contribute to the further development of the overall relationship between the Contracting Parties; and

Recognising that this Agreement is designed to allow each Contracting Party to regulate, and to introduce new measures relating to, investments in its Area in order to meet national public policy objectives;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

(a) the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor and has characteristics of an investment such as commitment of capital or other resources, the expectation of gain or profit, or assumption of risk, including:

(i) a local enterprise or branch;

(ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

(iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;

(iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(v) claims to money and to any performance under contract having a financial value;

(iv) intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits, including those for the exploration, prospect, exploitation and extraction of natural resources; and

(viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases,

mortgages, liens and pledges.

An investment includes the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment.

(b) the term "investor of a Contracting Party" means:

(i) a natural person, who under the law of the Contracting Party:

(A) in respect of Japan, is a national of Japan; and

(B) in respect of the Republic of Kenya, is a citizen or national of the Republic of Kenya; or

(ii) an enterprise of that Contracting Party,

That seeks to make, is making or has made an investment in the Area of the other Contracting Party;

(c) an enterprise is:

(i) "owned" by an investor if more than fifty (50) percent of the equity interest in it is owned by the investor; and

(ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

(d) the term "enterprise of a Contracting Party" means any legal person or any other entity duly constituted or organised under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company;

(e) the term "investment activities" means operation, management, maintenance, use, enjoyment and sale or other disposal of investments;

(f) the term "Area" means:

(i) in respect of Japan, the territory of Japan, and the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and

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

(g) the term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund.

Article 2. Promotion and Admission of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its Area.

2. Each Contracting Party shall, subject to its applicable laws and regulations, including those with regard to foreign ownership and control, admit investment of investors of the other Contracting Party.

Article 3. National Treatment

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to its own investors and to their investments with respect to investment activities.

2. Paragraph 1 shall not be construed so as to prevent a Contracting Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of foreign investors in its Area in accordance with its laws and regulations, provided that such special formalities do not impair the substance of the rights of investors of the other Contracting Party under this Agreement.

3. Paragraph 1 shall not apply to measures adopted or maintained by a Contracting Party with respect to incentives only for

the purpose of promoting small and medium sized enterprises in its Area, to the extent that such measures do not materially affect the investments or investment activities of the investors of the other Contracting Party.

Article 4. Most-favoured-nation Treatment

1. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to investors of a nonContracting Party and to their investments with respect to investment activities.

2. Each Contracting Party shall in its Area accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to investors of a nonContracting Party and to their investments with respect to the admission of investments.

3. The provision of paragraph 2 shall not apply to:

(a) measures related to:

(i) the acquisition of land property;

(ii) subsidies; or

(iii) government procurement;

(b) any treatment accorded by a Contracting Party to investors of a non-Contracting Party and to their investments on the basis of reciprocity;

(c) any preferential treatment resulting from the membership to any bilateral or multilateral international agreement involving protection of new varieties of plants, aviation, fishery or maritime matters; and

(d) any measure relating to investments in public law enforcement and correctional services, and in public social services such as income security or insurance, social security or insurance, social welfare, primary and secondary education, public training, health and child care.

4. Neither Contracting Party shall, under any measure adopted after the date of entry into force of this Agreement and listed in subparagraphs (a)(i), (a)(iii) and

(d) of paragraph 3, require an investor of the other Contracting Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time when the measure becomes effective.

5. The provisions of paragraphs 1 and 2 shall not be construed so as to oblige a Contracting Party to extend to investors of the other Contracting Party and to their investments treatment accorded to investors of a non Contracting Party and to their investments by virtue of any membership to:

(a) a customs, economic or monetary union, a common market, a free trade area, an international agreement for regional economic integration or a similar international agreement; or

(b) multilateral agreements in respect of protection of intellectual property rights.

6. It is understood that the "treatment" referred to in this Article does not include dispute settlement procedures provided for in other international agreements, including those provided for in other investment agreements.

Article 5. General Treatment and Improvement of Investment Environment

1. Each Contracting Party shall in its Area accord to investments of investors of the other Contracting Party fair and equitable treatment and full protection and security in accordance with customary international law.

Note: This paragraph prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.

2. Neither Contracting Party shall, within its Area, in any way impair investment activities of investors of the other

Contracting Party by arbitrary measures.

3. Each Contracting Party shall take appropriate measures to further improve investment environment in its Area for the benefit of investors of the other Contracting Party and their investments. In this regard, each Contracting Party shall endeavour to create and maintain favourable conditions for the investors of the other Contracting Party and their investments with respect to investment activities as well as the establishment, acquisition and expansion of investments.

Article 6. Access to the Courts of Justice

Each Contracting Party shall in its Area accord to investors of the other Contracting Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or to investors of a non-Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

Article 7. Prohibition of Performance Requirements

1. Neither Contracting Party shall impose or enforce on an investor of the other Contracting Party, as a condition for investment activities in its Area, export requirements, export-import balancing requirements or requirements regarding the amount of foreign exchange inflows associated with investments of the investor, except in accordance with applicable regional and international laws and obligations.

2. For the purposes of this Article, "applicable regional laws and obligations" means the laws and obligations applied by virtue of membership to a customs, economic or monetary union, a common market or a free trade area.

Article 8. Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, the laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect the implementation and operation of this Agreement.

2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1.

3. Paragraphs 1 and 2 shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

Article 9. Entry, Sojourn and Residence of Investors

Each Contracting Party shall, subject to its applicable laws and regulations relating to entry, sojourn and residence, permit a natural person having the nationality of the other Contracting Party who wishes to enter the former Contracting Party and to remain therein for the purpose of business activities in connection with investments.

Article 10. Expropriation and Compensation

1. Neither Contracting Party shall expropriate or nationalise investments in its Area of investors of the other Contracting Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 3, 4, and 5; and

(d) in accordance with due process of law.

2. For the purposes of this Agreement, the determination of whether a measure or a series of measures by a Contracting Party have an effect equivalent to expropriation requires a case-by-case, fact-based inquiry, and evidence that includes:

(a) permanent and complete or near complete deprivation of the value of investment;

(b) permanent and complete or near complete deprivation of the investor's right of management and control over the

investment; or

(c) an appropriation of the investment by the Contracting Party which results in transfer of the complete or near complete value of that investment to that Contracting Party, to an agency of that Contracting Party or to a third party.

3. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

4. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currency, at the market exchange rate prevailing on the date of expropriation.

5. Without prejudice to the provisions of Article 15, the investors affected by expropriation shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

6. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with applicable international agreements on intellectual property to which both Contracting Parties are parties.

Article 11. Compensation for Losses or Damages

1. Each Contracting Party shall accord to investors of the other Contracting Party that have suffered loss or damage relating to their investments in the Area of the former Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a nonContracting Party, whichever is more favourable to the investors of the other Contracting Party.

2. Any payment as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Contracting Party of the investors concerned and into freely usable currency.

Article 12. Subrogation

1. If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or insurance contract, pertaining to an investment of such investor in the Area of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognise the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. As regards payments to be made to the former Contracting Party or its designated agency by virtue of the assignment of right or claim as provided for in paragraph 1 and the transfer of such payment, the provisions of Articles 10 and 11 shall apply mutatis mutandis.

Article 13. Transfers

1. Each Contracting Party shall ensure that all transfers relating to investments in its Area of an investor of the other Contracting Party may be made freely into and out of its Area without delay. Such transfers shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, interest, capital gains, dividends, royalties, fees and other current incomes accruing from investments;

(c) payments made under a contract including loan payments in connection with investments;

(d) proceeds of the total or partial sale or liquidation of investments;

(e) earnings and remuneration of personnel from the other Contracting Party engaged in activities in connection with investments in the Area of the former Contracting Party;

(f) payments made in accordance with Articles 10, 11 and 12; and

(g) payments arising out of the settlement of a dispute under Article 15.

2. Each Contracting Party shall further ensure that the transfers provided for in paragraph 1 may be made without delay in freely usable currency at the market exchange rate prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) ensuring compliance with orders or judgments in adjudicatory proceedings;

(e) financial reporting or record keeping of transfers to assist law enforcement or financial regulatory authorities; or

(f) ensuring compliance with payment of taxes.

Article 14. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled by negotiations through diplomatic channels.

2. If the dispute referred to in paragraph 1 cannot thus be settled within six (6) months following the date on which either Contracting Party requested the negotiations as provided for in paragraph 1, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

3. The Arbitral Tribunal referred to in paragraph 2 shall be constituted for each individual case in the following way. Within two (2) months from the date of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Arbitral Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairperson of the Arbitral Tribunal. The Chairperson shall be appointed within four (4) months from the date when the Contracting Party which was later to appoint its member has notified the other Contracting Party of the appointment.

4. If the necessary appointments have not been made within the periods specified in paragraph 3, either Contracting Party may, in the absence of any other agreement, invite the Secretary-General of the Permanent Court of Arbitration at the Hague to make the appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Arbitral Tribunal shall be final and binding on both Contracting Parties.

Each Contracting Party shall bear the costs of its own member and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairperson, as well as any other costs. The Arbitral Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

6. Issues subject to dispute referred to in paragraph 1 shall be decided in accordance with the provisions of this Agreement and the generally recognised principles of international law.

Article 15. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. For the purposes of this Article, "investment dispute" is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation of the former Contracting Party under this Agreement with respect to that investor of the other Contracting Party or its investments in the Area of the former Contracting Party.

2. Subject to subparagraph 8, nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Area of the Contracting Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. Any investment dispute shall, as far as possible, be settled amicably through consultations between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties").

4. The investment dispute may, at the choice of the disputing investor, be submitted to:

(a) a competent court or administrative tribunal of the disputing Party; or

(b) an arbitration in accordance with:

(i) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965 (hereinafter referred to in this Article as the "ICSID Convention"), if both Contracting Parties are parties to the ICSID Convention;

(ii) the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, if either, but not both, Contracting Party is a party to the ICSID Convention;

(iii) the Arbitration Rules of the United Nations Commission on International Trade Law; or

(iv) any other arbitration rules, if agreed with the disputing Party provided that, for the purposes of subparagraph (b), the investment dispute cannot be settled through the consultation referred to in paragraph 3 within six (6) months from the date of the submission of the written request for consultation to the disputing Party.

5. Each Contracting Party hereby consents to the submission of an investment dispute by a disputing investor to arbitration set forth in paragraph 4 chosen by the disputing investor.

6. Notwithstanding paragraph 5, no investment disputes may be submitted to arbitration set forth in paragraph 4, if more than three (3) years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

7. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

8. Once the disputing investor has submitted an investment dispute to the competent court or administrative tribunal of the disputing Party or to one of the arbitrations set out in paragraph 4, the choice of the disputing investor shall be final and the disputing investor may not submit thereafter the same dispute to the other arbitrations set out in paragraph 4.

9. Notwithstanding paragraphs 4 and 5, no investment dispute may be submitted to the arbitration set out in paragraph 4 unless the disputing investor gives the disputing Party written waiver of any right to initiate or continue before any competent court or administrative tribunal of the disputing Party with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 1.

10. The disputing Party shall deliver to the other Contracting Party:

(a) written notice of the investment dispute submitted to the arbitration no later than thirty (30) days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

11. The Contracting Party which is not the disputing Party may, upon written notice to the disputing parties, make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

12. The arbitral tribunal may award only:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and

(b) one or both of the following remedies, only if there has been such a breach:

(i) monetary damages and applicable interest; and

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and

any applicable interest, in lieu of restitution.

The arbitral tribunal may also award cost and attorney's fees in accordance with this Agreement and applicable arbitration rules.

13. The disputing Party may make available to the public in a timely manner all documents, including an award, submitted to, or issued by, an arbitral tribunal established under paragraph 4, subject to redaction of:

(a) confidential business information;

(b) information which is privileged or otherwise protected from disclosure under the applicable laws and regulations of either Contracting Party; and

(c) information which shall be withheld pursuant to the relevant arbitration rules.

14. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (hereinafter referred to in this Article as "the New York Convention").

15. The award rendered by the arbitral tribunal shall be final and binding upon the disputing parties. This award shall be executed in accordance with the applicable laws and regulations, as well as relevant international law including the ICSID Convention and the New York Convention, concerning the execution of award in force in the country where such execution is sought.

Article 16. Security Exceptions

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 11, each Contracting Party may take any measure:

(a) which it considers necessary for the protection of its essential security interests;

(i) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or

(ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or

(b) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 11, that Contracting Party shall not use such measure as a means of avoiding its obligations.

Article 17. Safeguard Measures

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under Article 3 relating to cross-border capital transactions and Article 13:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund, so long as the Contracting Party taking the measures is a party to the said Articles;

(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above;

(c) shall be temporary and shall be eliminated as soon as conditions permit;

(d) shall be promptly notified to the other Contracting Party; and

(e) shall avoid unnecessary damages to the commercial, economic and financial interests of the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting

Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 18. Prudential Measures

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Contracting Party pursuant to paragraph 1 do not conform with this Agreement, they shall not be used as a means of avoiding the obligations of the Contracting Party under this Agreement.

Article 19. Intellectual Property Rights

1. The Contracting Parties shall, in accordance with their respective applicable laws and regulations, grant and ensure the adequate and effective protection of intellectual property rights, and promote efficiency and transparency in the administration of intellectual property protection system. For this purpose, the Contracting Parties shall promptly consult with each other at the request of either Contracting Party. Depending on the results of the consultation, each Contracting Party shall, in accordance with its applicable laws and regulations, take appropriate measures to remove the factors which are recognised as having adverse effects to the investments of investors of the other Contracting Party.

2. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under multilateral agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties.

Article 20. Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party under a convention on avoidance of double taxation. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

2. Articles 3, 4, and 7 shall not apply to taxation measures.

Article 21. Consultations

The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the following purposes:

(a) to discuss and review the implementation and operation of this Agreement;

(b) to exchange information on and to discuss investment-related matters within the scope of this Agreement which relate to improvement of investment environment; and

(c) to discuss any other investment-related matters concerning this Agreement.

Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on by the Contracting Parties.

Article 22. Health, Safety and Environmental Measures and Labour Standards

Each Contracting Party shall recognise the importance of encouraging investments by investors of the other Contracting Party or of a non-Contracting Party without relaxing its health, safety or environmental measures or by lowering its labour standards. To this effect each Contracting Party should not waive or otherwise derogate from such measures or standards as an encouragement for the establishment, acquisition or expansion of investments in its Area by investors of the other Contracting Party or of a non-Contracting Party.

Article 23. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party:

(a) does not maintain diplomatic relations with the non-Contracting Party; or

(b) adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the other Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the enterprise has no substantial business activities in the Area of the other Contracting Party.

Article 24. Review

Upon the request of either Contracting Party, the Contracting Parties shall undertake a review of this Agreement with a view to further promoting investment between the Contracting Parties.

Article 25. Headings

The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 26. Final Provisions

1. The Contracting Parties shall notify each other of the completion of their respective internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of the receipt of the latter notification. It shall remain in force for a period of ten (10) years after its entry into force and shall continue in force unless terminated as provided for in paragraph 3.

2. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the Area of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.

3. A Contracting Party may, by giving one (1) year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or at any time thereafter.

4. In respect of investments acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination of this Agreement.

5. This Agreement shall not apply to claims arising out of events which occurred prior to its entry into force.

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

DONE in duplicate at Nairobi, on this 28th day of August, 2016 in the Japanese and English languages, all the two texts being equally authentic.

FOR THE GOVERNMENT OF JAPAN:

Fumio Kishida

FOR THE GOVERNMENT OF THE REPUBLIC OF KENYA:

Henry Rotich