Agreement between the Government of the Republic of Kazakhstan and the Cabinet of Ministers of the Kyrgyz Republic on the promotion and mutual protection of investments

The Government of the Republic of Kazakhstan and the Cabinet of Ministers of the Kyrgyz Republic, hereinafter referred to collectively as the “Parties” and individually as the “Party,”

Desiring to create favorable conditions for closer bilateral economic cooperation and, in particular, for investments by investors of one State in the territory of the other State, based on the principles of equality and mutual benefit;Recognizing the growing importance of promoting and protecting investments for stimulating investment initiatives and achieving prosperity in both States;

Recognizing that these objectives can be achieved without prejudice to national laws and regulations relating to health, safety, environmental protection, labor, and the principles of corporate social responsibility for national corporations, in such a manner as to promote the achievement of sustainable development goals;

Recognizing the importance of technology transfer, job creation, and human resource development resulting from such investments;

Recognizing that each Party reserves the right to regulate foreign investment in its territory and to take the necessary measures to ensure that investment activities are consistent with its national legislation, policies, and development strategies;

Have agreed as follows:

Chapter 1. General Provisions

Article 1. Definitions

Unless otherwise specified, for the purposes of this Agreement, the following words and terms shall have the meanings set forth below:

1. Investments means all types of assets owned or controlled, directly or indirectly, by an investor of one Party and invested in the territory of the other Party in economic activities in accordance with the applicable laws of that Party, and having the characteristics of an investment, such as an investment of capital, expectation of income or profit, assumption of risk or a certain duration, contribution to the economic development of the host State, and in particular include:

cash; movable and immovable property;

property rights (mortgage, right of retention, pledge, and others);

shares and other forms of participation in a legal entity;

bonds and other debt obligations;

intellectual property rights (including trademarks, copyright and related rights, patents, utility models, industrial designs, integrated circuit topographies, selection achievements, appellations of origin, geographical indications, trade names and know-how);

any right to carry out activities based on a license or other form granted by the state authorities of a Party;

concessions based on the legislation of a Party, including concessions for the exploration, development, extraction, or exploitation of natural resources of a Party;

profits or income derived from investments and reinvested in the territory of the State Party;

other forms of investment not prohibited by the legislation of the States Parties.

The form in which property is invested or any change in that form shall not affect its character as an investment.

2. Investor means any natural or legal person engaged in investment activities who invests their own, borrowed, or attracted funds in the form of direct investments.

Natural person means a person who, in accordance with the national legislation of one Party, is a citizen of that Party.

Within the framework of this Agreement, a citizen of the Kyrgyz Republic who also has another citizenship shall be considered by the States Parties only as a citizen of the Kyrgyz Republic whose economic activities are carried out in the territory of the States Parties.

Other citizenship means the possession by a citizen of the Kyrgyz Republic of the citizenship of a foreign state or several foreign states in accordance with the requirements of the legislation of the Kyrgyz Republic.

A legal entity means any legal entity duly established or incorporated in accordance with the national legislation of one of the Parties and having its place of business and actual economic activity in the territory of that Party.

With regard to Article 11 of this Agreement, the investor shall bear the burden of proving that the conditions set forth in paragraph 2 of this Article have been fulfilled.

3. Territory means:

3.1) with regard to the Republic of Kazakhstan, the territory of the Republic of Kazakhstan within its state border, including land, water, subsoil, and airspace, to which its state sovereignty extends, as well as any zone beyond the state border in which the Republic of Kazakhstan exercises or may in the future exercise sovereign rights and jurisdiction in accordance with its international treaties and national legislation;

3.2) with respect to the Kyrgyz Republic – the territory of the Kyrgyz Republic within its state borders, including land, waters, subsoil, and airspace over which its state sovereignty is exercised, as well as any area beyond the State border in which the Kyrgyz Republic exercises or may in the future exercise sovereign rights and jurisdiction in accordance with international law, international treaties and its national legislation.

4. Measure means any measure of a Party in the form of a law, decree, regulation, procedure, decision, administrative measure or any other form adopted by the state authorities and local self-government bodies of the States Parties in accordance with their national legislation.

5. Income means the amount received or derived from investments, including profits, dividends, interest, capital gains, royalty payments, payments in respect of intellectual property rights, and all other lawful income. For the purposes of defining “investment,” invested income shall be considered an investment, and any change in the form in which assets are invested or reinvested shall not affect their character as investments.

6. Freely usable currency means “freely usable currency” as defined in accordance with the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the “Fund”) of July 22, 1994, and as amended.

7. Requisition means the taking of property from its owner in cases of natural disasters, accidents, epidemics, epizootics, and other circumstances of an extraordinary nature, in the interests of the public, by decision of the state authorities in accordance with the procedure and on the conditions established by the legislation of the States Parties, with payment of the market value of the property.

8. ICSID means the International Center for Settlement of Investment Disputes established by the ICSID Convention.

9. ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965.

10. ICSID Additional Rules means the Rules for an Additional Forum for Administrative Proceedings of the Secretariat of the International Centre for Settlement of Investment Disputes, as amended and effective on April 10, 2006.

11. MCIS Arbitration Rules means the Rules for Arbitration (Arbitration Rules), as amended and effective on April 10, 2006.

12. New York Convention means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.

13. UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law recommended by the General Assembly of the United Nations on December 15, 1976.

Article 2. Applicability of the Agreement

1. Each Party shall allow investments made by investors of the other Party in accordance with the national law of its state.

2. The provisions of this Agreement shall not apply to claims arising from events that occurred or claims that arose prior to the entry into force of this Agreement. For greater clarity this Agreement shall not apply to disputes that arose or were settled, or may arise before the entry into force of this Agreement.

3. The provisions of this Agreement shall not apply to:

3.1) public procurement, land relations, subsidies or grants provided by a Party, including loans, guarantees or insurance obtained with the support of the Parties, or any conditions attached to the receipt or continued receipt of such subsidies or grants, whether such subsidies or grants are provided exclusively to investors of the Party or to their investments;

3.2) taxation matters in the territory of either Party, except as provided in Article 21 (“Taxation”) of this Agreement. Nothing in this Agreement shall affect the rights and obligations of either Party under the Agreement between the Republic of Kazakhstan and the Kyrgyz Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital of April 8, 1997 (“DTA”). In the event of any inconsistency between this Agreement and the DTAA, the latter shall prevail to the extent of the inconsistency.

Chapter 2. Protection

Article 3. Promotion and Protection of Investments

1. Each Party shall encourage and create favorable conditions for investors of the other Party in order to promote investment in accordance with its national legislation.

2. Investments made by investors of either Party shall enjoy fair and equitable treatment, as well as full protection and security in the territory of the other Party.

3. For greater certainty, the reference to “fair and equitable treatment” means the obligation not to deny justice in judicial or administrative proceedings and not to violate procedural rules in accordance with the minimum standard of customary international law. The reference to “full protection and security” does not require treatment beyond the minimum standard of treatment required under the minimum standard of customary international law.

4. A breach of any provision of this Agreement or of a separate international treaty to which the States Parties are simultaneously parties shall not constitute a breach of this Article.

5. For greater certainty, if a Party takes or fails to take measures that may not meet the legitimate expectations of an investor, this shall not constitute a breach of this Article, even if the result is the loss or reduction of the amount of the investment made.

Article 4. National Treatment and Most-favored-nation Treatment

1. Each Party shall, in its territory and in like circumstances, accord to investors of the other Party and their investments, with respect to the management, maintenance, use, enjoyment, or disposal of their investments, treatment no less favorable than that it accords to its own investors and their investments.

2. Each Party shall, in its territory and under similar circumstances, grant to investors of the other Party and their investments, with respect to the management, maintenance, use, enjoyment, or disposal of their investments, treatment no less favorable than that it accords to investors of any third State and their investments.

3. For greater certainty, the reference to “similar circumstances” in this Article requires a comprehensive examination in each specific case of all circumstances of the investment, including:

3.1) the impact on third parties and the local community;

3.2) the impact on the local, regional, or national environment, including the cumulative impact of all investments within the jurisdiction on the environment;

3.3) the sector in which the investor operates;

3.4) the purpose of the relevant measure;

3.5) whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare or public order objectives;

3.6) the regulatory process normally applicable to the measure in question; and

3.7) other factors directly relevant to the investment or the investor in relation to the measure in question.

4. Each Party reserves the right, in accordance with its domestic law, to determine sensitive sectors of the economy and/or other related activities that may be restricted or excluded from the scope of this commitment.

5. This Article shall not apply to provisions on the settlement of disputes between an investor and a State contained in bilateral international treaties on the promotion and protection of investments concluded by any Party with a third party.

6. This Article shall not apply to treatment accorded by a Party under existing bilateral or multilateral international investment treaties in force at the date of signature of this Agreement.

Article 5. Expropriation

1. Neither Party shall nationalize or take any other measures, directly or indirectly, depriving investors of the other Party of their investments, unless the following conditions are met:

1.1) the measure is taken in the public interest;

1.2) the measure is taken in accordance with the conditions and procedures established by the legislation of the Parties;

1.3) the measure is taken in a non-discriminatory manner; and 1.4) the measure is taken with compensation paid without delay in accordance with the procedure established by the legislation of the Parties.

2. An act or series of acts by a Party shall not constitute expropriation if it does not affect the rights to tangible or intangible property or property interests in investments (as determined by the national legislation of the receiving State).

3. Direct expropriation occurs when an investment is nationalized or otherwise directly taken through a formal transfer of ownership or direct seizure.

4. Indirect expropriation occurs when a measure or series of measures taken by a Party has an effect equivalent to direct expropriation without formal transfer of ownership or direct seizure, in the sense that it substantially deprives the investor of the essential attributes of ownership in its investment, including the right to use, enjoy, and dispose of its investment, without formal transfer of legal status or direct seizure.

5. Determining whether an act or series of acts of a State Party in a particular factual situation constitutes indirect expropriation requires a case-by-case examination based on the facts, taking into account, in particular, the following factors:

5.1) the economic consequences of the State Party's actions, although the fact that an action or series of actions by the State Party has an adverse effect on the economic value of the investment does not in itself indicate that indirect expropriation has occurred;

5.2) the extent to which the State Party's actions interfere with clear, reasonable expectations supported by the investment; and

5.3) the nature of the State Party's actions, including its intention. For greater certainty, the question of whether an investor's expectations, backed by investment, are reasonable depends on factors such as whether the Party has provided the investor with binding written guarantees, as well as the characteristics of state regulation in the relevant sector.

6. This Article shall not apply to the granting of compulsory licenses in respect of intellectual property rights, or the revocation, limitation or creation of intellectual property rights to the extent that such granting, revocation, limitation or creation is consistent with applicable international treaties on intellectual property.

Article 6. Compensation for Losses

1. Investors of a State Party whose investments have suffered losses in the territory of the other State Party as a result of

war, armed conflict, a state of emergency, a coup d'état, riots or other similar events of force majeure shall be accorded by the State of the latter Party, in respect of restitution, reimbursement, compensation or other settlement, if any, treatment no less favorable than that accordable to its own investors or to investors of any third State, whichever is more favorable. Any final compensation shall be made in freely convertible currency and shall be freely transferable in accordance with Article 7 (“Transfers”) of this Agreement.

2. If an investor of one Party, in the cases referred to in paragraph 1 of this Article, suffers losses in the territory of the other Party as a result of:

2.1) the requisition of its investments or part thereof by the armed forces or authorities of the latter Party; or

2.2) the destruction of its investments or part thereof by the armed forces or authorities of the latter Party, which was not required by the necessity of the situation as provided for by the national legislation of the Parties, the latter Party shall grant the investor restitution, compensation, or both, as appropriate for such loss.

Article 7. Transfers

1. After the fulfillment of all tax obligations, each Party shall permit all transfers related to investments of investors of the other Party on its territory for their free and prompt execution on its territory. Such transfers shall include:

1.1) capital contributions, including initial contributions;

1.2) profits, dividends, capital gains, income from the sale of all or any part of the investment or the partial or total liquidation of the investment;

1.3) interest, royalties, payments for management services, payments for technical assistance, and other payments;

1.4) payments in connection with the conclusion of a contract with the investor or concerning the investment, including payments made in accordance with a loan agreement;

1.5) payments in accordance with Article 5 (“Expropriation”) and Article 6 (“Compensation for Losses”) of this Agreement; and

1.6) payments arising under Chapter 3 (“Settlement of Disputes”) of this Agreement.

2. Each Party shall authorize such transfers, which shall be made in a freely usable currency at the market exchange rate prevailing at the time of transfer.

3. Without prejudice to paragraphs 1 and 2 of this Article, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its domestic law relating to:

3.1) bankruptcy, insolvency, or the protection of creditors' rights;

3.2) the issuance, trading, or transaction of securities, futures, options, or derivatives;

3.3) financial reporting and accounting for transfers, where necessary to assist law enforcement or financial regulatory authorities;

3.4) criminal offenses;

3.5) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

3.6) social security, pensions, or mandatory savings programs.

4. The Parties understand that subparagraph 3.4) of paragraph 3 of this Article may apply to measures taken in accordance with international standards of the Financial Action Task Force to Prevent Money Laundering, Terrorist Financing, and the Proliferation of Weapons of Mass Destruction.

5. Nothing in this Agreement shall affect the rights and obligations of the members of the Fund under the Articles of the Fund, including the use of exchange operations conducted in accordance with the Articles, provided that a Party does not impose restrictions on any capital transactions that are not related to its obligations under this Agreement with respect to such transfers, except as provided in Article 8 (“Restrictions for Balance of Payments Protection”) of this Agreement or at the request of the Fund.

Article 8. Restrictions for Balance of Payments Protection

1. In cases of serious balance of payments difficulties and external financial difficulties or the threat thereof, a Party may impose or maintain restrictions on payments or transfers related to investments. It is recognized that special pressure on the balance of payments of a Party undergoing economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves sufficient to carry out its economic development programs.

2. The restrictions referred to in paragraph 1 of this Article shall:

2.1) shall be consistent with the Articles of the Fund;

2.2) shall avoid causing undue damage to the commercial, economic, and financial interests of the other Party;

2.3) shall not go beyond what is necessary in the circumstances referred to in paragraph 1 of this Article;

2.4) shall be temporary and shall be gradually removed as the situation referred to in paragraph 1 of this Article improves;

2.5) shall be applied on a non-discriminatory basis and in such a way that the State of the other Party is treated no less favourably than any third State.

3. Any restrictions imposed or maintained in accordance with paragraph 1 of this Article, or any changes thereto, shall be notified to the other Party within 30 (thirty) calendar days.

4. The Party imposing any restrictions in accordance with paragraph 1 of this Article shall consult with the other Party prior to the imposition of restrictions and thereafter to review the restrictions imposed by it.

Article 9. Subrogation

1. If one of the Parties (or an agency, institution, body, or corporation designated by it) makes payments to its own investors in respect of any of their claims under this Agreement as a result of compensation granted in respect of an investment or any part thereof, the other Party shall recognize that the first Party (or any agency, institution, body, or corporation designated by it) is entitled, by virtue of subrogation, to exercise the rights and make the claims of its investors. body or corporation designated by it) shall be entitled, by subrogation, to exercise the rights and make the claims of its investors. The subrogated rights or claims shall not exceed the original rights or claims of the investor concerned.

2. Any payment made by one Party (or any agency, institution, body, or corporation designated by it) to investors of its own state shall not affect the rights of such investors to make claims against the other Party in accordance with Section 1 (“Settlement of disputes between a Party and an investor of the other Party”) of Chapter 3 (“Settlement of Disputes”) of this Agreement.

Chapter 3. Settlement of Disputes

Section 1. Settlement of Disputes between a Party and an Investor of the other Party

Article 10. Purpose

This section applies to disputes between one of the Parties and an investor of the other Party concerning an alleged breach of the former's obligations under this Agreement which causes loss or damage to the investor or its investment.

Article 11. Procedure

1. The Parties shall initially seek to resolve the dispute through consultations and negotiations.

2. If the dispute cannot be settled as provided in paragraph 1 of this Article within six (6) months from the date of the request for consultations and negotiations, unless the Parties agree otherwise, the investor in dispute (hereinafter referred to as the claimant) may submit the dispute:

2.1) to the national courts of the State of the disputing Parties, provided that the national courts have jurisdiction over such a dispute;

2.2) in accordance with the MCIS Convention and the MCIS Arbitration Rules;

2.3) in accordance with the MCIS Additional Rules;

2.4) in accordance with the UNCITRAL Arbitration Rules; or

2.5) to any other arbitral institutions or in accordance with any other arbitral rules, if the disputing Parties so agree.

3. Each Party shall give its written consent to submit the dispute to arbitration in accordance with paragraph 2 of this article in accordance with the provisions of this section, provided that:

3.1) the dispute is submitted to such arbitration within 3 (three) years from the date when the claimant became aware or should have become aware of the breach of obligations under this Agreement which is the cause of the claimant's loss or damage or of its investment;

3.2) the claimant provides written consent to arbitration in accordance with the procedures set forth in this section;

3.3) the claimant gives written notice at least 30 (thirty) calendar days prior to submitting its claims to the respondent of its intention to submit the dispute to arbitration, which:

(i) contains the name and address of the claimant;

(ii) designates one of the jurisdictions mentioned in paragraph 2 of this article as the jurisdiction for dispute resolution;

(iii) indicate its waiver of its rights to commence and continue any proceedings (except for proceedings for interim relief as defined in paragraph 7 of this Article) in any other dispute resolution jurisdiction specified in paragraph 2 of this Article in respect of the dispute; and

(iv) contains a summary of the respondent's alleged breach under this Agreement (including the provisions of the alleged breaches), the legal and factual grounds for the dispute, and the losses or damages incurred by the claimant or its investment allegedly resulting from such breaches.

4. The consent pursuant to paragraph 3 of this Article and the submission of a claim to arbitration pursuant to this Section shall comply with the requirements of:

4.1) Chapter II of the ICAC Convention (Jurisdiction of the Center) and the ICAC Supplementary Rules on Written Consent of the Parties to a Dispute; and

4.2) Article II of the New York Convention on “agreements in writing.”

5. Unless otherwise agreed by the disputing parties, the arbitral tribunal shall consist of three arbitrators who shall not be citizens or permanent residents of any State of either Party. Each disputing party shall appoint one arbitrator and the disputing parties shall agree on the third arbitrator, who shall be the chair of the arbitral tribunal. If the arbitral tribunal is not appointed within 90 (ninety) calendar days from the date of submission of the request for arbitration, either because of the failure of a disputing party to appoint an arbitrator or because the parties have been unable to agree on the appointment of the chairperson, the secretary general of the arbitral tribunal shall, at the request of one of the disputing parties, appoint the unappointed arbitrator or arbitrators at his or her discretion. However, when appointing the chair, the secretary general of the arbitral tribunal shall ensure that he or she is not a citizen or permanent resident of the state of either Party.

6. Unless otherwise agreed by the disputing parties, the court shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

7. Neither Party shall prevent the claimant from seeking interim measures of protection not related to the award of damages or the resolution of the dispute on the merits in the courts or administrative tribunals of the respondent prior to the initiation of proceedings in any of the dispute settlement jurisdictions referred to in paragraph 2 of this Article in order to preserve its rights and interests.

8. Neither Party shall grant diplomatic protection or make international claims in respect of a dispute which an investor of its State and the other Party have agreed to submit under this Section until such Party has been able to comply with or enforce the decision rendered in such dispute. Diplomatic protection for the purposes of this paragraph shall not include informal diplomatic exchanges with the sole intention of facilitating the settlement of the dispute.

9. A claim submitted to arbitration in accordance with this section shall be considered as arising from commercial relations or from a transfer for the purposes of Article 1 of the New York Convention.

10. Any arbitral award shall be final and binding on the disputing parties. Each Party shall ensure the recognition and enforcement of the award in accordance with the national law of its State.

Section 2. Settlement of Disputes between the Parties

Article 12. Purpose

This section applies to the settlement of disputes between the Parties arising from the interpretation and application of the provisions of this Agreement.

Article 13. Consultations and Negotiations

1. Either Party may request, in writing, consultations regarding the interpretation or application of this Agreement. If disputes arise between the Parties regarding the interpretation or application of this Agreement, they shall, as far as possible, be settled by mutual agreement through consultations and negotiations.

2. If the dispute cannot be settled in this manner within six (6) months from the date on which such negotiations or consultations were requested in writing, either Party may submit the dispute to an arbitration tribunal established in accordance with this section or, with the consent of the Parties, to any other international court.

Article 14. Establishment of the Arbitral Tribunal

1. The arbitration procedure shall be initiated by the submission of a written notification by one Party (the claimant Party) to the other Party (the respondent Party) through diplomatic channels. Such notification shall consist of a statement of the provisions of Chapter 2 (“Protection”) that are alleged to have been violated, the legal and factual grounds for the claim, a summary of the development and results of consultations and negotiations in accordance with Article 13 (“Consultations and Negotiations”) of this Agreement, the claimant's intention to initiate proceedings in accordance with this section, and the full details of the arbitrator appointed by the requesting Party.

2. Within 30 (thirty) calendar days of the transmission of such notification, the responding Party shall inform the requesting Party of the name of the arbitrator it has appointed.

3. Within 30 (thirty) calendar days following the appointment of the second arbitrator, the Parties shall, by mutual agreement, appoint a third arbitrator who shall be the chair of the arbitral tribunal. If the Parties fail to reach mutual agreement on the appointment of the third arbitrator, the arbitrators appointed by the Parties shall, within 30 (thirty) calendar days, appoint a third arbitrator who shall be the chair of the arbitral tribunal.

4. With regard to the selection of arbitrators in paragraphs 1, 2, and 3 of this Article, neither Party nor, where applicable, the arbitrators appointed by them shall select arbitrators who are citizens or permanent residents of one of the Parties.

5. If the required appointments have not been made within the time limits specified in paragraphs 2 and 3 of this Article, either Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators who have not been appointed. If the President is a national or permanent resident of a State Party or is unable to act, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national or permanent resident of a State Party or is unable to act, the most senior member of the International Court of Justice who is not a national or permanent resident of a State Party shall be invited to make the necessary appointments.

6. If an arbitrator appointed in accordance with this article refuses or is unable to perform his or her duties, a successor shall be appointed in the manner specified for the appointment of the original arbitrator. The successor shall have the same powers and duties as the original arbitrator.

Article 15. Procedure

1. Unless the Parties agree otherwise, the place of arbitration shall be determined by the court. The arbitral tribunal shall decide all questions concerning its jurisdiction and, subject to any agreement between the Parties, shall determine its own procedures. At any stage of the proceedings, the arbitral tribunal may suggest to the Parties that they settle the dispute by negotiation or consultation. At all stages, the arbitral tribunal shall ensure that the Parties are given an open hearing.

2. The arbitral tribunal shall render its decision by a majority vote. The decision shall be in writing and shall state the applicable factual and legal grounds. The signed decision shall be delivered to each Party. The decision of the arbitral tribunal shall be final and binding on the Parties.

3. The arbitral tribunal established under this section shall resolve disputes in accordance with this Agreement and applicable rules and principles of international law.

4. Each Party shall bear the expenses of the member of the tribunal appointed by it and of its representation in the arbitration proceedings. The expenses of the chair of the arbitral tribunal and other expenses related to the arbitration shall be borne equally by the Parties.

Article 16. Third-party Funding of Disputes

1. "Third-party funding of disputes" means the financing of disputes by any natural or legal person who is not a disputing party but who enters into an agreement with a disputing party for the purpose of financing part or all of the costs of the proceedings, including by way of donation, grant, any agreement on remuneration and/or in exchange for remuneration contingent on the outcome of the dispute.

2. In the event of third-party funding of a dispute, the disputing party benefiting from such funding shall disclose to the other disputing party and to the court or arbitration tribunal the existence and nature of the funding agreement, as well as the name and address of the third party providing the funding.

3. Such notification shall be made at the time the claim is filed or, if the financial agreement is concluded or the subsidy or grant is provided after the claim is filed, without delay after the conclusion of the agreement or the provision of the subsidy or grant.

Chapter 4. Final Provisions

Article 17. Waiver of Privileges

Subject to prior notification and consultation, a Party may deny the benefits of this Agreement to an investor of the other Party who is a legal entity of the other Party and to the investments of such investor if the denying Party establishes that that the legal entity is owned or controlled by persons of a third State or of the Party refusing the benefits and does not have substantial business operations in the territory of the other Party.

Article 18. Waiver of Privileges of Central Banks

Nothing in this Agreement shall be construed as a waiver, derogation or other modification of any immunities, privileges or exemptions granted to the central banks of the Parties and/or to property owned by the central banks of the Parties in accordance with international agreements, conventions and/or any applicable law.

Article 19. General Exceptions

1. Provided that such measures are not taken in a manner that would result in arbitrary or unjustifiable discrimination against the other Party or investors of the other Party, depending on the circumstances, or distort the restrictions imposed on investments of investors of the other Party in the territory of the Party, nothing in this Agreement shall be construed as preventing a Party from adopting or enforcing measures:

1.1) necessary to protect public morals or maintain public order;

1.2) necessary to protect health, the environment, humans, animals, or plants;

1.3) protecting national treasures of artistic, historical, or archaeological value;

1.4) conserving natural resources;

1.5) necessary for the enforcement of laws and regulations that are not inconsistent with the provisions of this Agreement, including those related to:

(i) preventing fraud or deception or remedying the consequences of non-performance of obligations under investment agreements;

(ii) protecting the privacy of persons involved in the processing and dissemination of personal data and protecting the confidentiality of personal records and accounts;

(iii) security.

2. The measures specified in subparagraph 1.1) of paragraph 1 of this article may be applied only in cases where there is a genuine and sufficiently serious threat to the essential interests of society.

Article 20. Security Exceptions

Nothing in this Agreement shall be interpreted as:

1) requiring a Party to provide any information the disclosure of which it considers contrary to its essential security interests; or

2) preventing a Party from taking measures that it considers necessary to fulfill its obligations with respect to: maintaining or restoring international peace or security, or protecting its own essential security interests.

Article 21. Taxation

1. Article 5 (“Expropriation”) and Section 1 (“Settlement of disputes between a Party and an investor of the other Party”) of Chapter 3 (“Settlement of disputes”) of this Agreement shall apply to taxation measures to the extent that such taxation measures constitute expropriation. An investor seeking to invoke Article 5 (“Expropriation”) of this Agreement in respect of a tax measure shall first refer the matter to the competent authorities of both Parties referred to in paragraph 2 of this Article at the time when it submits the notification in accordance with Section 1 (“Settlement of disputes between a Party and an investor of the other Party”) of Chapter 3 (“Settlement of disputes”) of this Agreement, with the question of whether the tax measure constitutes expropriation as provided for in Article 5 (“Expropriation”) of this Agreement. If the competent authorities of both Parties fail to agree to consider the matter or, having agreed to consider it, fail to agree that the measure does not constitute expropriation as provided for in Article 5 (“Expropriation”) of this Agreement within 6 (six) months of such referral, the investor may submit its claim to arbitration in accordance with Section 1 (“Settlement of disputes between a Party and an investor of the other Party”) of Chapter 3 (“Settlement of disputes”) of this Agreement.

2. For the purposes of this Article, “competent authority” means the authorized authority in the field of tax administration.

3. With regard to Article 5 (“Expropriation”) of this Agreement, the following considerations are relevant in assessing whether a tax measure constitutes expropriation:

3.1) The introduction of taxes in general does not constitute expropriation. The mere introduction of new tax measures or the introduction of taxes in more than one jurisdiction in relation to investments does not in itself constitute expropriation;

3.2) Tax measures consistent with international tax policy, principles, and practice do not constitute expropriation. In particular, tax measures aimed at preventing tax avoidance or evasion should not, as a rule, be considered expropriatory; and

3.3) Tax measures that are applied on a non-discriminatory basis and are not aimed at investors of a particular nationality or individual taxpayers are less likely to constitute expropriation. A tax measure shall not constitute expropriation if it was already in force at the time the investment was made and information about the measure was made public or otherwise generally available.

Article 22. Amendments and Additions

This Agreement may be amended by mutual written agreement of the Parties, which shall form an integral part of this Agreement and shall be recorded in separate protocols, which shall enter into force in accordance with the procedure provided for in Article 24 (“Entry into force, duration and termination”) of this Agreement.

Article 23. Transparency

Each Party shall promptly publish or otherwise make available to the public, in accordance with its national law, its laws, regulations, procedures, administrative rulings, and judicial decisions of general application, as well as international treaties that may affect the investments of investors of the other Party in its territory.

Article 24. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date of receipt of the last written notification through diplomatic channels that the Parties have completed the internal procedures necessary for its entry into force.

2. This Agreement shall remain in force for a period of 10 (ten) years and shall be automatically extended for successive periods of 10 (ten) years unless, at least one year prior to the expiry of the initial or any subsequent period, one of the Parties notifies the other Party through diplomatic channels of its intention not to extend this Agreement. The termination

of this Agreement shall not affect its implementation with respect to investments made during its term for a period of 10 (ten) years from the date of its termination, unless the Parties agree otherwise. From the date of entry into force of this Agreement, the Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the promotion and mutual protection of investments of April 8, 1997, shall cease to be in force.

3. In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at _____ on "____" _____ 2024 in two copies in the Kazakh, Kyrgyz, and Russian languages, all texts being equally authentic.

In the event of any discrepancies between the texts of this Agreement, the Parties shall refer to the Russian text. FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN