Agreement between the Government of the Republic of Kazakhstan and the Government of the State of Qatar on the Reciprocal Promotion and Protection of Investments

The Government of the Republic of Kazakhstan and the Government of the State of Qatar, hereinafter referred to as the "Contracting Parties" for the purposes of this Agreement,

Desiring to intensify economic cooperation for the mutual benefit of both States,

Intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect such investments in order to foster the economic prosperity of both Contracting Parties,

Agreeing that a fair and equitable treatment of investments is necessary to ensure a stable basis for investment and the most efficient use of economic resources,

Have agreed as follows:

Article 1. Definitions

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

1. The term "investor" means a national of one Contracting Party who makes an investment in the territory of the other Contracting Party in accordance with the national legislation of the latter Contracting Party, in particular:

a) a natural person who is a citizen of one of the Contracting Parties and is authorized under the national legislation of that State to make investments in the territory of the other Contracting Party;

b) legal entities, including companies, corporations, business associations, and other organizations established or otherwise duly constituted in accordance with the national laws of a Contracting Party and having their place of business and actual economic activity in the territory of such Contracting Party, regardless of whether they are privately owned or owned or controlled by the State.

For greater certainty, legal entities include government agencies, public authorities, sovereign wealth funds, and institutions registered or organized in accordance with the national laws of the Contracting Parties.

2. The term "investment" means any form of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the national laws of the latter Contracting Party.

Types of investments include, but are not limited to, the following:

a) movable and immovable property, as well as other property rights, such as easements, guarantees, mortgages, pledges, and similar rights;

b) shares, debt obligations of a company, or any similar forms of participation in a company;

c) monetary claims or any security for the performance of a contract having economic value;

d) intellectual and industrial property rights, such as copyrights, trademarks, patents, technical processes, and know-how, protected in accordance with the national laws of the Contracting Parties;

e) any rights of an economic nature granted by national legislation or agreement, such as concessions for production

activities, including rights to explore, process, extract, and develop natural resources.

No change in the form in which assets were originally or subsequently invested shall affect their qualification as “investments” within the meaning of this Agreement, provided that such change does not conflict with this Agreement and the national laws of the Contracting Parties.

3. The term “income” means returns on investments and money received as a result of investments, and includes, in particular but not exclusively, profits, dividends, interest, capital gains, royalties, and fees.

4. The term “freely usable currency” means a currency widely used for settlements in international transactions according to the classification of the International Monetary Fund.

5. The term “territory” means:

a) with respect to the Republic of Kazakhstan: the territory within the State border of the Republic of Kazakhstan, including land, waters, subsoil, and airspace over 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 national legislation and international law;

b) with respect to the State of Qatar: the land, internal waters, and territory of the State of Qatar, their seabed and subsoil, the airspace above them, as well as the exclusive economic zone and continental shelf over which the State of Qatar exercises sovereign rights and jurisdiction in accordance with the provisions of international law and national legislation.

6. The term “third Party” applies to investors or states that are not related to the states of the Contracting Parties.

Article 2. Scope of Application of the Agreement

1. The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party and recognized as such under the national legislation of the latter Contracting Party, regardless of whether they were made before or after the entry into force of this Agreement, but shall not apply to any claims arising from events that occurred or claims that were raised prior to the entry into force of this Agreement.

The provisions of this Agreement shall not apply to:

a) subsidies or grants provided by the Contracting Parties, including loans, guarantees, or insurance backed by the Government, or any conditions attached to the receipt or continued receipt of such subsidies or grants, regardless of whether such subsidies or grants are provided exclusively to investors of the Contracting Parties or their investments;

b) matters of taxation within the territories of the Contracting Parties, as governed by the domestic laws of each Contracting Party;

c) government procurement.

2. The provisions of this Agreement shall not affect the right of any Contracting Party to exercise and enforce regulatory authority within its territory to the extent necessary to achieve essential objectives, such as the protection of public health, safety, the environment, or labor rights. The mere fact of a conflict between government regulatory measures or changes in the legislation of either Contracting Party and the expectations of investors, in particular their expectation of profit, or the fact of an adverse impact on them, shall not constitute a breach of an obligation under this Agreement.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall promote and create favorable conditions for investors of the other Contracting Party in order to facilitate investments in accordance with the national laws of their respective states.

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

For greater certainty, the reference to “fair and equitable treatment” implies an obligation not to deny justice in judicial or administrative proceedings and not to violate procedural norms 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.

3. A breach of any provision of this Agreement or of a separate international investment agreement between the Contracting Parties and their states does not establish that there has been a breach of this Article.

Article 4. Most-Favored-Nation Treatment

1. Each Contracting Party shall, within the territory of its State, accord to investments and investors of the other Contracting Party treatment no less favorable than that which it accords, under similar circumstances, to investments and investors of any third State. For greater certainty, this Article establishes the treatment of the relevant investments after they have been made.

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

3. The most favorable treatment to be accorded in the similar circumstances referred to in this Agreement does not apply to any umbrella clause within the framework of substantive protection and does not cover the investment dispute settlement mechanisms contained in this Agreement or any provisions relating to the jurisdiction of the court that are provided for in treaties or international investment agreements.

4. This Article does not apply to treatment accorded by a Contracting Party pursuant to a bilateral or multilateral international investment agreement that entered into force prior to the date of signature of this Agreement. However, this Article applies to all agreements referred to above in this paragraph that are amended, renewed, or extended in the future and enter into force after the signing of this Agreement.

5. The treatment granted under paragraphs 1, 2, and 3 of this Article shall not be construed as obligating a Contracting Party to extend to investors of the other Contracting Party and their investments the benefits of any treatment, preference, or privilege arising from:

a) its membership in or association with any existing or future free trade agreement, customs union, common market, or monetary union;

b) any international multilateral or bilateral agreement or arrangement relating wholly or principally to taxation, or any national legislation relating wholly or principally to taxation.

Article 5. National Treatment

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

2. Each Contracting Party reserves the right, in accordance with its national legislation, to designate sensitive sectors of the economy and/or related business activities that are to be restricted or excluded.

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

Article 6. Expropriation and Compensation

1. Neither Contracting Party shall nationalize or take targeted measures of expropriation, whether direct or indirect, or any other measures having a similar effect on investments belonging to investors of the other Contracting Party (hereinafter referred to as “expropriation”), unless such measures are taken in the public interest. Expropriation shall be carried out in accordance with due process of law, on a non-discriminatory basis, and subject to the payment of effective, prompt, and adequate compensation. Such compensation shall correspond to the fair market value of the expropriated investment immediately prior to the expropriation or before the impending expropriation becomes public knowledge, whichever occurs first (hereinafter referred to as the “valuation date”). The amount of compensation shall include interest at a customary commercial rate from the date of expropriation until the date of payment, shall be made in accordance with Article 9 (“Payments and Transfers”) of this Agreement, and shall be actually realizable.

2. If the parties fail to reach an agreement on the amount of compensation, the matter shall be resolved in accordance with the provisions of Article 12 (“Settlement of Disputes between a Contracting Party and an Investor of the Other Contracting Party”) of this Agreement.

3. Such market value shall be expressed in a freely usable currency at the market exchange rate applicable to that currency on the date of valuation. Compensation shall be paid without delay and shall be officially recognized and transferable in a freely usable currency. Compensation shall also include interest from the date of expropriation until the date of payment.

4. In cases where a Contracting Party expropriates the assets of a legal entity that is registered or incorporated in accordance with its applicable laws in any part of its territory, and in which shares are owned by investors of the other Contracting Party, it shall ensure the application of this Article in such a manner as to guarantee adequate and effective compensation with respect to the investments of investors of the other Contracting Party who are the owners of such shares.

5. For greater certainty, the Contracting Parties confirm their common understanding that:

(a) expropriation may be either direct or indirect:

i. direct expropriation occurs when an investment is nationalized or otherwise directly expropriated through an official transfer of ownership or direct seizure;

ii. indirect expropriation occurs when a measure or series of measures by a Contracting Party has an effect equivalent to direct expropriation, in the sense that it substantially deprives the investor of the essential attributes of ownership of its investment, including the right to own, use, and dispose of its investment, without a formal transfer of title or direct seizure;

b) determining whether a measure or series of measures by a Contracting Party constitutes indirect expropriation in a specific situation requires a fact-based inquiry in each specific case, taking into account, among other things, factors such as:

i. the economic impact of the measure or series of measures, although the mere fact that a measure or series of measures by a Contracting Party has a negative impact on the economic value of the investment does not in itself indicate that indirect expropriation has occurred;

ii. the duration of the measure or series of measures implemented by a Contracting Party;

iii. the nature of the measure or series of measures, in particular their subject matter and context.

6. For greater certainty, except in rare circumstances where the impact of a measure or series of measures, in light of its objectives, is so severe as to appear excessive, non-discriminatory measures of a Contracting Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, social services, public education, security, the environment, including climate change, public morals, social protection or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity, do not constitute indirect expropriation.

Article 7. Compensation for Losses

1. Investors of a Contracting Party who have suffered losses on their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of emergency, revolution, insurrection, or riot, shall be accorded treatment no less favorable by the State of the other Contracting Party with respect to restitution, damages, compensation, or other settlement.

2. Any payments arising therefrom shall be made in freely usable currency at the market exchange rate.

Article 8. Restrictions for the Protection of the Balance of Payments

1. In the event of a serious disturbance in the balance of payments and external financial difficulties, or a threat thereof, a Contracting Party may impose or maintain restrictions on payments or transfers related to investments.

It is recognized that particular pressures on a Contracting Party's balance of payments during the course of economic development may require the application of restrictions to ensure, among other things, the maintenance of a level of financial reserves sufficient to implement its economic development program.

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

a) be consistent with the Articles of Agreement of the International Monetary Fund;

b) not cause unnecessary damage to the commercial, economic, and financial interests of the other Contracting Party;

c) not exceed what is necessary to remedy the circumstances described in paragraph 1 of this Article;

d) be temporary in nature and be gradually phased out as the situation described in paragraph 1 of this Article improves; and

e) be applied on the basis of national treatment and in such a way that the other Contracting Party is treated no less

favorably than any third country.

3. The other Contracting Party shall be notified immediately of any restrictions adopted or imposed pursuant to paragraph 1 of this Article, or of any changes to such restrictions.

4. A Contracting Party that has established any restrictions in accordance with paragraph 1 of this Article shall initiate consultations with the other Contracting Party with a view to reviewing the restrictions it has adopted.

Article 9. Payments and Transfers

1. Each Contracting Party shall ensure that investors may freely transfer payments related to such investments made by investors of the other Contracting Party in the territory of that State, after the investors have fulfilled all tax obligations, including, but not limited to:

a) capital and additional capital used to service and increase investments;

b) income;

c) repayment of any loan, including interest thereon, related to investments;

d) profits from the sale of shares;

e) income received by investors in the event of a sale, partial sale, or liquidation;

f) income of natural persons of one Contracting Party or other personnel recruited from abroad who work in connection with investments in the territory of the other Contracting Party;

g) payments arising from an investment dispute;

h) compensation in accordance with Article 6 (“Expropriation and Compensation”) of this Agreement.

2. Transfers under this Article shall be made without delay in any freely usable currency and at the market exchange rate prevailing on the date of transfer.

3. Pursuant to a court order, a Contracting Party may suspend the transfer of funds for a specified period if unforeseen violations have been identified in connection with the following:

a) bankruptcy, insolvency, or creditor protection;

b) criminal or penal offenses related to the operational activities of the investment;

c) enforcement of orders or court decisions in legal proceedings related exclusively to the operational activities of the investment; and

d) failure to pay taxes;

Such delay shall be applied on a fair and non-discriminatory basis and in good faith.

4. The Contracting Parties undertake to accord to transfers referred to in this Article treatment no less favorable than that accorded to transfers arising from investments made by any third State.

Article 10. Subrogation

1. If a Contracting Party or its authorized body has provided a guarantee of any compensation for non-commercial risks in respect of investments of any of its investors in the territory of the other Contracting Party and has made payments to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its authorized entity shall have the right, by virtue of subrogation, to exercise the rights and enforce the claims of such investors. The rights under the assignment or claim shall not exceed the original rights or claims of such investors.

2. In the event of subrogation, as defined in paragraph 1 of this Article, an investor shall have no right to bring a claim unless such investor is authorized to do so by a Contracting Party or its authorized body.

Article 11. Denial of Benefits

1. Upon notification, a Contracting Party may deny the benefits of this Agreement with respect to:

a) an investor of the other Contracting Party that is a legal entity of such Contracting Party, and the investments of such investor, if such legal entity is owned or controlled by investors of a third Party, and the renouncing Contracting Party does not maintain diplomatic relations with that third Party;

b) an investor of the other Contracting Party that is a legal entity of that Contracting Party, and the investments of such investor, if an investor from a third Party owns or controls that legal entity, and it does not conduct significant commercial operations in the territory of the other Contracting Party.

Article 12. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute under this Agreement between the host Contracting Party and an investor of the other Contracting Party arising directly out of investments in the territory of the host Contracting Party shall, as far as possible, be settled amicably between the Parties to the dispute.

2. If such a dispute cannot be settled in accordance with the provisions of paragraph 1 of this Article within six months from the date of the written request for settlement, the investor concerned may, at its discretion, submit the dispute for resolution to:

a) a competent court of the Contracting Party in the territory of the State where the investment was made; or

b) the International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on March 18, 1965; or

c) an ad hoc international arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted by UNCITRAL (hereinafter referred to as the “UNCITRAL Arbitration Rules”); or

d) the International Arbitration Center of the Astana International Financial Center or the Court of the Astana International Financial Center, with the consent of the parties to the dispute; or

e) The Qatar International Dispute Resolution and Arbitration Center, subject to the consent of the parties to the dispute; or

f) any other arbitration institutions or in accordance with any other arbitration rules, subject to the consent of the parties to the dispute.

Once the investor has selected one of the aforementioned dispute resolution methods, the others may not be applied.

3. A Contracting Party and an investor of the other Contracting Party shall maintain confidentiality regarding the subject matter, content, and details of the arbitration dispute provided for in paragraph 2 of this Article.

4. No claim may be submitted for resolution in accordance with paragraph 2 of this Article if more than 5 (five) years have elapsed since the date on which the investor first became aware of the alleged breach.

Article 13. Third-Party Funding of Disputes

1. In the event of third-party funding of a dispute, the party to the dispute benefiting from such funding shall disclose to the other party to the dispute and to the court (arbitral tribunal) the existence and nature of the funding agreement, as well as the name and address of the third party providing the funding.

2. Such notice shall be provided at the time the claim is filed or, if a financing agreement has been concluded or a subsidy or grant is provided after the claim is filed, immediately after the conclusion of the agreement or the provision of the subsidy or grant.

3. “Third-party funding” means any funding by a natural or legal person of a State that is not a party to the dispute, but which enters into an agreement with one of the parties to the dispute for the purpose of partially or fully funding the costs associated with the proceedings, in exchange for remuneration contingent upon the outcome of the dispute, or any financing by a natural or legal person of a State that is not a party to the dispute, in the form of a grant or subsidy.

Article 14. Settlement of Disputes between the Contracting Parties

1. Both Contracting Parties shall endeavor, in good faith and in a spirit of cooperation, to achieve a fair and prompt settlement of any disputes arising between them in connection with the interpretation or implementation of this

Agreement. In this regard, both Contracting Parties undertake to enter into direct and objective negotiations to achieve such a settlement. If the dispute is not resolved within six months from the date of receipt of a written request from either Contracting Party to hold negotiations, it may, at the request of either Contracting Party, be referred to an ad hoc arbitration panel consisting of three members.

2. Within two months of the date of receipt of the request, each Contracting Party shall appoint one arbitrator; the two arbitrators thus appointed shall, within two months and with the approval of both Contracting Parties, appoint a national of a third Party as the chairperson of the Arbitration.

3. If, within the time limits specified in paragraph 2 of this Article, the necessary appointments have not been made, any Contracting Party may, in the absence of any other agreement, propose to the President of the International Court of Justice of the United Nations (hereinafter referred to as the UN) to make any necessary appointment. If the President of the International Court of Justice of the UN is a national of a Contracting Party or is otherwise unable to perform the said function, the Vice-President of the International Court of Justice of the UN shall be invited to make the said appointments. If the Vice President of the UN International Court of Justice is a national of a Contracting Party or is otherwise unable to perform the said function, the next senior member of the UN International Court of Justice who is not a national of any Contracting Party shall be invited to make the necessary appointments.

4. The Arbitral Tribunal shall render its decisions by a majority vote. Such decisions shall be final and binding upon both Contracting Parties. Each Contracting Party shall bear the expenses of its member of the Arbitral Tribunal and its representation in the arbitration proceedings; the expenses of the President of the Arbitral Tribunal and other expenses shall be borne by the Contracting Parties in equal shares. However, the Arbitral Tribunal may decide that one of the two Contracting Parties shall bear a higher share of the costs, and such decision shall be binding on both Contracting Parties. The Arbitral Tribunal shall determine its own procedures.

5. Unless the Contracting Parties agree otherwise, the place of arbitration shall be the Permanent Court of Arbitration in The Hague (Netherlands).

6. All claims must be submitted and all hearings must be concluded within six months from the date of appointment of the Chairman of the Arbitral Tribunal, unless otherwise agreed. The Arbitral Tribunal shall render its award within two months of the date of submission of the final pleadings or the date of the closing of the joint sessions, whichever is later.

7. A dispute may not be submitted to arbitration under the provisions of this Article if the same dispute has been submitted to another arbitration under the provisions of Article 12 (“Settlement of Disputes between a Contracting Party and an Investor of Another Contracting Party”) of this Agreement and which is still pending before that Arbitration.

Article 15. Most-Favored-Nation Treatment

1. If the national legislation of a Contracting Party or obligations under international law that are currently in force or have subsequently been established between the Contracting Parties in addition to this Agreement contain a provision, general or specific, granting investors of the other Contracting Party the right to a treatment that is more favorable than that provided for under this Agreement, such provision shall prevail over this Agreement to the extent that it is more favorable to the investor.

2. In all cases where the conditions granted by one Contracting Party to an investor of the other Contracting Party pursuant to its national legislation or other provisions of a specific treaty or agreement concluded in accordance with the national legislation of the host Contracting Party are more favorable than those provided for in this Agreement, the more favorable conditions shall apply to that investor.

Article 16. Transparency

Each Contracting Party shall promptly publish or otherwise make available to the public, in accordance with its national legislation, its laws, regulations, procedures, administrative regulations, and judicial decisions of general application, as well as international agreements that may relate to investments by an investor of the other Contracting Party in the territory of the first Contracting Party.

Article 17. Entry Into Force and Amendments

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

2. The Contracting Parties may, by mutual agreement, make amendments and additions to this Agreement, which shall form an integral part thereof and shall be set forth in separate protocols entering into force in accordance with the procedure provided for in paragraph 1 of this Article.

Article 18. Duration and Termination

1. This Agreement shall remain in force for a period of 10 (ten) years and shall be automatically extended for similar periods unless, no later than one year prior to the expiration of the initial or any subsequent period, one of the Contracting Parties notifies the other Contracting 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 ten years from the date of its termination, unless the Contracting Parties agree otherwise.

This Agreement shall, as of the date of its entry into force, replace the Agreement between the Government of the Republic of Kazakhstan and the Government of the State of Qatar on the Promotion and Reciprocal Protection of Investments dated March 4, 2008.

2. In witness whereof, the undersigned, duly authorized by their respective governments, have signed this Agreement.

Done at Astana on October 12, 2022, in two original copies in the Kazakh, Arabic, Russian, and English languages, all texts being equally authentic. In the event of any discrepancy between the texts of this Agreement, the Contracting Parties shall refer to the English text.

For the Government of the Republic of Kazakhstan

For the Government of the State of Qatar