Agreement between the Government of the United Arab Emirates and the Government of the Republic of Chad on the Mutual Promotion and Protection of Investments

The Government of the United Arab Emirates and the Government of the Republic of Chad, hereinafter referred to as the "Contracting Parties,"

Desiring to promote greater economic cooperation between them with respect to investments made by nationals of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and mutual protection of such investments will stimulate mutually beneficial commercial activities and increase prosperity in both Contracting Parties;

and recognizing that a stable investment framework will maximize the efficient use of economic resources and improve living standards in both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all types of assets owned directly or indirectly and invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, and includes, in particular:

(a) Movable and immovable property, as well as any other rights, such as mortgages, pledges, rights of use, and similar rights;

(b) Companies, shares, stocks, debt securities, and other forms of participation in a company;

(c) debt securities, bonds, loans, and other forms of debt;

(d) Financial claims or any other assets or performance of economic value;

(e) Intellectual or industrial property rights, including rights relating to copyrights, patents, trademarks, trade names, industrial designs, technical processes, know-how, and goodwill associated with the investment; and

(f) Rights granted by law or under contract, such as concessions, licenses, authorizations, or permits. Natural resources are not covered by this Agreement in the case of the United Arab Emirates.

Financial claims involving the types of interests set forth in paragraphs (a) through (f) above do not include:

(a) commercial contracts for the sale of goods or services by a national or company of one Contracting Party to a national or company in the territory of the other Contracting Party; or

(b) the extension of credit in connection with a commercial transaction, such as trade finance.

To qualify as an investment for the purposes of this Agreement, an asset must possess the characteristics of an investment, including a definite term, a commitment of capital or other resources, an expectation of gain or profit, and the assumption of risk.

An arbitral award or any decision or judgment rendered in connection with an investment shall not be considered an investment for the purposes of this Agreement.

2. The term "investor of a Contracting Party" means:

(a) Any natural person who is a national of that Contracting Party in accordance with its laws;

(b) Any legal entity established or organized in accordance with the laws of that Contracting Party and conducting substantial business operations in the territory of that Contracting Party.

3. The term “territory” means:

1. With respect to the United Arab Emirates, the territory of the United Arab Emirates, including its territorial waters, the airspace above it, and other maritime zones, including the exclusive economic zone and the continental shelf over which the United Arab Emirates exercises sovereign and jurisdictional rights with respect to any activity on the waters, the seabed, and the subsoil related to the exploration and exploitation of natural resources pursuant to its laws and international law;

2. With respect to the Republic of Chad, the term “territory” means the territory of the Republic of Chad, including its territorial sea, subsea areas, and other airspace and maritime zones over which the Republic of Chad exercises sovereign rights and jurisdiction in accordance with its national law and international law.

Article 2. Promotion of Investments

Each Contracting Party shall, in accordance with its general policy on foreign investment, encourage investments by investors of the other Contracting Party in its territory and shall permit such investments in accordance with its laws and regulations.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall accord to investments made by investors of the other Contracting Party in its territory fair and equitable treatment, as well as full protection and security, in accordance with customary international law.

2. For greater certainty, a Contracting Party shall be in breach of the obligation to provide fair and equitable treatment set forth in paragraph 1 only if it adopts measures or a series of measures that constitute:

(a) Denial of due process in criminal, civil, or administrative proceedings;

(b) Manifestly arbitrary conduct;

(c) harassment, coercion, compulsion, or similar conduct in bad faith.

3. Neither Contracting Party shall, in any manner, through unreasonable or discriminatory measures, impede the management, maintenance, use, enjoyment, or disposal of investments made by investors of the other Contracting Party.

4. Each Contracting Party shall monitor compliance with any obligation it has undertaken with respect to the investments of investors from the other Contracting Party.

5. A finding that another provision of this Agreement or of a separate international agreement has been breached does not, in and of itself, establish that this Article has been breached.

Article 4. Most-Favoured-Nation Treatment

1. Each Contracting Party shall accord to the investments of the other Contracting Party and their investors treatment no less favorable than that which it accords, under similar circumstances, to investors of any third country and their investments, with respect to the management, conduct, operation, and disposal of investments.

2. For greater certainty, the treatment referred to in paragraph 1 does not extend to dispute resolution mechanisms, procedural or judicial matters, or any undertakings regarding the host State’s contractual obligations as provided for in this Agreement or other international agreements.

3. The provisions of this Agreement shall not be construed as obligating a Contracting Party to extend to investors of the other Contracting Party the benefits of any treatment, preference, or privilege resulting from:

(a) Membership in an existing or future regional economic integration agreement, organization, or customs union to which one of the Contracting Parties is a party or may become a party thereto; or

(b) Any international agreement or arrangement relating wholly or principally to taxation, or any domestic legislation relating wholly or principally to taxation.

4. The provisions of this Article shall not apply to government procurement, government subsidies, loans, guarantees, or insurance granted to domestic companies.

Article 5. National Treatment

1. Subject to its laws and regulations, each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favorable than that which it accords, under similar circumstances, to its own investors and their investments, solely with respect to the management, administration, operation, and disposal of investments.

2. The provisions of this Article shall not apply to government procurement.

Article 6. Expropriation

1. Neither Contracting Party may nationalize or expropriate an investment of an investor (hereinafter referred to as "expropriation") of the other Contracting Party either directly or indirectly through measures having an effect equivalent to expropriation or nationalization, except:

(a) for public purposes;

(b) on a non-discriminatory basis;

(c) upon payment of adequate and effective compensation; and

(d) in accordance with legal procedures.

2. Compensation under paragraph 1(c) of this Article shall be equal to the market value of the investment immediately prior to the occurrence of the expropriation or public knowledge of the impending expropriation, whichever occurs first. The compensation shall be enforceable and freely transferable without any unjustified delay.

3. Paragraphs 1 and 2 of this Article shall in no way prejudice the right of a Contracting Party to enforce laws or to adopt regulatory measures or procedures regulatory measures it deems necessary to protect legitimate public interest objectives, such as public health and safety, the environment, and the control of property use in accordance with the public interest, or to ensure the payment of taxes or other contributions, including fines.

4. Notwithstanding the provisions of this Article, sovereign assets and sovereign funds shall not be subject to nationalization, expropriation, seizure, or freezing by a Contracting Party, nor shall they be subject to any of these measures, directly or indirectly, at the request of a third party.

Article 7. Compensation for Losses

1. When the investments of investors of either Contracting Party suffer losses due to war or other armed conflict, revolution, civil unrest, a national emergency, insurrection, riot, or similar events in the territory of the other Contracting Party, such investors shall be accorded, with respect to restitution, compensation, or other remedies, treatment no less favorable than that accorded to its own investors or to investors from any third party, whichever is more favorable.

2. Without prejudice to the provisions of paragraph 1 of this Article, an investor of one of the Contracting States who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting State as a result of:

(a) the expropriation of all or part of his investments by the forces or authorities of the latter;

(b) the destruction of his investment or part thereof by the forces or authorities of the latter Contracting State, which was not necessitated by the situation,

restitution or compensation shall be granted.

Article 8. Transfers

1. Each Contracting Party shall permit all transfers relating to an investment to be made freely and without delay into and out of its territory. Such transfers shall include:

(a) Initial capital and additional amounts to maintain or increase an investment;

(b) returns;

(c) proceeds from the sale of all or any part of the investment or from the total or partial liquidation of the investment;

(d) payments under a contract, including a loan agreement;

(e) income of individuals working abroad in connection with an investment in its territory; and

(f) payments under Articles 6 and 7 of this Agreement.

2. Each Contracting Party shall permit transfers related to an investment in a freely convertible currency at the prevailing market exchange rate on the date of the transfer.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Contracting Party may prevent, delay, or suspend a transfer through the fair, non-discriminatory, and good-faith application of its laws relating to taxation, the protection of creditors' rights, and the enforcement of orders or judgments in judicial or administrative proceedings.

Article 9. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party who is a legal entity of such other Contracting Party, and to that investor's investments, if the legal entity is owned or controlled by persons from a non-Contracting Party and the Contracting Party imposing the denial does not maintain diplomatic relations with the non-Contracting Party.

2. A Contracting Party may deny the benefits of this Agreement to an investor who is a legal entity of the other Contracting Party with respect to that investor's investments if the legal entity does not engage in significant commercial activities in the territory of the other Contracting Party and is owned or controlled by persons from a non-Contracting Party or from the Contracting Party imposing the denial.

Article 10. Prohibition of Performance Requirements

1. Neither Contracting Party may impose or require investors of the other Contracting Party to comply with any performance requirements regarding the management, administration, or operation of their investments in the territory of that Contracting Party.

2. Neither Contracting Party may impose or require the following requirements, or impose an obligation or undertaking, with respect to the management, administration, or operation of an investment by investors of the other Contracting Party in its territory:

(a) To export a specific level or percentage of goods;

(b) to achieve a specific level or percentage of local content;

(c) to purchase, use, or give preference to a good produced in its territory, or to purchase a good or service from any person in its territory;

(d) to link the volume or value of imports to the volume or value of exports or to the amount of foreign exchange flows associated with such an investment.

Article 11. Right to Regulate

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining, or enforcing any measures that are otherwise consistent with this Agreement and that it deems appropriate to:

(a) ensure compliance with the laws and regulations of the Contracting Party that are not inconsistent with this Agreement;

(b) protect the environment, human life, plant life, or health;

(c) regulate the conservation of living or non-living natural resources; or

(d) ensure the maintenance or restoration of peace or national security, or protect its essential security interests.

2. The maintenance or enforcement of such measures shall be subject to the condition that they are not applied in an arbitrary or unjustifiable manner or do not constitute a unreasonable restriction on investments from the other Contracting Party.

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

1. This Article applies to legal disputes between an investor of one Contracting Party and the other Contracting Party arising from an investment by the said investor in the territory of the latter Contracting Party. Such a dispute concerns an alleged breach of an obligation of a Contracting Party under this Agreement that has caused losses or damages to an investor of the other Contracting Party.

2. To initiate consultations, the investor must deliver a written notice to the Contracting Party; the notice must specify the details of the dispute, such as:

(a) The name and address of the investor involved in the dispute;

b) the provisions of this Agreement that are alleged to have been breached; and c) the factual and legal grounds for the claim.

3. If the dispute cannot be resolved amicably within six months from the date of receipt of the written notice, the matter shall, at the investor's request, be referred for settlement as follows:

(a) to a competent court of the Contracting Party in whose territory the investment is situated; or

(b) arbitration before the International Centre for Settlement of Investment Disputes (ICSID), as provided for in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on March 18, 1965, provided that both contracting parties are parties to the said Convention;

(c) The Additional Facilities of the International Centre for Settlement of Investment Disputes, if only one of the contracting parties is a signatory to the Washington Convention; or

(d) Arbitration before a tribunal composed of three arbitrators in accordance with the 2010 Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as amended by UNCITRAL.

In the event of arbitration, each contracting party hereby irrevocably agrees in advance to submit any such dispute to a tribunal constituted in accordance with the aforementioned Rules.

4 The award shall be final and binding. Each Contracting Party confirms its recognition and enforcement of the arbitral award in accordance with its laws, regulations, and the rules and principles of international law.

5. Disputes arising from any contract concluded between an investor and a specific entity of a Contracting Party or its local government concerning such investors' investments shall be settled in accordance with the dispute settlement procedures set forth therein.

6. If an investment dispute is submitted for resolution under one of the forums provided for in paragraph 3 of this Article, the same investment dispute shall not be submitted for resolution under any other available forums as provided for in paragraph 3 of this Article.

7. A dispute may not be submitted for resolution through arbitration under paragraph 3 of this Article if more than three years have elapsed from the date on which the investor first became aware, or should have become aware, of the alleged breach and the damage or loss suffered by the investor.

Article 13. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, to the greatest extent possible, be settled through consultation and/or other diplomatic channels.

2. If the Contracting Parties are unable to reach an agreement within six (6) months following the date on which consultations and/or other diplomatic channels were requested by either Contracting Party, the dispute shall, at the request of a Contracting Party, be submitted to an arbitral tribunal. In the absence of an agreement to the contrary between the Contracting Parties, the arbitration proceedings shall be conducted in accordance with the Optional Rules of the Permanent Court of Arbitration for the Arbitration of Disputes between States, except as modified by the Contracting Parties or this Agreement.

3. Unless the contracting parties agree otherwise, the dispute shall be settled by an arbitral tribunal consisting of three arbitrators. Each contracting party shall appoint one arbitrator within two months from the date on which either contracting

party receives a request for arbitration from the other contracting party. The two appointed arbitrators shall, jointly and within an additional two-month period, select a third arbitrator who is a national of a third country. Once the third arbitrator has been approved by both contracting parties, he or she shall be appointed as the chair of the tribunal.

4. If any member of the arbitral tribunal has not been selected within the time periods specified in paragraph 3 of this Article, then, at the request of either contracting party, the Secretary-General of the Permanent Court of Arbitration shall, at his discretion, appoint the arbitrator or arbitrators who have not yet been appointed.

5. The arbitration proceedings shall be held in The Hague, the Netherlands.

6. The arbitral tribunal shall render its award by a majority vote. The award shall be final and binding on both contracting parties.

7. The expenses incurred by the arbitrators and other costs of the proceedings shall be borne equally by the parties. However, the arbitral tribunal may, at its discretion, decide that a higher proportion of the costs shall be borne by one of the contracting parties.

Article 14. Application of the Agreement

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors from the other Contracting Party, whether before or after the entry into force of this Agreement; however, it shall not apply to any dispute that was settled prior to its entry into force.

Article 15. Amendments

As agreed upon by the Contracting Parties, amendments and additions may be made to this Agreement, which shall be concluded as a separate instrument and shall enter into force in accordance with paragraph 1 of Article 16 of this Agreement. Such separate instrument shall constitute an integral part of this Agreement.

Article 16. Entry Into Force, Duration, and Termination

1. This Agreement shall enter into force thirty days after the date of the exchange of the last written notification, through diplomatic channels, of the completion of the legal procedures necessary for this Agreement to enter into force in both Contracting Parties.

2. This Agreement shall remain in force for a period of ten (10) years and shall remain in force thereafter unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by giving the other Contracting Party one year’s prior notice through diplomatic channels.

4. With regard to investments made prior to the expiration date of this Agreement, the provisions of Articles 1 through 13 shall remain in effect for a period of ten (10) years following that date.

In witness whereof, the undersigned, duly authorized, have signed this Agreement, drawn up in two copies in Abu Dhabi on September 4, 2018, in Arabic, French, and English, and both texts shall be equally authentic.

In the event of any discrepancy in the interpretation of the provisions of this agreement, the English text shall prevail.

On behalf of the Government of the United Arab Emirates,

Sultan bin Ahmed Al-Jabr

On behalf of the Government of the Republic of Chad,

Al-Alali Mohamed Abkaramin,

Minister of Finance and Budget