BILATERAL INVESTMENT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE STATE OF ISRAEL

Preamble

The Government of the Republic of India ("India") and the Government of the State of Israel ("Israel") (hereinafter referred to as the "Party" individually or the "Parties" collectively);

Desiring to promote bilateral cooperation between the Parties with respect to foreign investments;

Desiring to promote conducive conditions and to encourage a competitive environment for investments by investors of a Party in the territory of the other Party;

Recognizing that the promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic cooperation between them and to the promotion of sustainable development; and

Reaffirming the right of Parties to regulate investments in their territory in accordance with their law and policy objectives;

Have agreed as follows:

Chapter I. Preliminary

Article 1. Definitions

For the purposes of this Agreement:

1.1 "confidential information" means business confidential information, e.g. confidential commercial, financial or technical information which could result in material loss or gain or prejudice a disputing party's competitive position, and information that is privileged or otherwise protected from disclosure under the law of a Party;

1.2 "Designated Representative" means:

(i) for India, Secretary/Additional Secretary/Joint Secretary, Department of Economic Affairs, Ministry of Finance, Government of India.

(ii) for Israel, the Ministry of Finance, Chief Economist Department, or its successor.

1.3 "enterprise" means:

(i) any entity constituted and organised under the law of a Party holding the necessary approvals in the relevant economic sector and carrying out substantial business activities in the territory of that Party; and

(ii) a branch of any such entity established in the territory of a Party in accordance with its law and carrying out substantial business activities there. (1)

(1) For the purpose of this Agreement, an enterprise is deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise (a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party; (b) has its central administration in the territory of that Party; (c) employs staff in the territory of that Party; (d) generates turnover and pays taxes in the territory of that Party.

1.4 "investment" means any of the following investments, owned or controlled, directly or indirectly, by an investor of one Party in the territory of the other Party (a) in accordance with the law of the Party in whose territory the investment is made including the necessary approvals in the relevant economic sector, and (b) that, has the characteristics of an investment such as the commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk.

Such investment shall only include the following:

(A) an enterprise constituted, organised and operated in good faith, which can possess any of the following assets:

(a) shares, stocks and other forms of equity participation of the enterprise or in another enterprise;

(b) turnkey constructions, production or revenue sharing contracts or other similar contracts;

(c) bonds, debentures and other debt instruments of another enterprise;

(d) a loan to another enterprise;

(e) licenses, permits, authorisations or similar rights conferred in accordance with the law of a Party;

(f) long term rights conferred by law of a Party, or under contract, but excluding concessions, to search for, explore, extract or exploit natural resources in accordance with the law of a Party; (2)

(2) For greater certainty, the Parties confirm their understanding that the term natural resources does not relate to renewable energy.

(g) copyrights, know-how and intellectual property rights such as patents, trademarks, industrial designs and trade names, to the extent they are recognized under the law of a Party;

(h) moveable or immovable property and related rights; or

(i) any other interests of the enterprise which involve substantial economic activity and out of which the enterprise derives significant financial value;

(B) shares, stocks and other forms of equity participation in an enterprise;

(C) bonds, debentures and loans and other debt instruments issued by an enterprise. (3)

(3) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of good or services, do not have such characteristics.

For greater clarity, investment does not include the following:

(i) debt securities issued by a government or government-owned or controlled enterprise, or loans to a government or government-owned or controlled enterprise;

(ii) any pre-operational expenditure relating to admission, establishment, acquisition or expansion of the enterprise incurred before the commencement of substantial business activities of the enterprise in the territory of the Party where the investment is made;

(iii) claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party;

(iv) goodwill, brand value, market share or similar intangible rights;

(v) claims to money that arise solely from the extension of credit in connection with any commercial transaction;

(vi) an order or judgment sought or entered in any judicial, administrative or arbitral proceeding;

(vii) any other claims to money that do not involve the kind of interests or operations set out in the definition of investment in this Agreement.

1.5 "investor" means a natural person of a Party or juridical person of a Party, other than a branch or representative office, that has made an investment in the territory of the other Party;

For the purposes of this definition, a "juridical person" means:

(a) a legal entity that is constituted and organised under the law of that Party and that has substantial business activities (4) in the territory of that Party; or

(4) For the purpose of this Agreement, a juridical person is deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether a juridical person has a genuine link to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the juridical person (a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party; (b) has its central administration in the territory of that Party; (c) employs staff in the territory of that Party; (d) generates turnover and pays taxes in the territory of that Party.

(b) a legal entity that is constituted and organised under the laws of that Party and that is directly or indirectly owned or controlled by a natural person of that Party or by a legal entity mentioned under sub-clause (a) herein.

1.6 "local government" includes:

for India:

(i) An urban local body, municipal corporation or village level government; or

(ii) an enterprise owned or controlled by an urban local body, a municipal corporation or a village level government.

for Israel:

(i) municipalities, local councils and regional councils; or

(ii) an enterprise owned or controlled by a municipality, a local council or a regional council.

1.7 "measure" includes a law, regulation, rule, procedure, decision, administrative action, requirement or practice.

1.8 "natural person of a Party" means

(i) in case of India, a national or citizen or permanent resident (5) in accordance with the laws of India;

(5) Permanent resident shall not include a permanent resident of India who is also a national or citizen of a Non-Party that does not maintain diplomatic relations with Israel, or a national of Israel.

(ii) in case of Israel, a national or permanent resident (6) in accordance with the law of Israel.

(6) Permanent resident shall not include a permanent resident of Israel who is also a national or citizen of the land-bordering countries of India, or of a Non-Party that does not maintain diplomatic relations with India, or a national or citizen of India.

A natural person of a Party who is a dual national shall be deemed to be exclusively a national of the country of her or his dominant and effective nationality, where she/he ordinarily or permanently resides.

1.9 "Pre-investment activity" means any activities undertaken by the investor or its enterprise prior to the admission and establishment of the investment in accordance with the law of the Party where the investment is made, including but not limited to acquiring of the necessary permits to operate in a sector, and in compliance with sectoral limitations on foreign equity.

1.10 "Sub-national government" means a State Government or a Union Territory administration in the case of India but does not include local governments;

1.11 "Territory" means:

(i) In respect of India: the territory of the Republic of India in accordance with the Constitution of India, including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, or exclusive jurisdiction in accordance with its law and the 1982 United Nations Convention on the Law of the Sea and international law;

(ii) In respect of the State of Israel: the territory of Israel including the territorial sea as well as the continental shelf and the

exclusive economic zone, over which Israel exercises sovereignty, sovereign rights or jurisdiction in accordance with international law and the laws of Israel.

1.12 "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April, 1994.

Article 2. Annexure, Provisos and Footnotes

For the purposes of this Agreement, the Annexures, Provisos and Footnotes in this Agreement constitute an integral part of this Agreement and are to be accorded the same effect as other provisions in this Agreement.

Article 3. Scope and General Provisions

3.1 This Agreement shall apply to measures adopted or maintained by a Party relating to investments of investors of the other Party in its territory, in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter, and which have been admitted by a Party in accordance with its law, regulations and policies.

3.2 For investments in existence as of the date of entry into force of this Agreement this Agreement shall not apply to claims arising out of an alleged breach or events which occurred, prior to the entry into force of this Agreement.

3.3 Notwithstanding anything in Article 3.2 to the contrary, this Agreement shall replace the India-Israel BIT 1996, in respect of investments made or acquired prior to the date of termination of India-Israel BIT 1996 which would have been otherwise protected as per Article 15(2) of India-Israel BIT 1996.For the avoidance of doubt the Parties hereby confirm that from the date of entry into force of this Agreement, the India-Israel BIT 1996 shall cease to be effective in respect of investments made or acquired before the date of termination of the India-Israel BIT 1996.

3.4 Subject to the provisions of Chapter Ill of this Agreement, nothing in this Agreement shall extend to any Pre-investment activity related to establishment, acquisition or expansion of any investment, or to any measure related to such Pre-investment activities, including terms and conditions under such measure which continue to apply to the management, conduct, operation, sale or other disposition of such investments after the permit has been acquired and the investment has been made.

3.5 This Agreement shall not apply to:

(i) any measure by a local government;

(ii) any law or measure regarding taxation, including measures taken to enforce taxation obligations.

For greater certainty, it is clarified that where the Party in which investment is made decides that conduct alleged to be a breach of its obligations under this Agreement is a subject matter of taxation, such decision of that Party, whether before or after the commencement of arbitral proceedings, shall be non-justiciable and it shall not be open to any arbitration tribunal to review such decision.

(iii) the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the international obligations of the Parties under the WTO Agreement.

(iv) government procurement by a Party;

(v) subsidies or grants provided by a Party;

(vi) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Agreement, a service supplied in the exercise of governmental authority means any service which is not supplied for a commercial purpose.

Article 4. Right of State to Regulate

The Parties reaffirm the right of each Party to regulate, including through adopting or maintaining measures, within its Territory in pursuit of legitimate public policy objectives. The mere fact that a Party regulates in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectation of profits, is not a breach of an obligation under this Agreement.

Chapter II. Obligations of Parties

Article 5. Treatment of Investments

5.1 No Party shall subject investors with respect to their investments and investments made by investors of the other Party to measures which constitute:

(i) Denial of justice in any judicial or administrative proceedings; or

(ii) fundamental breach of due process; or

(iii) targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or

(iv) manifestly abusive or manifestly arbitrary treatment, such as coercion, duress and harassment. (7)

(7) If a measure is taken in pursuit of legitimate policy objectives, then such measure shall not be considered to be manifestly arbitrary treatment.

5.2 Each Party shall accord in its territory to investments of the other Party and to investors with respect to their investments full protection and security. For greater certainty, "full protection and security" only refers to a Party's obligations relating to physical security of investors and to investments made by the investors of the other Party which does not require a treatment in addition to or beyond that which is required by the applicable customary international law regarding the Minimum Standard of Treatment of aliens.

5.3 A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 6. National Treatment

6.1 Each Party shall not apply to an investor with respect to its investments, or to investments made by investors of the other Party, measures that accord less favourable treatment than that it accords, in like circumstances, (8) to its own investors with respect to their investments or to investments by such investors with respect to the management, conduct, operation, sale or other disposition of investments in its territory.

(8) For greater certainty, whether treatment is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate regulatory objectives. These circumstances include, but are not limited to, (a) the goods or services consumed or produced by the investment; (b) the actual and potential impact of the investment on third persons, the local community, or the environment, (c) whether the investment is public, private, or state-owned or controlled, and (d) the practical challenges of regulating the investment.

6.2 The treatment accorded by a Party under Article 6.1 means, with respect to a Sub-national government, treatment no less favourable than the treatment accorded, in like circumstances, by that Subnational government to investors with respect to their investments, and to investments of investors, of the Party of which it forms a part.

6.3 This Article shall not apply to rights on land and real estate.

Article 7. Expropriation

7.1 Neither Party may nationalize or expropriate an investment of an investor (hereinafter "expropriate") of the other Party either directly or through measures having an effect equivalent to expropriation, except for reasons of public purpose, (9) in accordance with the due process of law in a non-discriminatory manner and on payment of adequate compensation. Such compensation shall be adequate and be at least equivalent to the fair market value of the expropriated investment immediately on the day before the expropriation takes place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

(9) For the avoidance of doubt, where India is the expropriating Party, any measure of expropriation relating to land shall be for the purposes

as set out in its law relating to land acquisition and any questions as to "public purpose" and compensation shall be determined in accordance with the procedure specified in such law.

7.2 Payment of compensation shall be made in a freely convertible currency and be realisable. Interest on payment of compensation, where applicable, shall be paid in simple interest at a commercially reasonable rate from the date of expropriation until the date of actual payment. On payment, compensation shall be freely transferable in accordance with Article 8 (Transfers).

7.3 The Parties confirm their shared understanding that:

(a) Expropriation may be direct or indirect:

(i) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(ii) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially or permanently deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

(b) The determination of whether a measure or a series of measures have an effect equivalent to expropriation requires a case-by-case, fact-based inquiry, that takes into consideration among other things:

(i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(ii) the duration of the measure or series of measures of a Party;

(iii) the character of the measure or series of measures, notably their object, context and intent; and

(iv) whether a measure by a Party breaches the Party's prior binding written commitment to the investor whether by contract, licence or any other legal document.

7.4 For the avoidance of doubt, the Parties agree that an action taken by a Party in its commercial capacity shall not constitute expropriation or any other measure having similar effect.

7.5 Non-discriminatory regulatory measures by a Party that are designed and applied to protect legitimate public interest or public purpose objectives such as public health, safety and the environment shall not constitute expropriation under this Article, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive.

Article 8. Transfers

8.1 Subject to its law, each Party shall permit all funds of an investor of the other Party related to an investment in its territory to be freely transferred and on a non-discriminatory basis. Such funds may include:

(i) contributions to capital;

(ii) profits, dividends, capital gains and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(iii) interest, royalty payments, management fees, and technical assistance and other fees;

(iv) payments made under a contract, including a loan agreement;

(v) payments made pursuant to Article 7 [Expropriation], Article 9 [Compensation for losses] and under Chapter IV.

8.2 Unless otherwise agreed to between the Parties, currency transfer under Article 8.1 shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

8.3 Nothing in this Agreement shall prevent a Party from conditioning or preventing a transfer through a good faith application of its law, including actions relating to:

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

(ii) compliance with judicial, arbitral or administrative decisions and awards;

(iii) compliance with labour obligations;

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

(v) issuing, trading or dealing in securities, futures, options, or derivatives;

(vi) compliance with the law on taxation;

(vii) criminal or penal offences and the recovery of the proceeds of crime;

(viii) social security, public retirement, or compulsory savings schemes, including provident funds, retirement gratuity programs and employees insurance programs;

(ix) severance entitlements of employees;

(x) requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Party; and

(xi) in the case of India, requirements to lock-in initial capital investments, as provided in India's Foreign Direct Investment (FOi) Policy, where applicable, provided that, any new measure which would require a lock-in period for investments will not apply to existing investments.

8.4 Notwithstanding anything in Article 8.1 and 8.2 to the contrary, the Parties may temporarily restrict transfers in the event of serious balance-of-payments difficulties or threat thereof, or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

Article 9. Compensation for Losses

Each Party shall accord to investors of the other Party, and to investments by such investors, non-discriminatory treatment with respect to measures, including restitution, indemnification, compensation or other settlement, it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, civil strife, or state of national emergency.

Article 10. Subrogation

10.1 If a Party or its designated agency makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment in the territory of the other Party, the other Party shall recognize the validity of the subrogation in favour of such Party or agency thereof to any right or title held by the investor.

10.2 A Party or its designated agency thereof which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment including the same payments due pursuant to those rights and claims.

10.3 If a Party or its designated agency has made a payment to its investor and has taken over rights and claims of the investor under this Article that investor shall not, unless authorised in writing by the Party or its designated agency to act on behalf of the Party or its designated agency making the payment, pursue those rights and claims against the other Party. In the exercise of subrogated rights or claims, a Party or its designated agency exercising such rights or claims shall disclose evidence of the subrogation or transfer of rights from the investor to the Party or its designated agency to the other Party.

Article 11. Transparency

11.1 Each Party shall, to the extent possible, ensure that its laws, regulations, procedures, and administrative rulings of general application in respect of any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

11.2 Each Party shall, as provided for in its laws and regulations:

(i) publish any such measure that it proposes to adopt; and

(ii) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

11.3 Each Party shall, upon request by the other Party, promptly respond to specific questions from and provide information to the other Party with respect to matters referred to in Article 11.1.

11.4 Nothing in this Agreement shall require a Party to furnish or allow access to information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest or to that Party's law, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

Chapter III. Investor Obligations

Article 12. Compliance with Laws

The Parties reaffirm their understanding and recognize that:

(i) Investors and their investments shall comply with all applicable laws, regulations, administrative guidelines and policies of a Party, concerning taxation and the establishment, acquisition, management, operation and disposition of investments.

(ii) Investors and their investments shall not, either prior to or after the establishment of an investment, offer, promise, or give any undue pecuniary advantage, gratification or gift whatsoever, whether directly or indirectly, to a public servant or official of a Party as an inducement or reward for doing or forbearing to do any official act or obtain or maintain other improper advantage nor shall be complicit in inciting, aiding, abetting, or conspiring to commit such acts.

(iii) A Party may require an investor of the other Party to provide information concerning the investment in question and the corporate history, for purposes of decision making in relation to that investment or solely for informational or statistical purposes. The Party shall protect confidential information from any disclosure that would prejudice the competitive position of the investor or its investment. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Chapter IV. Settlement of Disputes between an Investor and a Party

Article 13. Scope and Definitions

13.1 Without prejudice to the rights and obligations of the Parties under Chapter V, this Chapter establishes a mechanism for the settlement of disputes between an investor and a Defending Party.

13.2 This Chapter shall only apply to a dispute between a Party and an investor of the other Party with respect to its investment, arising out of an alleged breach of an obligation of a Party under Chapter II of this Agreement, other than the obligation under Article 11 of this Agreement and the investment or the investor with respect to its investments has incurred loss or damage by reason of, or arising out of, that alleged breach.

13.3 A Tribunal constituted under this Chapter shall only decide claims in respect of a breach of this Agreement as set out in Chapter II, except under Article 11, and not disputes arising solely from an alleged breach of a contract between a Party and an investor. Such disputes shall only be resolved by the domestic courts or, when applicable, in accordance with the dispute resolution provisions set out in the relevant contract.

13.4 A tribunal constituted under this Chapter shall not have jurisdiction over a claim if the investment has been made through fraud, corruption, money laundering or other similar illegal mechanism, or if the investor with relation to its investment, has acted in a manner constituting fraud, corruption, money laundering or similar illegal mechanism.

13.5 In addition to other limits on its jurisdiction, a Tribunal constituted under this Chapter shall not have the jurisdiction to:

(i) review the merits of a decision made by a competent judicial authority of the Parties; or

(ii) accept jurisdiction over any claim that is or has been subject of an arbitration under Chapter V; or

(iii) determine the legality of a measure alleged to constitute a breach of this Agreement under the law of a Party.

13.6 A dispute between an investor and a Party shall proceed sequentially in accordance with this Chapter.

13.7 For the purposes of Chapter IV:

(i) "Defending Party" means a Party against which a claim is made under this Chapter;

(ii) "disputing party" means a Defending Party or a disputing investor;

(iii) "disputing parties" means a disputing investor and a Defending Party;

(iv) "disputing investor" means an investor of a Party that makes a claim against the other Party under Chapter IV on its own behalf or on behalf of the locally established enterprise through which an investment is made;

(v) "ICSID" means the International Centre for Settlement of Investment Disputes;

(vi) "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Dispute;

(vii) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on 18 March 1965;

(viii) "Non-disputing Party" means the Party to this Agreement which is not the Defending Party under Chapter IV;

(ix) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law 2010.

Article 14. Proceedings Under Different International Agreements

Where claims are brought pursuant to this Chapter and another international agreement and:

(a) there is a potential for overlapping compensation; or

(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Chapter,

a Tribunal constituted under this Chapter shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to the other international agreement are taken into account in its decision, order or award.

Article 15. Third Party Funding Clause

Third Party funding of the investor in case of dispute is not permitted.

Article 16. Conditions Precedent to Submission of a Claim to Arbitration

16.1 In respect of a claim that the Defending Party has breached an obligation under Chapter II, in accordance with Article 13.2, a disputing investor must first submit its claim before the relevant domestic courts or administrative bodies of the Defending Party for the purpose of pursuing domestic remedies in respect of the same measure or same subject matter for which a breach of this Agreement is claimed. Such claim before the relevant domestic courts or administrative bodies of the Defending Party must be submitted within one (1) year from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the measure in question and knowledge that the investment, or the disputing investor with respect to its investment, had incurred loss or damage as a result. For greater certainty, the aforementioned one (1) year limitation period shall only be relevant to an investor's rights or recourse under this Agreement and shall be without prejudice to any other statuary limitation period under applicable law of Defending Party that may apply to any other claim that the investor may be entitled to bring. For greater certainty, in demonstrating compliance with the obligation to pursue local remedies, the investor shall not assert that the obligation to pursue local remedies does not apply or has been met on the basis that the claim under this Agreement is by a different party or in respect of a different cause of action. Provided, however, that the requirement to pursue local remedies shall not be applicable if the disputing investor or the locally established enterprise can demonstrate that there are no available domestic legal remedies capable of reasonably providing any relief in respect of the same measure or same subject matter for which a breach of this Agreement is claimed by the disputing investor.

16.2 For the purposes of Article 16, local remedies shall be deemed to have been pursued for the purposes of being entitled to submit a notice of dispute, if no resolution that is satisfactory to the disputing investor has been reached after pursuing for at least a period of three years from the date the disputing investor acquired, or should have acquired, knowledge of the measure in question and knowledge that the investment, or the investor with respect to its investment, had incurred loss or damage as a result of the measure (or lesser period where available local remedies have been exhausted within

such period), regardless of any pending appeal or other ongoing proceedings in the domestic courts or administrative bodies of the Defending Party. In such case, the disputing investor shall have the absolute right under Chapter IV to transmit a notice of dispute to the Defending Party.

16.3 The notice of dispute shall:

(i) specify the name and address of the disputing investor or the enterprise, where applicable;

(ii) set out the factual basis of the claim, including the measures at issue;

(iii) specify the provisions of the Agreement alleged to have been breached and any other relevant provisions;

(iv) demonstrate compliance with Article 16.1 and 16.2, where applicable;

(v) specify the relief sought and the approximate amount of damages claimed; and

(vi) furnish evidence establishing that the disputing investor is an investor of the Non-disputing Party.

(vii) specify complete details of the interest in investment including ownership control and economic rights for which the disputing investor claims to have suffered loss or damage as a result of the alleged breach, at all levels, over the period of time, since Investment was made including nature and date of creation of such interest. A disputing investor shall be deemed to have disclosed all details and should the Defending Party identify any material undisclosed information at a later point in time, the Defending Party shall withdraw the consent to arbitration as under Article 18 (Consent to arbitration) and the arbitration proceedings shall be terminated.

16.4 For no less than six (6) months after receipt of the notice of dispute, the disputing parties shall use their best efforts to try to resolve the dispute amicably through meaningful consultation, negotiation or other third-party procedures.

16.5 In the event that the disputing parties cannot settle the dispute amicably, a disputing investor may submit a claim to arbitration pursuant to this Agreement, but only if the following additional conditions are satisfied:

(i) not more than six (6) years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the measure in question and knowledge that the disputing investor with respect to its investment, had incurred loss or damage as a result; or

(ii) where applicable, not more than twelve (12) months have elapsed from the conclusion of domestic proceedings pursuant to Article 16.1.

(iii) the disputing investor or the locally established enterprise have waived their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 13.2.

(iv) In case of indirect Investment, a disputing investor may submit a claim under Chapter IV only if both the disputing investor and the legal entity of any other territory through which the investment has been made, waive their right to initiate or continue any proceeding, including under any other bilateral or multilateral investment treaty, with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 13.2. Such waivers shall be provided in writing to the Defending Party by the disputing investor and the legal entity of any other territory through which the investment has been made.

(v) where the claim submitted by the disputing investor is for loss or damage to an interest in an enterprise established in the territory of the other Party that is a juridical person that the disputing investor owns or controls, that enterprise has waived its right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 13.2.

(vi) At least 90 days before submitting any claim to arbitration, the disputing investor has transmitted to the Defending Party a written notice of its intention to submit the claim to arbitration ("notice of arbitration"). The notice of arbitration shall:

a. attach the notice of dispute and the record of its transmission to the Defending Party with the details thereof;

b. provide the consent to arbitration by the disputing investor, or where applicable, by the locally established enterprise, in accordance with the procedures set out in this Agreement;

c. provide the waiver as required under Article 16.5 (iii) or (iv), as applicable; provided that a waiver from the enterprise under Article 16.5 (iii) or (iv) shall not be required where the Defending Party has deprived the disputing investor

of control of the enterprise;

d. specify the name of the arbitrator appointed by the disputing investor.

Article 17. Submission of Claim to Arbitration

17.1 A disputing investor who meets the conditions precedent provided for in Article 16 may submit the claim to arbitration under:

(a) The ICSID Convention, provided that both the Parties are full members of the Convention; or

(b) the Additional Facility Rules of ICSID, provided that either Party, but not both, is a member of the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

17.2 The applicable arbitration rules shall govern the arbitration except to the extent modified by this Chapter, and supplemented by any subsequent rules adopted by the Parties.

17.3 A claim is submitted to arbitration under this Chapter when

(a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID; or

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the Defending Party.

17.4 Delivery of the notice of dispute, the notice of arbitration and other documents to a Party shall be made to the Designated Representative for each Party.

Article 18. Consent to Arbitration

Each Party consents to the submission of a claim to arbitration in accordance with the terms of this Agreement.

Article 19. Appointment of Arbitrators

19.1 The arbitral Tribunal shall consist of three arbitrators with relevant expertise or experience in public international law, international trade and international investment law, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent of, and not be affiliated with or take instructions from a disputing party or the government of a Party with regard to trade and investment matters. Arbitrators shall not take instructions from any organisation, government or disputing party with regard to matters related to the dispute.

19.2 The arbitrators appointed by each party may be nationals of the Parties or of countries with which both Parties maintain diplomatic relations.

19.3 One arbitrator shall be appointed by each of the disputing parties and the third arbitrator ("Presiding Arbitrator") shall be appointed by agreement of the co-arbitrators and the disputing parties.

19.4 If a Tribunal has not been constituted within one hundred twenty (120) days from the date that a Claim is submitted to arbitration under this Article, the appointing authority under this Chapter shall be:

(a) in case of an arbitration submitted under the ICSID Convention or the ICSID Additional Facility Rules, the Secretary-General of ICSID;

(b) in case of an arbitration submitted under the UNICTRAL Rules, the Secretary-General of the Permanent Court of Arbitration;

Provided that if the appointing authority referred to in-sub paragraphs (a) or (b) is a national of a Party or a national of a non-Party that does not maintain diplomatic relations with either Party, or otherwise prevented from discharging the said function, the Deputy Secretary-General of the relevant centre or court shall be invited to make the appointment.

19.5 The appointing authority shall appoint in her/his discretion and after consultation with the disputing parties, the arbitrator or the arbitrators not yet appointed.

19.6 Subject to the rights of the disputing parties provided for in this Chapter to choose a national of each Party as an arbitrator, all arbitrators referred to under this Chapter shall be nationals of states having diplomatic relations with both Parties.

Article 20. Prevention of Conflict of Interest of Arbitrators and Challenges

20.1 Every arbitrator appointed to resolve disputes under this Agreement shall during the entire arbitration proceedings be impartial, independent and free of any actual or potential conflict of interest.

20.2 Upon nomination and, if appointed, every arbitrator shall, on an ongoing basis, disclose in writing any circumstances that may, in the eyes of the disputing parties, give rise to doubts as to her/his independence, impartiality, or freedom from conflicts of interest. This includes any relevant circumstances pertaining to the subject matter of the dispute that will create a conflict of interest, and to existing or past, direct or indirect, financial, personal, business, or professional relationships with any of the parties, legal counsel, representatives, witnesses, or coarbitrators. Such disclosure shall be made immediately upon the arbitrator acquiring knowledge of such circumstances, and shall be made to the co-arbitrators, the parties to the arbitration and the appointing authority, if any, making an appointment. Neither the ability of those individuals or entities to access this information independently, nor the availability of that information in the public domain, will relieve any arbitrator of his or her affirmative duty to make these disclosures. Doubts regarding whether disclosure is required shall be resolved in favour of such disclosure.

20.3 The arbitrators shall:

(a) have experience or expertise in public international law, international investment rules, or in dispute settlement derived from international investment agreements;

(b) be independent from the Parties and the disputing investor, and not be affiliated with or receive instructions from any of them;

(c) not take instructions from any organisation or government with regard to matters before the Tribunal for which they are appointed;

(d) avoid creating an appearance of bias and not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party, disputing party or any other person involved or participating in the proceeding, fear of criticism or financial, business, professional, family or social relationships or responsibilities;

(e) not, directly or indirectly, incur any obligation, or accept any benefit, enter into any relationship, or acquire any financial interest that would in any way interfere, or appear to interfere, with the proper performance of their duties, or that is likely to affect their impartiality;

(f) not use their position as a member of the Tribunal to advance any personal or private interests and avoid actions that may create the impression that others are in a special position to influence them;

(g) perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence; and

(h) avoid engaging in ex parte contacts concerning the proceeding; and

(i) consider only those issues raised in the proceeding and which are necessary for a decision or award and not delegate this duty to any other person.

20.4 A disputing party may challenge an arbitrator appointed under this Agreement:

(a) if facts or circumstances exist that may, in the eyes of the parties, give rise to justifiable doubts as to the arbitrator's independence, impartiality or freedom from conflicts of interest; or

(b) in the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of the arbitrator performing his or her functions,

Provided that no such challenge may be initiated after fifteen days of that party: (i) learning of the relevant facts or circumstances through a disclosure made under Article 20.2 by the arbitrator, or (ii) otherwise becoming aware of the relevant facts or circumstances relevant to a challenge under Article 20.4, whichever is later.

20.5 The notice of challenge shall be communicated to the disputing party, to the arbitrator who is challenged, to the other arbitrators and to the appointing authority under Article 19.4. The notice of challenge shall state the reasons for the

challenge.

20.6 When an arbitrator has been challenged by a disputing party, all disputing parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

20.7 If, within 15 days from the date of the notice of challenge, the disputing parties do not agree to the challenge or the challenged arbitrator does not withdraw, the disputing party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority as specified under Article 19.4.

20.8 The appointing authority as specified under Article 19.4 shall accept the challenge made under Article 20.4 if, even in the absence of actual bias, there are circumstances that would give rise to justifiable doubts as to the arbitrator's lack of independence, impartiality, freedom from conflicts of interest, or ability to perform his or her role, in the eyes of an objective third party.

20.9 In any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in this Agreement and the arbitration rules that were applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a disputing party to the arbitration had failed to exercise its right to appoint or to participate in the appointment.

20.10 If an arbitrator is replaced, the proceedings may resume at the stage where the arbitrator who was replaced ceased to perform his or her functions unless otherwise agreed by the disputing parties.

20.11 A justifiable doubt as to an arbitrator's independence or impartiality or freedom from conflicts of interest shall be deemed to exist on account of the following factors, including if:

(a) The arbitrator or her/his associates or relatives have an interest in the outcome of the particular arbitration;

(b) The arbitrator is or has been a legal representative/advisor of the appointing party or an affiliate of the appointing party in the preceding three (3) years prior to the commencement of arbitration;

(c) The arbitrator is a lawyer in the same law firm as the counsel to one of the parties;

(d) The arbitrator is acting concurrently with the lawyer or law firm of one of the parties in another dispute;

(e) The arbitrator's law firm is currently rendering or has rendered services to one of the parties or to an affiliate of one of the parties out of which such law firm derives financial interest;

(f) The arbitrator has received a full briefing of the merits or procedural aspects of the dispute from the appointing party or her/his counsel prior to her/his appointment;

(g) The arbitrator is a manager, director or member of the governing body, or has a similar controlling influence by virtue of shareholding or otherwise in one of the parties;

(h) The arbitrator has publicly advocated a fixed position regarding an issue on the case that is being arbitrated.

20.12 The Parties shall by mutual agreement and after completion of their respective procedures adopt a separate code of conduct for arbitrators to be applied in disputes arising out of this Agreement, such as the UNCITRAL Code of Conduct for Arbitrators for International Investment Dispute Resolutions (2023), which may replace or supplement the existing rules in application and may address topics such as disclosure obligations, the independence and impartiality of arbitrators and confidentiality.

Article 21. Conduct of Arbitral Proceedings

21.1 Unless otherwise agreed by the disputing parties, the Tribunal may determine a place for meetings and hearings and the legal seat of arbitration. In doing so, the Tribunal shall take into consideration the convenience of the disputing parties and the arbitrators, the location of the subject matter, the proximity of the evidence, and provided that if the determined location is in the territory of a non-Party, it shall be a non- Party with which both Parties have diplomatic relations.

21.2 When considering matters of evidence or production of documents, the Tribunal shall not have any powers to compel production of documents or the furnishing of information which the Defending Party claims are protected from disclosure under the rules on confidentiality or privilege under its law or in accordance with Article 33 (Essential Security Exceptions).

Article 22. Dismissal of Frivolous Claims

22.1 Without prejudice to a Tribunal's authority to address other objections, a Tribunal shall address and decide as a preliminary question any objection by the Defending Party that a claim submitted by the disputing investor is:

(a) not within the scope of the Tribunal's jurisdiction, or

(b) manifestly without legal merit or unfounded as a matter of law.

22.2 Such objection shall be submitted to the Tribunal as soon as possible after the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the Defending Party to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the Tribunal fixes for the Defending Party to submit its response to the amendment).

22.3 On receipt of an objection under this Article, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question and issue a decision or award on the objection, stating the grounds thereof. In deciding an objection under this Article, the Tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof). The Tribunal may also consider any relevant facts not in dispute.

22.4 The Tribunal shall issue an award under this Article no later than 150 days after the date of the receipt of the request under Article 22.2. However, if a Defending Party requests a hearing, the Tribunal may take an additional 30 days to issue the decision or award.

22.5 The Defending Party does not waive any objection as to competence or any argument on the merits merely because the Defending Party did or did not raise an objection or make use of the expedited procedure set out this Article.

22.6 When it decides on a preliminary objection by a Defending Party under this Article, the Tribunal may, if warranted, award to the prevailing Defending Party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether either the claim by the disputing investor or the objection by the Defending Party was frivolous, and shall provide the disputing parties a reasonable opportunity to present their cases.

Article 23. Transparency In Arbitral Proceedings

23.1 Subject to Article 33 (Essential Security Exceptions), applicable law of the defending party regarding protection of confidential information, and the mutual written agreement of the disputing parties, the Defending Party may make available, to the extent possible, to the public the following documents relating to a dispute under this Chapter:

a. the notice of dispute and the notice of arbitration;

b. pleadings and other written submissions on jurisdiction and the merits submitted to the Tribunal, including submissions by a Nondisputing Party;

c. Transcripts of hearings, where available; and

d. decisions, orders and awards issued by the Tribunal.

23.2 Hearings for the presentation of evidence or for oral argument ("hearings") shall, subject to the written consent of the Defending Party, and to the extent possible, be made public in accordance with the following provisions:

a. Where there is a need to protect confidential information or protect the safety of participants in the proceedings, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

b. The Tribunal shall make logistical arrangements to facilitate public access to hearings, including by organizing attendance through video links or such other means as it deems appropriate. However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

23.3 Subject to the mutual written agreement of the disputing parties, (i) an award of a Tribunal rendered under this Chapter shall be publicly available, subject to the redaction of confidential information; and (ii) where a Defending Party determines that it is in the public interest to do so and notifies the Tribunal of that determination, all other documents submitted to, or issued by, the Tribunal shall also be publicly available, subject to the redaction of confidential information.

Article 24. Burden of Proof and Governing Law

24.1 The disputing investor at all times bears the burden of establishing: (a) jurisdiction; (b) the existence of an obligation under Chapter II of this Agreement, other than the obligation under Article 11; (c) a breach of such obligation; (d) that the investment, or the investor with respect to its investment, has suffered actual and non-speculative losses as a result of the breach; and (e) that those losses were directly caused by the breach.

24.2 The governing law for interpretation of this Agreement by a Tribunal constituted under this Article shall be: (a) this Agreement; (b) the general principles of public international law as reflected in the Vienna Convention on the Law of Treaties, 1969 relating to the interpretation of treaties, including the presumption of consistency between international treaties to which the Parties are party; and (c) for matters relating to domestic law, the law of the Defending Party. For greater certainty, in determining matters relating to domestic law including the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of the Defending Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

Article 25. Joint Interpretations

25.1 Interpretations of specific provisions and decisions on application of this Agreement issued subsequently by the Parties in accordance with this Agreement shall be binding on tribunals established under this Chapter upon issuance of such interpretations or decisions.

25.2 In accordance with the Vienna Convention of the Law of Treaties, 1969 and customary international law, other evidence of the Parties subsequent agreement and practice regarding interpretation or application of this Agreement shall constitute authoritative interpretations of this Agreement and must be taken into account by tribunals under this Chapter.

Article 26. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless the disputing parties disapprove, a Tribunal may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety, technical or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

Article 27. Award

27.1 An award shall include a judgement as to whether there has been a breach by the Defending Party of any rights conferred under this Agreement in respect of the disputing investor and its investment and the legal basis and the reasons for its decisions.

27.2 The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both disputing parties to the arbitration.

27.3 A tribunal can only award monetary compensation for a breach of the obligations under Chapter II of the Agreement. Such compensation shall not be greater than an amount determined by the Tribunal with reference to actual loss suffered by the investor (excluding incidental and consequential damages including future profits, and assets excluded from the scope of this Agreement). For greater certainty, such compensation shall be reduced by any prior damages or compensation already provided by a Party. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure, or other mitigating factors. (10)

(10) Mitigating factors can include, compensation received by the investor from other sources, any unremedied harm or damage that the investor has caused to the environment or local community or other relevant considerations regarding the need to balance public interest and the interests of the investor.

27.4 The Tribunal may not award punitive or moral damages or any injunctive relief against either of the disputing parties under any circumstance.

Article 28. Finality and Enforcement of Awards

28.1 An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the

particular case and the tribunal must clearly state those limitations in the text of the award.

28.2 Subject to Article 28.3, a disputing party shall abide by and comply with an award without delay.

28.3 A disputing party shall not seek enforcement of a final award under the UNCITRAL Arbitration Rules until,

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

28.4 Each Party shall provide for the enforcement of an award in its territory in accordance with its law.

Article 29. Costs

The disputing parties shall share the costs of the arbitration, with arbitrator fees, expenses, allowances and other administrative costs. Each of the disputing parties shall also bear the cost of its representation in the arbitral proceedings. The Tribunal may, however, in its discretion direct that the entire costs or a higher proportion of costs shall be borne by one of the two disputing parties and this determination shall be final and binding on both disputing parties.

Article 30. Diplomatic Exchange between Parties

If a disputing investor has commenced a dispute against a Defending Party under this Chapter, the Non-disputing Party shall not give diplomatic protection, or bring an international claim, in respect of such dispute between one of its investors and the Defending Party, unless the Defending Party has failed to abide by and comply with an award or the decisions of its courts, as the case may be, in accordance with this Chapter and other applicable law regarding recognition and enforcement of foreign judgments and arbitral awards.

Chapter V. State-State Dispute Settlement

Article 31. Disputes between Parties

31.1 Disputes between the Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled amicably through consultation or negotiation, which may include the use of non-binding third-party mediation or other mechanisms. Such consultation or negotiation shall be initiated by delivering a notice to the other Party.

31.2 Unless the Parties agree to a longer period, the Parties shall, within 30 days of the notice, meet to consider the matter with a view to reaching a mutually satisfactory resolution.

31.3 If a dispute between the Parties cannot be settled within six months from the time the dispute arose, it shall upon the request of either Party be submitted to a Tribunal.

31.4 Such a Tribunal shall be constituted for each individual case in the following way: Within two months of the receipt of the request for arbitration, each Party shall appoint one member of the Tribunal. Those two members shall then select a national of a Non-Party with which both Parties maintain diplomatic relationswho, on approval by the two Parties, shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members. All arbitrators shall be nationals of states having diplomatic relations with both Parties.

31.5 If within the periods specified in Article 31.4 the necessary appointment(s) have not been made, either Party may, in the absence of any other agreement, invite the Secretary General of the Permanent Court of Arbitration to make any necessary appointment(s). If the Secretary General of the Permanent Court of Arbitration is a national of either Party or a national of a non-Party that does not maintain diplomatic relations with either Party or if he or she is otherwise prevented from discharging the said function, the Deputy Secretary General of the Permanent Court of Arbitration shall be invited to make the necessary appointment(s). If the Deputy Secretary General of the Permanent Court of Arbitration is a national of either Party or a national of a non-Party that does not maintain diplomatic relations with either Party or if he or she too is prevented from discharging the said function, the member of the Permanent Court of Arbitration next in seniority who is not a national of either Party nor a national of a non-Party that does not maintain diplomatic relations with either Party shall be invited to make the necessary appointment(s).

31.6 Subject to the rights of the Parties provided for in this section to choose a national of each Party as an arbitrator, all arbitrators referred to under this section shall be nationals of states having diplomatic relations with both Parties.

31.7 The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties.

31.8 The Parties to the arbitration shall share the costs of the arbitration, including the arbitrator fees, expenses, allowances and other administrative costs. Each Party shall bear the cost of its representation in the arbitral proceedings. The Tribunal may, however, in its discretion direct that the entire costs or a higher proportion of costs shall be borne by one of the two Parties and this determination shall be binding on both Parties.

31.9 The Tribunal shall decide all questions relating to its competence and, subject to any agreement between the Parties, determine its own procedure, taking into account the PCA Arbitration Rules 2012. (11)

(11) Neither Party shall invoke Article 26 of the PCA Arbitration Rules 2012, unless the Parties otherwise agree.

Chapter VI. Exceptions

Article 32. General Exceptions

32.1 Nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures of general applicability applied on a non-discriminatory basis that are necessary (12) to:

(12) In considering whether a measure is "necessary", the Tribunal shall take into account whether there was no less restrictive alternative measure reasonably available to the Party.

(i) protect public morals or maintaining public order;

(ii) protect human, animal or plant life or health;

(iii) ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(iv) protect and conserve the environment, including all living and non-living natural resources; or

(v) protect national treasures or monuments of artistic, cultural, historic or archaeological value.

32.2 Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by a central bank or monetary authority of a Party in pursuit of monetary and related credit policies or exchange rate policies. This paragraph is without prejudice to a Party's rights and obligations under Article 8 (Transfers).

32.3 Nothing in this Agreement shall affect the rights and obligations of Parties as members of the International Monetary Fund under the IMF Articles of Agreement, as applicable from time to time, including the use of exchange actions which are in conformity with the IMF Articles of Agreement. In case of any inconsistency between the provisions of this Agreement and the IMF Articles of Agreement, the latter shall prevail.

32.4 Nothing in this Agreement shall prevent the Parties from adopting or maintaining measures relating to financial services for prudential reasons, including:

a) the protection of investors, depositors, policy holders, policy claimants, as well as financial market participants or persons to whom a financial services supplier owes a fiduciary duty;

b) the maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers; or

c) ensuring the integrity and stability of the Party's financial system. Where the measures taken by a Party pursuant to paragraph 32.4 are not in conformity with this Agreement, they shall not be used as a means of avoiding the obligations of a Party under this Agreement.

Article 33. Essential Security Exceptions

Nothing in this Agreement shall be construed:

(a) To require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) To preclude a Party from applying measures that is considers necessary for the fulfilment of its obligations under the

United Nations Charter with respect to the maintenance or restoration of international peace or security, or for the protection of its own essential security interests, or in order to carry out obligations it has accepted for the purposes of maintaining international security.

Chapter VII. Final Provisions

Article 34. Relationship with other Treaties

34.1 This Agreement or any action taken hereunder shall not affect the rights and obligations of the Parties under any other Agreements to which they are Parties.

34.2 Any inconsistency, or question regarding the relationship between this Agreement and another bilateral agreement between the Parties, or a multilateral agreement to which both Parties are a party, shall be resolved in accordance with applicable provisions of the Vienna Convention on the Law of Treaties, 1969.

Article 35. Denial of Benefits

35.1 The benefits of this Agreement, including after the institution of arbitration proceedings in accordance with Chapter IV of this Agreement, shall not be available to:

(i) an investment or investor owned or controlled (13), directly or indirectly, by juridical entities or natural persons of a non-Party or of the denying Party; or

(13) For the purpose of Article 35.1, "owned" means having more than 50 percent of equity interest and "controlled" means the power to name a majority of directors or otherwise to legally direct actions.

(ii) an investment or investor that has been established or restructured or does not have substantial business activity or has otherwise acquired the nationality of a Party with the primary purpose of gaining access to the dispute resolution mechanisms provided in this Agreement.

35.2 The benefit under this Agreement shall not be extended to an investor of the other Party and to investments of that investor in case (i) a Specified Non-Party (14), or (ii) a natural person or an entity of a Specified Non-Party, has beneficial interest (15) in the investor or investment of the other Party.

(14) The Specified Non-Party means the Land Bordering countries of India.

15 For the purposes of Article 35.2 and 35.3, the term "beneficial interest'' shall mean any person who is acting alone or together with one or more persons, directly or indirectly, possesses or has financed the possession of, any of the following rights or entitlements in the relevant entity, namely: (i) holds more than ten percent of the investment; or (ii) holds more than ten percent of the voting rights; or (iii). has right to receive or participate in more than ten percent of the total distributable dividend, any other distribution or profit or economic interest in a financial year or (iv) has right to exercise control in any manner.

35.3 The benefit under this Agreement shall not be provided to the investor of the other Party and to investments of that investor, if an investment is routed through the territory of a non-Party or a Specified Non-Party, and a natural person or an entity of a Specified Non-Party, holds a beneficial interest in the entity through which the investment is routed.

Article 36. Consultations and Periodic Review

36.1 Either Party may request in writing and the other Party shall promptly agree to, consultations in good faith on any issue regarding the interpretation, application, implementation, execution or any other matter including, but not limited to:

(i) reviewing the implementation of this Agreement;

(ii) reviewing the interpretation or application of this Agreement;

(iii) exchanging legal information; and

(iv) addressing disputes arising under Chapter IV of this Agreementor any other disputes arising out of investment.

36.2 Further to consultations under this Article, the Parties may take any action as they may jointly decide, including making and adopting rules supplementing the applicable arbitral rules under Chapter IV or Chapter V of this Agreement, and issuing binding interpretations of this Agreement.

36.3 The Parties upon mutual consent shall meet every five years after the entry into force of this Agreement to consult and review the operation and effectiveness of this Agreement.

Article 37. Amendments

This Agreement may be amended at any time by the mutual written consent of the Parties. The amendments shall enter into force subject to the completion of the relevant legal procedures necessary for its entry into force. The amendments shall be binding on the tribunals constituted under Chapter IV or Chapter V of this Agreement, and a tribunal award must be consistent with all amendments to this Agreement.

Article Entry Into Force, Duration and Termination

38.1 The Parties shall notify each other in writing of the completion of their internal legal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force thirty (30) days after the date of receipt of the later notification regarding ratification.

38.2 This Agreement shall remain in force for a period of ten years. Thereafter, it shall continue to remain in force until and unless it is terminated as per Article 38.3.

38.3 This Agreement may be terminated any time after its entry into force if either Party gives to the other Party a prior notice in writing one year in advance stating its intention to terminate the Agreement. The Agreement shall stand terminated immediately after the expiry of the one year notice period.

38.4 In respect of Investments made prior to the date when the termination or the expiry of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a period of ten years.

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

Done at New Delhi on this 8th day of September in two originals each in the Hindi and English, all texts being equally authoritative.

In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Republic of India

NIRMALA SITHARAMAN

Minister of Finance

For the Government of the State of Israel

BEZALEL SMOTRICH

Minister of Finance

Annex. Essential Security Exceptions

The Parties confirm the following understanding with respect to interpretation and/or implementation of Article 33 of this Agreement:

For avoidance of doubt, for the purpose of this Agreement, where the Party asserts as a defence that conduct alleged to be a breach of its obligations under this Agreement is for the protection of its essential security interests protected by Article 33, any decision of such Party taken on such security considerations and its decision to invoke Article 33 at any time, whether before or after the commencement of arbitral proceedings shall be non-justiciable. It shall not be open to any arbitral tribunal constituted under Chapter IV or Chapter V of this Agreement to review any such decision, even where the

arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the Tribunal.