

# AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Arab Emirates and the Government of the Republic of Costa Rica, hereinafter referred to as the "Parties";

In its quest to create favorable conditions to encourage greater investment by investors of one Party in the territory of the other Party;

Recognizing that the promotion and protection of such investments seek to stimulate the flow of capital and technology and economic development; and therefore promoting sustainable development in both Parties;

Recognizing that the investments of investors of a Party in the territory of the other Party will be made within the framework of the laws and regulations of the Party hosting the investment;

Underlining the importance of strengthening their economic relations, while recognizing their interest in promoting bilateral trade and investment through the corresponding agreements;

Having resolved to conclude an agreement on the reciprocal promotion and protection of investments, hereinafter referred to as the "Agreement";

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement, and unless otherwise indicated:

1. "**Investor**" means,

(a) a natural person who has the nationality of a Party in accordance with its laws and regulations. The term "natural person" does not include the permanent resident of any Party; and

(b) legal persons, including corporations, companies, firms, partnerships, business associations and other similar organizations, incorporated or constituted under the laws and regulations of a Party, that have their headquarters and carry out real business activities in that Party, and that have established an investment in the territory of the other Party.

"**Investment**" means any type of asset owned or controlled by an investor, in accordance with the laws and regulations of the Party in whose territory the investment is made, which has the characteristics of an investment, including characteristics such as the commitment to capital or other resources, the expectation of obtaining profit or utilities, or assuming risk. The forms an investment can take include:

(a) movable and immovable property, as well as other related property rights such as mortgages, liens or pledges;

(b) shares, bonds, capital and other forms of participation in companies;

(c) credits or any other contractual obligation that has financial value;

(d) intellectual property rights recognized in accordance with the laws and regulations of the respective Party;

(e) rights to carry out economic and commercial activities, conferred by law or by contract, with the exception of natural resources. For greater certainty,

- i) in the case of the United Arab Emirates, natural resources will not be covered by this Agreement; and
- ii) in the case of Costa Rica, natural resources will be subject only to national laws and regulations, and a claim regarding natural resources will be resolved only in accordance with Costa Rica's internal procedures and not in accordance with Article 14 (Dispute Settlement between a Party and an Investor of the other Party).

Contracts with their own dispute resolution mechanisms relating to any right to engage in economic and commercial activities will not be covered by this Agreement. For greater certainty, the terms and conditions of any contract signed by a Party will govern the dispute; and a breach of such contract shall not be construed as a violation of this Agreement.

But investment does not mean:

(a) an order or sentence within a judicial or administrative process; and

(b) pecuniary claims derived solely from:

i) commercial contracts for the sale of goods or services by a national or legal person in the territory of a Party to a national or legal person in the territory of the other Party; or

ii) the granting of credit in relation to a commercial transaction, such as trade financing .

Any change in the way the assets are invested or reinvested does not affect their investment character, as long as that change is not contrary to the approvals or authorizations granted to the initially invested assets.

2. "**Party**" means any State, including local governments, for which this Agreement applies.

3. "**Territory**" means:

(a) With respect to the United Arab Emirates, the territory of the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises sovereign rights, in accordance with international law and law from the United Arab Emirates; including the Exclusive Economic Zone and the continent and the islands under its jurisdiction with respect to any activity carried out in its waters, seabed and subsoil in connection with the exploration or exploitation of natural resources under its law and international law; and

(b) With respect to Costa Rica, the territory of Costa Rica, its inland and territorial waters, including its soil and subsoil, the air space over them, the exclusive economic zone and the continental shelf, over which Costa Rica exercises its jurisdiction , sovereignty and sovereign rights in accordance with the provisions of international law and the laws and regulations of Costa Rica.

5. "**Free use currency**" means the Euro, the Dollars of the United States of America, the British Pound Sterling, the Yen of Japan and any currency that the International Monetary Fund determines from time to time to be free use currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendments thereto.

6. "**Claimant**" means an investor of a Party that is a party to a dispute regarding an investment with the other Party, pursuant to Article 14 (Dispute Settlement between a Party and an Investor of the other Party).

7. "**Defendant**" means the Party that is a party to an investment dispute pursuant to Article 14 (Dispute Settlement between a Party and an Investor of the other Party).

## **Article 2. Scope of the Agreement**

1. This Agreement will apply to investments made by investors of a Party in the territory of the other Party, accepted as such in accordance with its laws and regulations, made before or after the entry into force of this Agreement, but will not apply to any controversy regarding an investment that arises before the entry into force of this Agreement, or to any claim that was resolved before the entry into force of this Agreement.

2. For greater certainty, this Agreement only applies to the post-establishment stage of investments made by investors of one Party in the territory of the other Party.

3. Articles 5 (Most Favored Nation Treatment), 6 (National Treatment) and 8 (Dispute Treatment) shall not apply to:

(a) public procurement; or

(b) to subsidies or donations made by a Party, including government-backed loans, guarantees and insurance.

### **Article 3. Investment Promotion**

1. Each Party, to the extent possible, will promote the creation of conditions for investors of the other Party to make investments in its territory and will admit such investments in accordance with its laws and regulations.
2. For the purpose of promoting mutual investment flows, each Party shall seek, at the request of the other Party, to inform it about investment opportunities in its territory.

### **Article 4. Investment Protection**

1. Each Party shall accord fair and equitable treatment in its territory to the investments of investors of the other Party, in accordance with customary international law.
2. The concept of "fair and equitable treatment" does not require additional treatment or beyond that required by such a standard in customary international law, and does not create additional substantive rights. The obligation established in paragraph 1 to grant:  
  
"fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative litigation proceedings, in accordance with the principle of due process incorporated in the main legal systems of the world.
3. "Customary international law" results from a general and consistent practice of the States followed by them in the sense of a legal obligation.
4. A determination that another provision of this Agreement or a different international agreement has been violated does not establish that this article has been violated.

### **Article 5. Most Favored Nation Treatment**

1. Each Party shall grant, subject to its laws and regulations, investments of investors of the other Party treatment no less favorable than that accorded, in similar circumstances, to investments in its territory by investors of a third State, regarding the administration, maintenance, exploitation, use or disposition of your investment.
2. Without prejudice to other investment agreements that the Parties have with third States, before or after the entry into force of this Agreement, most-favored-nation treatment shall not apply to dispute settlement mechanisms such as those established in the Articles 13 (Settlement of Disputes between the Parties) and 14 (Settlement of Disputes between a Party and an Investor of the other Party) or that are provided in any other international treaty or trade agreement, and will only be interpreted as applicable to substantive issues in under Articles 4 to 9 (Investment Protection, Most Favored Nation Treatment, National Treatment, Expropriation, Treatment in Case of Dispute and Transfers). In this regard, for greater certainty, there will be no importation of more favorable protection derived from these other agreements.
3. Paragraphs 1 and 2 shall not be construed to oblige either Party to extend to investments of investors of the other Party the benefits of any treatment, preference or privileges granted to investments and investors of a third State. by virtue of your participation in any of the following:
  - (a) agreements relating to any existing or future customs unions, economic or monetary unions, free trade zones, regional economic organizations or similar international agreements;
  - (b) any international agreement or agreement totally or partially related to tax measures; or
  - (c) any bilateral investment agreement.

### **Article 6. National Treatment**

Each Party shall grant in its territory, subject to its laws and regulations, to investments of investors of the other Party a treatment no less favorable than that accorded, in similar circumstances, to investments in its territory of its own investors with regard to to the administration, maintenance, exploitation, use or disposal of your investment.

### **Article 7. Expropriation**

1. A Party shall not expropriate or nationalize (hereinafter "expropriation") an investment by an investor of the other Party, either directly or indirectly, except for a public purpose in accordance with its law; on a non-discriminatory basis; in

accordance with due process of law; and through prompt, adequate and effective payment of compensation.

2. The compensation referred to in paragraph 1 shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation has taken place ("date of expropriation"). Compensation will be paid without undue delay and will be freely transferable, and will include interest at a commercially reasonable rate for that currency, from the date of dispossession of the expropriated investment until the date of payment.

3. With respect to paragraphs 1 and 2, the Parties agree as follows:

(a) an act or series of acts of a Party may not constitute an expropriation unless they interfere with a tangible or intangible property right of an investment; and

(b) The determination of whether an act or series of acts of a Party, in a specific factual situation, constitutes an indirect expropriation under this Article, requires a factual investigation, case by case, that considers all the factors relevant to the investment, including:

(i) the economic impact of the governmental act, although the mere fact that an act or series of acts of a Party has an adverse effect on the economic value of an investment, by itself, does not establish that an indirect expropriation has occurred ;

(ii) the extent to which the governmental act interferes with determinable, reasonable and unequivocal expectations related to the existing investment; and

(iii) the nature of the governmental act, including its objectives and context; and

(c) except in exceptional circumstances, such as, for example, when an act or series of acts are extremely serious or disproportionate in light of their purpose or effect; Non-discriminatory regulatory acts of a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.

4. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, 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 TRIPS Agreement.

## **Article 8. Treatment In Case of Strife**

Each Party shall accord to investments of investors of the other Party treatment no less favorable than that accorded, in similar circumstances, to its own investments or to investments of any third State with regard to restitution, repair or compensation or other arrangement by losses suffered by investments in its territory due to armed conflicts or civil strife. The resulting payments will be freely transferable.

## **Article 9. Transfers**

1. Each Party shall allow transfers related to an investment covered by this Agreement to be made freely and without undue delay to and from its territory. Such transfers include:

(a) capital contributions;

(b) profits, dividends, capital gains, and the product of the sale or liquidation, total or partial of the investment;

(c) interest, royalty payments, administration expenses, technical assistance and other charges;

(d) payments made pursuant to a contract, including a loan contract;

(e) payments made pursuant to Article 7 (Expropriation) and 8 (Treatment in Case of Dispute); and

(f) payments derived from a controversy.

2. Each Party will allow transfers related to an investment covered by this Agreement to be made in a freely usable currency at the exchange rate prevailing in the market at the time of the transfer and in accordance with its laws and regulations.

3. Without prejudice to paragraphs 1 and 2, a Party may prevent a transfer from being made, through the fair, non-discriminatory and good faith application of its laws relating to:

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

(b) issue, trade or operations of securities, futures, options or derivatives;

(c) criminal or criminal offenses;

(d) financial reports or maintenance of transfer records when necessary to collaborate with the authorities responsible for compliance with the law or financial regulation; or

(e) guarantee of compliance with orders or judgments in judicial or administrative proceedings.

## **Article 10. Measures Related to the Environment, Health, Safety, Labor Rights and Others Regulatory Requirements**

Nothing in this Agreement shall be construed as an impediment for a Party to adopt, maintain or enforce any measure, otherwise compatible with this Agreement, that it considers appropriate to guarantee that investment activities in its territory are carried out by taking into account environmental, safety, labor or other regulatory objectives concerns, provided that such measures are consistent with this Agreement and provided that they do not constitute unjustified discrimination between investments or investors, as established and interpreted in applicable national laws and regulations.

## **Article 11. Corporate Social Responsibility**

Each Party will encourage legal persons operating within its territory or subject to its jurisdiction to voluntarily incorporate into its internal policies the internationally recognized standards of corporate social responsibility that have been approved by the Party. These principles refer to issues such as the environment, human rights, relations with local communities and the fight against corruption.

## **Article 12. Denial of Benefits**

1. A Party may deny the benefits of this Agreement to an investor of the other Party who is a legal person of that other Party and to the investments of said investor, if said company is owned or controlled by a legal entity or person of a third State and the Party denying it the benefits of this Agreement adopt or maintain measures in relation to said third State or a person of said third State, which prohibit transactions with that legal person or that would be violated or evaded if the benefits of the This Agreement will be granted to that legal person or to their investments.

2. A Party may deny the benefits of this Agreement to an investor of another Party who is a legal person of that other Party and to the investments of that investor, if the legal person does not have substantial commercial activities in the territory of the other Party and persons from a third State, or from the denying Party, own or control the legal entity.

3. Before denying benefits, the denying Party will notify the other Party.

## **Article 13. Settlement of Disputes between the Parties**

1. Disputes between the Parties regarding the interpretation or application of this Agreement shall be resolved to the extent possible through consultations and negotiations. In this sense, the Parties agree to hold direct objective consultations and negotiations to reach such an agreement.

2. If the controversy has not been resolved within a period of eight months from the date on which the matter was raised by any of the Parties, it may be presented at the request of either Party before an arbitral tribunal composed of three members.

3. Within a period of two months from the date of receipt of the request indicated in paragraph 2, each Party shall appoint an arbitrator, and these two arbitrators shall appoint, within a period of two months and with the approval of both Parties, a third-State national as President of the arbitral tribunal.

4. If within the periods specified in paragraph 3 the necessary appointments have not been made, any Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. In the event that he is unable to perform said function, the Vice President will be invited to make the necessary appointments. If the Vice President is a national of any of the parties or if he is also disqualified to perform said function, the longest-serving member of the International Court of Justice who is not a national of either Party will be invited to make the necessary appointments.

5. The arbitral tribunal shall make its decision by majority vote. Said decision shall be final and binding on both Parties. The

arbitral tribunal shall base its decision on the relevant provisions of this Agreement and in accordance with international law. Each Party shall bear the expenses resulting from its own member of the arbitral tribunal and its representation in the arbitration procedure; the expenses of the President and the remaining expenses shall be shared equally between the Parties. Unless the Parties agree otherwise, the arbitral tribunal shall establish its own rules of procedure, in consultation with the Parties.

## **Article 14. Dispute Settlement between a Party and an Investor from the other Party**

### **Consultations and negotiation**

1. An investment controversy that arises between an investor and a Party with respect to an obligation of Articles 4 to 9 (Investment Protection, Most Favored Nation Treatment, National Treatment, Expropriation, Dispute Treatment and Transfers) of the This Agreement will be resolved, to the extent possible, through consultation and negotiation.
2. To initiate consultations and negotiations, said investor shall notify the defendant of the investment dispute by submitting a notice of the dispute (notice of dispute) in writing. The notice of dispute shall include the name and address of the investor of the other Party filing the claim, detailed information on the factual and legal basis of the claim and proof that it is an investor of the other Party that owns and controls the entire investment.

### **Third party procedures**

3. In the event that an investment dispute cannot be resolved through consultations and negotiations in accordance with paragraph 1, within three months after the respondent receives notification of the dispute, it must submit to a third - party procedure such as conciliation or mediation before an authorized center of the Party complained against in the dispute.
4. For greater certainty, compliance with the requirements pursuant to paragraphs 1, 2 and 3 regarding consultation and negotiation and third-party procedures is mandatory and a condition precedent to the submission of the dispute to arbitration.

### **Submission of a claim to arbitration**

5. If the controversy referred to in paragraph 1 cannot be resolved amicably within six months from the beginning of the third party procedure referred to in paragraph 3 of this Article, which can be extended if the disputing parties If so agreed, the investor may submit a claim to arbitration.
6. At least 90 days before a claim is submitted to arbitration pursuant to paragraph 7, the claimant shall provide the respondent with written notice of its intention to submit the claim to arbitration (notice of intention). The notice of intention shall specify:
  - (a) the name and address of the complainant;
  - (b) for each claim, the provision of this Agreement allegedly violated;
  - (c) the legal and factual issues on which each claim is based;
  - (d) sufficient proof of the existence of the investment and the amount invested; and
  - (e) the requested repair and the approximate amount of the damages claimed.
7. The claimant may submit the claim referred to in paragraph 5 in accordance with:
  - (a) authorized arbitration centers in the territory of the Party in whose territory the investment has been admitted; or
  - (b) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), opened for signature in Washington on March 18, 1965, and the Procedural Rules Applicable to ICSID Arbitration Procedures, provided and when both the defendant and the non-disputing Party are parties to the ICSID Convention; or
  - (c) the ICSID Additional Facility Rules, provided that either Party is a party to the ICSID Convention.
8. For greater certainty, an investor of a Party may only arbitrate an investment dispute regarding the breach of the obligations of the other Party under Articles 4 to 9 (Investment Protection, Most Favored Nation Treatment, Treatment National, Expropriation, Treatment in Case of Dispute and Transfers} of this Agreement.
9. Once an investor has alleged a breach of an obligation under Articles 4 to 9 (Investment Protection, Most Favored Nation Treatment, National Treatment, Expropriation, Dispute Treatment and Transfers) of this Agreement in any proceeding

before a competent judicial or administrative court of the Party in whose territory the investment has been admitted, or in any of the arbitration mechanisms established in paragraph 7, the choice of procedure will be final and the investor may not submit the dispute to a forum different.

10. The arbitration rules applicable in accordance with paragraph 7, and which are in force on the date the claim has been submitted to arbitration pursuant to this Agreement, shall govern the arbitration except to the extent that is otherwise established in this Agreement.

11. The complainant shall provide, together with the notice of arbitration, the name of the appointing arbitrator or the consent for the ICSID Secretary-General to appoint such arbitrator.

12. At any stage of the procedure, the investor and the defendant can withdraw the case if they resolve the dispute.

13. The Parties shall refrain from resorting through diplomatic channels to matters related to controversies between a Party and an investor of the other Party, submitted to a judicial or administrative tribunal of the Party or to international arbitration in accordance with the provisions of this Agreement. .

14. For greater certainty, in the event of a dispute settlement process in relation to Article 4 (Investment Protection), the claimant must establish the existence of a rule under customary international law and the defendant's breach of that rule .

#### **Consent to arbitration and, conditions and limitations to the consent of each Party**

15. Each Party agrees to submit a claim to arbitration, pursuant to this Agreement.

16. No claim may be submitted to arbitration under this Agreement, if more than three years have elapsed from the date on which the plaintiff had or should have had knowledge of the alleged violation under Articles 4 to 9 (Investment Protection , Most Favored Nation Treatment, National Treatment, Expropriation, Treatment in Case of Dispute and Transfers) of this Agreement and knowledge that the plaintiff suffered loss or damage.

17. No claim may be submitted to arbitration under this Agreement unless the plaintiff consents in writing to arbitration and the notice of arbitration is accompanied by the plaintiff's waiver in writing of any right to initiate or continue any judicial or administrative in accordance with the legislation of any of the Parties or other dispute resolution processes, any process with respect to any measure that it alleges constitutes a breach pursuant to Articles 4 to 9 (Protection of Investments, Most Favored Nation Treatment, Treatment National, Expropriation, Treatment in case of Strife and Transfers) of this Agreement.

18. Without prejudice to paragraph 17, the plaintiff may initiate or continue an action requesting the application of precautionary measures of a suspensive, declaratory or extraordinary nature, and that does not imply the payment of monetary damages before a judicial or administrative court of the defendant. , provided that the action is filed for the sole purpose of preserving the rights and interests of the plaintiff during the waiting period for arbitration.

19. For greater certainty, no claim may be submitted to arbitration under this Agreement, if the investor has already alleged the same violation before a competent judicial or administrative court of the defendant, or before any other binding dispute resolution process, for adjudication or resolution.

#### **Selection of arbitrators**

20. Unless the corresponding parties agree otherwise, the arbitral tribunal shall be composed of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who will be the presiding arbitrator, will be appointed by agreement of the disputing parties.

21. The ICSID Secretary General shall serve as the authority to appoint arbitrators in arbitration proceedings pursuant to this Article. When an arbitral tribunal is not integrated within 90 days from the date the claim is submitted to arbitration, in accordance with this Agreement, the Secretary-General of ICSID, at the request of a corresponding party, shall designate its discretion, after consulting the corresponding parties, the arbitrator or arbitrators who have not yet been appointed, The Secretary General of ICSID shall not designate a national of either party as presiding arbitrator, unless the disputing parties agree otherwise.

22. The arbitrators must:

(a) have specialized experience or knowledge in public international law, international investment standards, or in the settlement of disputes arising from international investment agreements; and

(b) be independent of the Parties and the claimant, and not be affiliated nor receive instructions from any of them.

#### **Conducting the arbitration**

23. The disputing parties may agree to the legal venue where any arbitration is to be held in accordance with the applicable arbitration rules in accordance with paragraph 7. In the absence of agreement between the disputing parties, the arbitral tribunal shall determine said place in accordance with the rules. applicable arbitration, provided that the place is in the territory of a State that is part of the New York Convention.

24. After consulting the disputing parties, the arbitral tribunal may allow a person or entity that is not a disputing party and has a significant interest in the proceeding, to submit a brief on an issue within the scope of the dispute. In determining whether such filing is permitted, the arbitral tribunal shall consider, among other things, the extent to which:

(a) the presentation of the brief would assist the arbitral tribunal in determining a question of fact or law related to the procedure by providing a perspective, particular knowledge or a vision different from that of the disputing parties;

(b) the presentation of the brief would address an issue within the scope of the controversy.

The arbitral tribunal shall ensure that the presentation of the brief does not interrupt the procedure, does not unduly burden or unfairly harm any of the disputing parties, and that the disputing parties are given the opportunity to present their observations on the presentation of the brief.

25. Without prejudice to the power of the arbitral tribunal to hear other objections as preliminary matters, an arbitral tribunal shall hear and decide as a preliminary matter any objection by the defendant that, as a matter of law, the claim submitted is not a claim with respect to which can make a favorable award for the plaintiff.

(a) Said objection shall be submitted to the arbitral tribunal as soon as possible after the constitution of the arbitral tribunal, and in no case later than the date that the arbitral tribunal establishes for the defendant to present its answer to the demand or, in the case of a modification to the notice of arbitration, the date that the court sets for the defendant to present its response to the modification.

(b) At the moment an objection is received pursuant to this paragraph, the arbitral tribunal shall suspend any action on the merits of the dispute, establish a schedule for the consideration of the objection, which will be compatible with any schedule established for the consideration of any other preliminary matter, and will issue a decision or award on the objection, setting forth the reasons for them.

(c) In deciding on an objection pursuant to this paragraph, the arbitral tribunal shall accept as true the factual allegations presented by the plaintiff in order to support any claim that appears in the notice of arbitration (or any modification thereof). The arbitral tribunal may also consider any other relevant fact that is not controversial.

(d) The Respondent does not waive any objection with respect to competition or any substantive argument, simply because it has or has not raised an objection under this paragraph, or uses the expedited procedure set forth in paragraph 27.

26. In the event that the defendant so requests, within 45 days of the constitution of the arbitral tribunal, the arbitral tribunal shall decide, expeditiously, on an objection pursuant to paragraph 25 and any objection in the sense that the controversy is not within the jurisdiction of the arbitral tribunal. The arbitral tribunal shall suspend any action on the merits of the litigation and shall issue, no later than 150 days after the date of the request, a decision or award on said objection, setting forth their basis. However, if a disputing party requests a hearing, the arbitral tribunal may take an additional 30 days to issue the decision or award.

Regardless of whether a hearing has been requested, the arbitral tribunal may, demonstrating an extraordinary reason, delay the issuance of its decision or award for an additional brief period, which may not exceed 30 days.

27. When the arbitral tribunal decides on a defendant's objection in accordance with paragraphs 25 or 26, it may, if justified, grant the defending disputing party reasonable costs and attorney fees incurred in filing the objection. or oppose it. In determining whether such an award is warranted, the arbitral tribunal will consider whether the plaintiff's claim or the defendant's objection were frivolous, and will give the disputing parties a reasonable opportunity to comment.

28. The arbitral tribunal may, after granting each of the disputing parties an opportunity to submit observations, order an interim measure of protection to preserve the rights of a disputing party, or in order to ensure the full exercise of jurisdiction. of the tribunal, including an order to preserve the evidence in the possession or control of a disputing party, or to protect the jurisdiction of the arbitral tribunal. The arbitral tribunal may not order the embargo, or prevent the application of a measure that is considered a violation. For purposes of this paragraph, an order includes a recommendation.

29. In any arbitration conducted under this Agreement, at the request of any of the disputing parties, the arbitral tribunal, before issuing a decision or award on liability, shall communicate its proposed decision or award to the disputing parties. Within 60 days after communicating said proposed decision or award, the disputing parties may submit written comments



to the arbitral tribunal regarding any aspect of their proposed decision or award. The arbitral tribunal shall consider said comments and issue its decision or award no later than 45 days after the expiration of the 60-day period for submitting comments.

### **Transparency of arbitration proceedings**

30. Subject to the obligation to protect confidential information in accordance with paragraphs 32 and 33, the defendant, after receiving the following documents, will make them available to the public:

- (a) the notice of arbitration; and
- (b) the award.

31. The arbitral tribunal, by mutual agreement of both disputing parties, shall hold hearings open to the public and shall determine, in consultation with the disputing parties, the relevant logistical arrangements. However, any disputing party intending to use information listed as information in a hearing shall so inform the arbitral tribunal. The arbitral tribunal will make the pertinent arrangements to protect the information from its disclosure.

32. Nothing in this Agreement requires the defendant to make protected information available. Any protected information that is submitted to the arbitral tribunal will be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the arbitral tribunal shall disclose any protected information when the disputing party providing the information so clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information will clearly designate it at the time it is submitted to the arbitral tribunal;

(c) a disputing party, at the same time that it presents a document that contains information alleged to be protected information, will present a redacted version of the document that does not contain the information. Only the redacted version may be published if appropriate, and in accordance with article 31; and (d) the arbitral tribunal will decide on any objection of a disputing party in relation to the designation of the alleged information as protected information. If the arbitral tribunal determines that said information was not appropriately designated, the disputing party that submitted the information may:

(i) withdraw all or part of the presentation that contains such information; or

(ii) agree to resubmit complete and redacted documents, with the correct designations in accordance with the determination of the court and subparagraph (c).

In any case, the other disputing party shall, when necessary, resubmit complete and redacted documents, which omit the information withdrawn pursuant to subparagraph (i) by the disputing party that first submits the information or redesigns the information, consistent with the designation made pursuant to subparagraph (ii) of the disputing party that first submitted the information.

### **Applicable law and experts**

33. The arbitral tribunal shall decide the issues in dispute in accordance with this Agreement and with the applicable rules of international law.

34. A decision of the Parties declaring their interpretation of a provision of this Agreement will be binding on an arbitral tribunal, and any decision or award made by the arbitral tribunal must be consistent with that decision.

35. Without prejudice to the appointment of other types of experts when authorized by the applicable arbitration rules, the arbitral tribunal, at the request of a disputing party or on its own initiative unless the disputing parties do not accept it, may appoint one or more experts to report in writing any factual matter related to environmental, health, safety or other scientific matters that a disputing party has raised in a proceeding, according to the terms and conditions agreed by the disputing parties.

### **Awards**

36. The arbitral tribunal will decide the issues by the majority of the votes of all its members. The award of the arbitral tribunal shall be in writing and shall be signed by the members of the arbitral tribunal who have voted for it. Said award shall deal with all matters submitted to the arbitral tribunal, and shall indicate the reasons on which it is based. Any member of the arbitral tribunal may attach his individual opinion to the award, whether he disagrees with the majority or not, or a

statement of his dissent. The court, in its final award, will establish its conclusions of law and fact, together with the reasons for its decision. When a tribunal makes an unfavorable final award to the defendant, the tribunal may, provided it does not exceed the plaintiff's claim, grant, separately or in combination, only:

(a) pecuniary damages and the corresponding interests; and

(b) restitution of the property, in which case the award will provide that the defendant may pay pecuniary damages, plus the interest that proceeds instead of the restitution.

37. An arbitral tribunal may also award attorney's fees and costs in accordance with this Agreement and with the applicable arbitration rules.

38. An arbitral tribunal is not authorized to order the payment of punitive damages.

39. The award issued by an arbitral tribunal will be binding only on the disputing parties and only with respect to the specific case.

40. Subject to paragraph 41 and the review procedure applicable to a provisional award, the disputing party shall abide by and comply with the award without delay.

41. A disputing party may not request the enforcement of the final award until:

(a) in the case of a final award rendered in accordance with the ICSID Convention,

(i) 120 days have elapsed from the date the award was made and no disputing party has requested revision or annulment of the award; or

(ii) the review or cancellation procedures have been completed; and

(b) in the case of a final award rendered pursuant to the Rules of the CIAD Complementary Mechanism I, or the other rules selected under paragraph 7:

(i) 90 days have elapsed since the date the award was issued and no disputing party has initiated a procedure to review, revoke or annul it; or

(ii) a court has rejected or admitted a request for review, revocation or annulment of the award and this resolution cannot be appealed.

42. Each Party shall order the enforcement of an award in its territory.

43. The delivery of the notification and other documents to a Party shall be made to the place designated by the Party in Annex 1 of this Agreement.

## **Article 15. General Exceptions**

1. Nothing in this Agreement shall be construed to prevent the adoption or execution of measures of general application that a Party considers necessary to:

(a) protect public morals or maintain public order;

(b) protect human, animal or plant life and health;

(c) guarantee compliance with laws or regulations, which are not incompatible with the provisions of this Agreement, for the prevention of fraudulent or deceptive practices or to face the effects of a breach of a contract;

(d) guarantee compliance with laws or regulations to protect the privacy of individuals in relation to the treatment and dissemination of personal data and the protection of the confidentiality of individual records and accounts;

(e) guarantee security; and

(f) the protection and conservation of the environment, including all living and non-living natural resources.

2. None of the provisions of this Agreement shall be understood as a commitment by the Parties to protect investments established with capital or assets derived from illegal or fraudulent acts, as determined in accordance with due process of law.

3. Nothing in this Agreement shall apply to non-discriminatory measures of general application adopted by any public entity of any of the Parties in the application of related monetary and credit policies or exchange policies.

## **Article 16. Essential Security**

Nothing in this Agreement shall be construed to mean:

(a) compel a Party to provide or give access to information the disclosure of which it considers contrary to its essential security interests; or

(b) prevent a Party from applying measures it deems necessary to protect its essential security interests:

(i) relating to fissile materials or those that serve to manufacture them;

(ii) relating to the supply of services intended directly or indirectly to ensure the supply of the armed forces;

(iii) related to the trafficking of arms, ammunition and war material, and to all trade in other articles and material destined directly or indirectly to ensure the supply of the armed forces;

(iv) applied in times of war or in case of serious international tension; or

c) prevent a Party from taking measures in compliance with its obligations under the Charter of the United Nations for the maintenance of international peace and security

## **Article 17. Tax Measures**

Nothing in this Agreement shall apply to tax measures.

## **Article 18. Balance of Payments**

Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures in accordance with the laws and regulations of the Party with respect to payments or transfers and movements of capital:

(a) in case of existence or threat of serious external balance or financial difficulties; or

(b) in cases where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary or exchange policies in the Party in question.

## **Article 19. Dissemination of Information**

Nothing in this Agreement shall be construed as imposing on a Party an obligation to provide or give access to confidential information, the disclosure of which may constitute an obstacle to law enforcement or be otherwise contrary to the public interest, or may harm commercial interests. legitimate legal, public or private person.

## **Article 20. Contact Points**

In order to facilitate communications regarding this Agreement, the Parties establish the following contact points:

(a) for Costa Rica: the General Directorate of Foreign Trade of the Ministry of Foreign Trade; and

(b) for the United Arab Emirates: the Ministry of Finance, or its successors.

## **Article 21. Annex and Protocol**

The Annex and Protocol to this Agreement constitute an integral part of this Agreement.

## **Article 22. Amendments**

1. The Parties may agree in writing to any modification of this Agreement at any time after its entry into force.

2. Said amendment shall enter into force and shall be an integral part of this Agreement 30 days after receipt of the last

written notification from the Parties certifying that they have completed their respective applicable legal processes for its entry into force or on any other date that the Parties agree.

### **Article 23. Entry Into Force**

This Agreement will enter into force 30 days after receipt of the last written notification from the parties certifying that they have completed their respective applicable legal processes for its entry into force or on any other date that the Parties agree.

### **Article 24. Duration and Termination**

1. This Agreement will remain in force for ten years and thereafter will be deemed to have been automatically extended.
2. Notwithstanding the provisions of paragraph 1, this Agreement shall terminate 180 days after the date on which a Party notifies the other Party in writing that it wishes to terminate this Agreement or on any other date that the Parties agree.
3. With respect to investments made before the date on which the termination of this Agreement is effective, the provisions of this Agreement shall remain in force for a period of ten years from the date of its termination.

### **Article 25. Reservations**

This Agreement will not allow unilateral declarations or interpretative reservations.

### **Article 26. Authentic Texts**

The Arabic, English and Spanish texts of this Agreement are equally authentic. In case of divergence between these texts, the English text will prevail.

IN WITNESS WHEREOF the undersigned, duly authorized for the purposes by their respective Governments, have signed this Agreement in the English and Spanish languages.

The Arabic text of the Agreement will be signed on a date to be agreed by the Parties.

Done in duplicate in San José, on October 3, 2017.

For the Government of the Republic of Costa Rica

Alexander Mora Delgado

Minister for Foreign Trade

For the Government of United Arab Emirates

Mohammed Sharaf

Assistant Minister of Foreign Affairs and International Cooperation for Economic and Trade Affairs

## **APPENDIX 1. Notification of documents to a party**

### **Costa Rica:**

Notifications and other documents pursuant to Article 14 (Dispute Settlement between an Investor of one Party and the other Party) will be notified in Costa Rica by delivery to:

General Directorate of Foreign Trade

Ministry of Foreign Trade

Plaza Tempo, Escazu,

San Jose Costa Rica

**United Arab Emirates:**

Notifications and other documents pursuant to Article 14 (Dispute Settlement between an Investor of one Party and the other Party) will be notified in the United Arab Emirates by delivery to:

Ministry of Finance

Department of International Financial Relations

Abu Dhabi

United Arab Emirates

**Protocol to the agreement between the government of the united arab emirates and the government of the republic of costa rica for the reciprocal promotion and protection of investments**

At the time of signing the Agreement between the Government of the United Arab Emirates and the Government of the Republic of Costa Rica for the Promotion and Reciprocal Protection of Investments (hereinafter referred to as the "Agreement"), the undersigned have further agreed to the The following provisions will be considered an integral part of the Agreement.

With respect to paragraph 2 of Article 1, the Parties agree that a company is indirectly owned by an investor if it owns at least 50% or more of the capital stock and that a company is controlled by an investor if that investor has the power to appoint the majority of its directors or to legally direct its actions.

With respect to paragraph 2 of Article 1, the Parties agree that market participation, market access, expected profits and opportunities for profit are not, by themselves, investments.

With respect to paragraph 2 (e) of Article 1, the Parties agree that no provision of this Agreement shall be understood as a waiver by the Parties of any right or flexibilities regarding intellectual property rights derived from the TRIPS Agreement or any other related agreement with intellectual property rights provided that said intellectual property right is recognized in accordance with the national laws and regulations of the respective Party.

With respect to Article 2, the Parties agree that each Party will fulfill its commitment with respect to this Agreement. However, any breach of a contract cannot be considered a breach of the Agreement.

For greater certainty, with respect to Article 5, the Parties agree that this Article will not be understood or interpreted in a way that modifies the scope of the Agreement.

With respect to paragraph 3 (c) of Article 7, the Parties agree that the list of "legitimate public welfare objectives" in paragraph 3 (c) of Article 7 is not exhaustive.

Done in duplicate in San José, on October 3, 2017, in the Spanish and English languages each. The Arabic text will be signed on a date to be agreed by the Parties. As each text is equally authentic, in case of divergence between these texts, the English text shall prevail.

IN WITNESS WHEREOF the undersigned, duly authorized for the purposes by their respective Governments, have signed this Agreement.

For the Government of the Republic of Costa Rica

Alexander Mora Delgado

Minister for Foreign Trade

For the Government of the United Arab Emirates

Mohammed Sharaf

Assistant Minister of Foreign Affairs and International Cooperation for Economic and Trade Affairs