AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CABO VERDE AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the Republic of Cabo Verde and the Government of the Democratic Republic of São Tomé and Príncipe (hereinafter referred to as the "Contracting Parties")

DESIRING to create favorable conditions for an increased flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNIZING that the mutual promotion and protection of investments, under the terms of this Agreement, will contribute to stimulating private initiative and enhancing the well-being of both peoples;

AGREE as follows:

Article 1. Definitions

1. For the purposes of this Agreement:

a) The term "investment" includes all types of eligible assets invested by investors of one of the Contracting Parties in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, including in particular, but not exclusively:

i) Ownership of movable and immovable property, as well as any other real rights, including security interests such as mortgages and liens;

ii) Shares, quotas, or other forms of equity interest in a company;

iii) Credit claims or any other contractual rights of economic value;

iv) Industrial and intellectual property rights, in particular copyrights, patents, utility model patents, industrial designs, trademarks, trade names, technical processes, know-how, and clientele (goodwill);

v) Concessions and licenses of economic value granted under the law by administrative act or by contract, including concessions for the prospecting, exploration, cultivation, or exploitation of natural resources;

b) The term "income" means the amount generated by an investment, in particular, but not exclusively, profits, interest, capital gains, dividends, royalties, and fees;

c) The term "investor" means any natural or legal person of a Contracting Party who has made an investment in the territory of the other Contracting Party.

i) The term "natural person" means any individual who is a national of one of the Contracting Parties, in accordance with its laws.

ii) The term "legal entity" means, with respect to either Contracting Party, any legal entity incorporated or constituted in accordance with its laws, including commercial companies, enterprises, or associations, established under the law of one of the Contracting Parties and having its headquarters as well as effective economic activity in the territory of that same Contracting Party.

(d) The term "territory" means:

(i) For the Republic of Cabo Verde—the Cabo Verde archipelago situated off the west coast of Africa, and its internal waters, airspace, and territorial sea, as well as any other area over which, in accordance with Cape Verdean and international law, Cabo Verde exercises:

A) Sovereign rights of exploration, exploitation, conservation, and management of natural resources, living or non-living, of the seabed and subsoil and the waters overlying them; or

B) Jurisdiction with respect to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment.

(ii) For the Democratic Republic of São Tomé and Príncipe

A) All territories and islands that, in accordance with the laws of São Tomé and Príncipe, constitute the State of São Tomé and Príncipe

B) The territorial sea of São Tomé and Príncipe; and

C) Any area outside the territorial sea of São Tomé and Príncipe that, in accordance with international law, has been or may be designated, under the laws of São Tomé and Príncipe, as an area, including the continental shelf, in which São Tomé and Príncipe's rights regarding the sea, the seabed, and the subsoil, as well as their natural resources, apply.

2. Any change in the manner of utilization of the invested assets shall not affect their qualification as investments, as defined in this Agreement.

Article 2. Scope of the Agreement

This Agreement applies only to investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the host Contracting Party.

Article 3. Promotion and Protection of Investments

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

2. Each Contracting Party shall use its best efforts to grant, in accordance with its laws, the necessary authorizations for the realization of such investments and, where necessary, to secure licensing agreements and contracts for technical, commercial, or administrative assistance.

3. Investments approved under Article 2 shall enjoy fair and equitable protection under the terms of this Agreement

Article 4. Treatment of Investments

1. Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. No Contracting Party shall in any way subject the management, maintenance, use, enjoyment, or disposal of investments made in its territory by investors of the other Contracting Party to unjustified, arbitrary, or discriminatory measures.

2. Each Contracting Party shall accord, within its territory, to investors and to the investments and returns of investors of the other Contracting Party treatment no less favorable than that accorded to its own investors or to investors of third States.

3. The provisions of paragraph (2) do not require a Contracting Party to grant to investors of the other Contracting Party any type of treatment, preference, or privilege resulting from:

(a) Participation in a customs union, free trade area, common market, or other similar international agreement, or interim agreements leading to such a union, zone, or market of which one of the Contracting Parties is a member;

(b) An international agreement relating, in whole or in part, to matters of a fiscal nature, or any national legislation relating, in whole or in part, to matters of a fiscal nature;

(c) Special advantages for foreign development financial institutions operating in the territory of either Contracting Party for the sole purpose of development assistance, primarily through non-profit activities.

4. Each Contracting Party shall comply with the obligations arising from its legislation and this Agreement, which bind the

Contracting Party and its investors, as well as the investors of the other Contracting Party, in matters relating to investments.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflicts, revolution, a state of national emergency, insurrection, or revolt shall be accorded treatment no less favorable than that granted by the latter Contracting Party to the investments of its own investors or to investors of third States, with respect to restitution, indemnification, compensation, or other relevant matters. The resulting compensation shall be freely transferable at the exchange rate applicable on the date of transfer in accordance with the foreign exchange regulations in force.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of each Contracting Party who, in any of the situations mentioned in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisition of their property by the forces or authorities of the latter Contracting Party, acting within the scope of legal provisions relating to their powers, duties, and command structures; or

(b) Destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused by combat operations or justified by the exigencies of the situation or by the fulfillment of any legal obligation,

shall be granted restitution or adequate compensation, no less favorable than that which the latter Contracting Party grants to its own investors or to investors from any third State.

Article 6. Expropriation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to other measures having effects equivalent to expropriation or nationalization, except for public utility, in the manner provided by law without discrimination and subject to prompt compensation. Compensation shall be paid without delay, shall accrue interest at the usual commercial rate until the date of its settlement, and shall be prompt, effective, adequate, and freely transferable,

2. An investor affected by expropriation shall have the right, in accordance with the law of the expropriating Contracting Party, to have his or her case reviewed by a court or other independent and impartial body.

3. If a Contracting Party expropriates, nationalizes, or takes measures having an effect equivalent to nationalization or expropriation against the assets of a company incorporated under the laws in force in any part of its territory, in which investors of the other Contracting Party hold an interest, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation, as specified therein, to the investors of the other Contracting Party who hold such shares.

Article 7. Transfer of Investment Capital and of Returns

1. Each Contracting Party, in accordance with its law, shall guarantee to ‘investors of the other Contracting Party’ the free transfer of amounts related to investments and returns, including compensation paid pursuant to Articles 5 and 6 of this Agreement.

2. Transfers shall be made without delay, in convertible currency, at the market exchange rate applicable on the date of transfer.

3. In the absence of such a market exchange rate, the rate to be used shall be the most recent exchange rate applied to domestic investments or the most recent exchange rate for converting currency into Special Drawing Rights, whichever is more favorable to the investor. Notwithstanding the provisions of paragraph (1), a Contracting Party shall not require its investor to transfer any income, gains, profits, or any sums arising from investments made in the territory of the other Contracting Party or attributable to such investments, nor shall it penalize its investor for failing to make such a transfer.

Article 8. Settlement of Disputes between the Investor and a Contracting Party

1. Disputes arising between an investor of one Contracting Party and the other Contracting Party relating to an investment by the former in the territory of the latter shall be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be resolved through negotiations within six months, either party to the dispute may initiate legal

proceedings before the competent court of the Contracting Party that received the investment.

3. If the dispute regarding the amount of compensation resulting from expropriation, nationalization, or other measures having an effect equivalent to nationalization or expropriation mentioned in Article 6 cannot be resolved within six months after the interested investor has resorted to negotiation, as specified in paragraph 1 of this Article, it may be submitted to an international arbitral tribunal established by both Contracting Parties.

4. Neither Contracting Party may resort to diplomatic channels to resolve any matter related to the arbitration, unless the proceedings have already concluded and the Contracting Party has neither accepted nor complied with the decision.

5. The international arbitral tribunal referred to above shall be constituted as follows:

(a) Unless the disputing Parties decide otherwise, each Party shall appoint one arbitrator. The two arbitrators shall appoint the third arbitrator, who shall preside. The arbitrators shall be appointed within two months and the presiding arbitrator within four months from the date on which one of the parties notifies the other party of its submission of the dispute to arbitration;

(b) If the time limits referred to in paragraph 5(a) of this Article have not been met, either Party to the dispute may, in the absence of any agreement, request the President of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the appointments;

(c) The arbitral tribunal shall, subject to the provisions below, determine its own arbitration procedures in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded in Washington on March 18, 1965;

(d) The tribunal shall render its decision by a majority vote, which shall be final and binding on both parties;

(e) The arbitral tribunal shall state the reasons for its decision and explain it upon request by either party;

(f) Each party shall bear the costs of the arbitrator it has appointed and of its representation in the arbitral proceedings. The parties shall bear the expenses of the President in equal shares, as well as all other expenses. The arbitral tribunal may, however, decide that a larger proportion of the costs shall be borne by one of the parties, and such decision shall be binding on both parties.

6. The provisions of this Article shall not prevent the Contracting Parties from resorting to the procedures specified in Article 9 whenever the dispute concerns the interpretation or application of this Agreement

Article 9. Settlement of Disputes between the Parties

1. Disputes arising between the Contracting Parties regarding the interpretation or application of this Agreement shall, to the extent possible, be resolved through negotiations between the Governments of the two Contracting Parties.

2. If the Contracting Parties fail to reach an agreement within six months of the start of negotiations, the dispute shall be submitted to an arbitral tribunal at the request of either Contracting Party.

3. The arbitral tribunal shall be constituted for each individual case as follows: within two months of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator to the tribunal. The two arbitrators shall then select a national of a third State who, with the approval of both Contracting Parties, shall be appointed President of the tribunal. The President shall be appointed within two months of the date of appointment of the other two arbitrators.

4. If the necessary appointments are not made within the time limits set forth in paragraph 3 of this Article, each Contracting Party may, unless otherwise agreed, request the President of the International Court of Justice to make such appointments. If the President is unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If the Vice-President is a national of one of the Contracting Parties or is unable to act for any other reason, the decisions shall be made by the member of the International Court of Justice next in seniority, provided that he or she is not a national of either Contracting Party.

5. The arbitral tribunal shall decide by majority vote. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the arbitrator it is responsible for appointing and of its representation in the arbitral proceedings. The Contracting Parties shall bear the expenses of the President in equal shares, as well as all other expenses. The arbitral tribunal may, however, decide that a larger proportion of the costs shall be borne by one of the Contracting Parties, and such decision shall be binding on both Contracting Parties and enforced by them.

6. In all other respects, the arbitral tribunal shall determine its own rules of procedure.

Article 10. Subrogation

1. In the event that one of the Contracting Parties or the Agency designated by it makes payments to one of its investors pursuant to a guarantee provided for an investment made in the territory of the other Contracting Party, the latter shall recognize the transfer to the other Contracting Party of all rights and actions of the indemnified investor, and that the other Contracting Party or the Agency designated by it may exercise such rights and bring such actions by virtue of subrogation, on the same terms and conditions as the original holder.

2. Any payment made to its own investor by one of the Contracting Parties or by its designated Agency pursuant to paragraph 1 shall not affect that investor's right to bring a claim against the other Contracting Party in accordance with Article 8, provided that the exercise of that right does not overlap with or conflict with the exercise of a right by virtue of the subrogation provided for in that paragraph.

Article 11. Application of other Rules

1. If, in addition to this Agreement, the provisions of the domestic law of one of the Contracting Parties or the obligations arising from international law in force or that may come into force between the two Contracting Parties establish a general or special regime that grants investments made by investors of the other Contracting Party more favorable treatment than that provided for in this Agreement, such regime shall prevail over this Agreement, in whichever is more favorable.

2. Each Contracting Party shall, however, honor any obligation it has undertaken with respect to investments by investors of the other Contracting Party.

Article 12. Prohibitions and Restrictions

The provisions of this Agreement shall in no way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or to take any other measure intended to protect its essential security interests or to protect public health or prevent animal or plant diseases and pests.

Article 13. Final Provisions

1. This Agreement shall apply to all investments made before and after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with their respective laws and regulations. For the avoidance of doubt, it is hereby declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. The Contracting Parties shall promptly notify each other of the completion of their respective legal procedures required for the entry into force of this Agreement. The Agreement shall enter into force on the day following the receipt of the last notification.

3. Either Contracting Party may, upon mutual consent, request an amendment to this Agreement, provided that such amendment does not prejudice rights acquired or obligations assumed prior to the entry into force of the amendment.

4. This Agreement shall remain in force for a period of ten (10) years. Upon the expiration of that period, it shall remain in force for up to twelve (12) months from the date on which either Contracting Party notifies the other Contracting Party in writing of the termination of this Agreement.

5. With respect to investments approved and/or made prior to the date on which the notice of termination of this Agreement takes effect, the provisions of the preceding articles shall apply to such investments for an additional period of ten (10) years from that date or for any longer period provided for or agreed upon, by act or contract, for the benefit of the investor.

IN WITNESS THEREOF, the undersigned, duly authorized for that purpose, have signed this Agreement.

Done at New York, on September 27, 2019, in two original copies, in Portuguese, both texts being equally authentic.

For the Government of the Republic of Cabo Verde

Luis Filipe Lopes Tavares

Minister of Foreign Affairs and Communities For the Government of the Democratic Republic of São Tomé and Príncipe

Elsa Teixeira Pinto

Minister of Foreign Affairs, Cooperation, and Communities