Agreement between the Government of the Republic of Iraq and the Government of the United Arab Emirates on the Promotion and Protection of Investment

The Government of the Republic of Iraq and the Government of the United Arab Emirates (hereinafter referred to as the “Contracting Parties”),

Desiring to encourage and protect economic cooperation between their countries and to create the best conditions for its expansion, particularly with regard to capital investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of such investments will contribute to strengthening economic relations between them, thereby enhancing the prosperity of both Contracting Parties and increasing the scale of national development, and acknowledging the importance of providing effective means to enforce requirements and fulfill obligations related to investment under national law as well as through international commercial arbitration,

Desiring to achieve these objectives in a manner that protects health, safety, and the environment and promotes consumer protection,

The Parties have agreed as follows:

Article 1.

For the purposes of this agreement, the following terms and expressions shall have the meanings listed next to them:

1. "Investment": The use of any type of asset, whether before or after this Agreement enters into force, by a natural or legal person affiliated with one of the Contracting Parties in the territory of the other Contracting Party, in accordance its legislation, regardless of the legal form used, and in a manner that benefits the national economy of the host party to the investment; such assets include, but are not limited to, the following:

(a) Movable and immovable property or any other rights such as mortgages, debts, concessions, lease agreements, or undertakings and usufruct rights;

(b) Stocks, bonds, and debt securities and their returns, including returns resulting from speculation in shares of companies established in the territory of either Contracting Party.

(c) Government loans;

(d) Any economic performance having monetary value;

(e) turnkey contracts;

(f) Intangible rights: These include intellectual property rights registered with either contracting party, as well as commercial and industrial property rights such as copyright, authorship, patents, licenses, and trademarks industrial designs, technical processes, know-how, trade names, and commercial reputation;

(g) Business privileges and guarantees established by law, contract, or any other license granted in accordance with the law; in the case of the United Arab Emirates, natural resources are excluded from the provisions of this Agreement, and in the case of the Republic of Iraq, investment in the fields of oil and gas extraction and production is excluded.

2. Investment does not include commercial contracts for the sale of goods or services by a national or enterprise in the territory of one Contracting Party to an enterprise in the territory of the other Contracting Party, or the extension of credit related to a commercial transaction, such as trade financing. Any change in the form of the invested assets shall not affect their character as an investment.

3. The term “investor” means any natural or legal person of one of the contracting parties who invests their funds in the territory of the other Contracting Party.

(a) Natural person: A person who holds the nationality of that contracting party in accordance with its applicable laws and regulations;

(b) Legal Entity: Any legal entity, such as a company, institution, labor union, or any entity established in accordance with the laws and legislation of the contracting state and whose business operations are conducted within the territory of the Contracting Party.

4. "Income": Money derived from the investment, including interest, profits, and income from shares and bonds and proceeds arising from technical services or any other services, in addition to any compensation.

5. The term “territory” means, with respect to:

(a) “The Republic of Iraq”: its land, territorial waters, airspace, exclusive economic zones, and the continental shelf over which the Republic of Iraq exercises sovereign rights and jurisdiction in accordance with national legislation and international law.

(b) “The United Arab Emirates,” when used in its geographical sense, means the territories and islands belonging to the United Arab Emirates, which include the territorial sea, maritime zones, the exclusive economic zone, and theover which the United Arab Emirates exercises sovereign rights in accordance with its domestic laws and international law, with respect to the exploitation and exploration of natural resources located in the sea waters, the seabed, and the subsoil of these waters.

6. "Investment-Related Activities": These include the organization and operation of companies, branches, and commercial agencies for the purpose of implementing the investment project, borrowing funds, and purchasing foreign currency for imports necessary to implement this project, as well as the marketing of goods and services and the sale and transport of raw and manufactured materials, energy, fuel, and means of production.

7. "Right of Establishment": Permitting investments to enter the territory of the other Contracting Party in accordance with its laws.

8. "Host State": The Contracting Party in whose territory investment projects belonging to investors of the other Contracting Party are established.

9. "Freely Convertible Currency": A currency widely used to settle obligations arising from international transactions and widely traded in major international exchange markets.

Article 2.

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory in accordance with its legislation.

2. Each Contracting Party shall grant investors of the other Contracting Party access to investment-related activities in accordance with its legislation.

3. (a) Each Contracting Party shall ensure fair and equitable treatment of the investments of the other Contracting Party in accordance with national legislation, including protection and security in accordance with the minimum standards of customary international law. This standard does not entail any treatment beyond what is required by this standard nor does it create any additional rights.

(b) Fair and equitable treatment includes the non-denial of criminal, civil, or administrative justice and its procedures in accordance with the legal procedures in force in the host Party.

(c) Protection and security include the measures required by the minimum standards of customary international law.

4. Investors and their family members shall be subject to the applicable local laws regarding residence, entry, and exit.

5. Investors of either Contracting Party shall be subject to the applicable laws regarding the employment of local labor in investment projects.

6. Investors of either Contracting Party shall be subject to the applicable laws regarding the recruitment of senior staff, regardless of their nationality.

7. Insurance for the investment project shall be obtained from any insurance company affiliated with the Host State or any other state deemed appropriate by the Host State.

Article 3.

1. Each Contracting Party guarantees investors of the other Contracting Party treatment no less favorable than that accorded to investors of another state not party to this Agreement.

2. The provision of paragraph (First) of this Article shall not apply to:

(a) Taxes and duties;

(b) Privileges granted by one Contracting Party to investors of another State under free trade, common market, and economic union agreements concluded within regional economic organizations.

(c) Investment dispute settlement mechanisms provided for in other international agreements relating to investments and concluded by the relevant Contracting Party.

3. The privileges granted to the nationals and the State of the first Contracting Party under this Agreement do not include procedural and enforcement rights.

Article 4.

1. An investor of one Contracting Party shall enjoy treatment with the other Contracting Party that is no less favorable than that accorded to its own investors or to investors of any other State not party to this Agreement, provided that the investor's investments have suffered damage as a result of war, armed conflict, a state of public emergency, civil disobedience, or riots occurring within the territory of the host State.

2. The investor shall be compensated for damages incurred due to any of the causes set forth in the first paragraph of this Article with appropriate compensation.

Article 5.

1. An investment project in the territory of the Contracting Party shall enjoy the protection provided for under its national legislation.

2. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to expropriation or nationalization, whether directly or indirectly equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except by final judicial decision and with prompt and fair compensation.

3. Such compensation shall be calculated based on the fair market value of the investment immediately prior to the moment the decision to nationalize or expropriate was announced or became publicly known, and the compensation shall be determined in accordance with the agreed principles of valuation recognized as market value; if the market value cannot be easily determined, compensation shall be determined based on fair principles, taking into account the depreciation of the invested capital, the returned capital, the replacement value, and goodwill.

4. This fair market price shall be expressed in a freely convertible currency based on the prevailing market exchange rate for that currency at the time specified in paragraph 2 of this Article. The compensation shall also include interest at a commercial rate based on the market rate for the currency in question from the date of expropriation until the date of actual payment.

5. In the event that a Contracting Party nationalizes or expropriates an investment of a legal entity established or licensed under the law in force in its territory, and the other Contracting Party or affiliated investors in that entity, the Contracting Party shall ensure the payment of adequate, fair, and effective compensation, which shall be determined and paid in accordance with the provisions of paragraph 2 of this Article.

6. The provisions of paragraph 1 of this Article shall apply to current returns on the investment as well as in the event of liquidation and to the proceeds of liquidation.

7. An investor whose investments have been expropriated shall have the right to seek review through a competent judicial authority of the host Contracting State regarding his case and the valuation of the investments in accordance with the principles set forth in this Article.

Article 6.

1. The host State shall guarantee to investors of the other Contracting Party, in accordance with its national legislation and after payment of outstanding debts, the freedom to transfer the following:

(a) Interest and profits, including dividends and other financial payments;

(b) Proceeds arising from the disposal of the investor's intellectual property rights;

(c) Amounts of debt that are repaid periodically.

(d) The amount resulting from the disposal or liquidation of the investment project, in whole or in part, including capital gains derived from the invested capital itself.

(e) The amount of compensation resulting from the application of paragraph (II) of Article (4) and paragraph (III) of Article (5) of this Agreement.

2. Employees of the investment project who are nationals of either Party and others associated with the investment project may remit their salaries, compensation, and returns to their home countries in accordance with the national legislation of the host country.

3. The transfer provided for in paragraph (2) of this Article shall be made at the exchange rate prevailing on the day the transfer is made.

4. The host State may, if necessary and to protect the balance of payments, impose precautionary measures on the transfer process in accordance with the provisions of the International Monetary Fund Agreement.

Article 7.

If one of the Contracting Parties or one of its institutions provides a guarantee relating to non-commercial notifications regarding an investment made by one of its nationals who is an investor in the territory of the other Contracting Party and makes financial payments to the investor on the basis of such guarantee, the second Contracting Party shall recognize the subrogation of the first Contracting Party to the investor's rights, in whole or in part, in accordance with the provisions of this Agreement.

Article 8.

1. Any dispute arising between the Contracting Parties as a result of the interpretation or application of this Agreement shall be settled amicably and through conciliation via diplomatic channels.

2. In the event that the dispute is not settled within or after the lapse of one hundred and eighty (180) days from the date of submission by one of the Parties to the dispute to the other Contracting Party, either Contracting Party may refer the dispute to an arbitration panel consisting of three (3) arbitrators.

3. The arbitral tribunal shall be constituted within sixty (60) days of the request for arbitration. Each party shall appoint an arbitrator. The two appointed arbitrators shall then appoint the chairperson of the tribunal within ninety (90) days of their appointment.

4. If the Contracting Parties fail to agree on the formation of the arbitral tribunal, either of them may invite the President of the International Court of Justice in The Hague to appoint the chairperson of the arbitral tribunal; and if the President of the International Court of Justice is a national of one of the contracting parties or if, for any reason, it is impossible for him to make the appointment, then the request shall be submitted to the Vice-President of the Court; and if the Vice-President of the Court is a national of one of the Contracting Parties or if, for any reason, he is unable to make the appointment, then the most senior member of the Court who is not a national of either contracting party shall be the one to make the appointment.

5. The arbitral tribunal shall render its decisions by majority vote, and its decisions shall be binding; each Contracting Party shall bear the costs of arbitration and the attendance of its arbitrators at the hearings, each in respect of its own affairs, and the costs of the chairperson and any other costs shall be shared equally between the parties to the dispute.

Article 9.

1. Any dispute arising between one of the Contracting Parties and the investor regarding the other Contracting Party concerning the interpretation and implementation of the investment contract shall be settled through amicable means and conciliation.

2. In the event that the dispute is not settled after exhausting internal review procedures within (180) one hundred and eighty days from the date of submission of the written request for conciliation, either party to the dispute may resolve it through any of the following:

(a) the court of the host country of the investment; or

(b) the International Center for Settlement of Investment Disputes (ICSID) under the 1965 Washington Convention for the settlement of Investment Disputes between a State and a National of Another State, provided that both Contracting Parties are parties to it and in accordance with the Additional Facility established in the Annex to the Convention, if one of the parties is not a member thereof; or

(c) A special arbitral tribunal shall be constituted in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. To commence negotiations, the investor must submit a written notice to the relevant Contracting Party. The notice shall specify the following:

(a) The name and address of the investor party to the dispute,

(b) The provisions of this Agreement alleged to have been breached,

(c) The factual and legal grounds for the claim,

(d) The relief sought and the amount of damages claimed.

4. The arbitral tribunal shall render its decisions by majority vote; its decisions shall be binding, and the disputing parties shall bear the expenses of the arbitrator they appointed, the expenses of the chairperson, and other expenses equally.

5. The applicable law shall be the contract with respect to the rights and obligations of the parties, and for the sake of clarity, a breach of the contract does not constitute a breach of this Agreement, the investment license, or the rules of local law of the host country of the investment.

6. The choice of the method of dispute resolution shall be final.

7. The decision of the arbitral tribunal shall be final, and each contracting party guarantees its recognition and enforcement in accordance with its laws and applicable regulations.

8. The investor shall not be entitled to bring a claim against the host state if a judicial or arbitral award has become final on the subject of the dispute.

9. The investor shall not be entitled to bring a claim before a national court or any arbitral tribunal after the passage of five (5) years from the date of his knowledge or presumed knowledge of the subject of the dispute.

10. A foreign investor who holds the nationality of the host state shall be considered a citizen of that state for the purposes of applying the provisions of this Article.

Article 10.

Any contracting party may take any necessary measures to protect its security interests, including:

1. Measures necessary to prevent crime.

2. Measures necessary to prevent the smuggling and trade of arms, military ammunition, and war equipment, as well as transactions and materials and services intended to equip a military, paramilitary, or security organization, whether directly or indirectly.

3. Actions related to the implementation of national policies or international agreements regarding the non-proliferation of nuclear weapons or nuclear or non-nuclear explosive devices.

4. The fulfillment of its obligations under the United Nations Charter to maintain international peace and security.

5. Measures taken by either contracting party in times of war or emergency in accordance with the law.

6. Measures necessary to protect the environment from pollution.

The provisions of the investment contract concluded between the investor and the host state shall apply.

Article 12.

1. This Agreement applies to investments existing at the time of its entry into force as well as those established subsequently, but does not apply to investment disputes arising prior to the entry into force of this Agreement.

2. The application of the provisions of this Agreement shall not preclude the application of the host country's national legislation aimed at combating corruption and money laundering.

Article 13.

1. The benefits of this Agreement shall not be available to an investor of a Contracting Party if the primary purpose of acquiring the nationality of that Contracting Party is to obtain benefits under this Agreement that would not otherwise be available to the investor.

2. The benefits of this Agreement shall not be available to an investor who structures his investment through intermediary countries that do not maintain diplomatic relations with the host country and have no substantial commercial activities in that country.

3. For greater certainty, the benefits of this Agreement shall not be available to a third party.

4. Before denying the benefits of this Agreement, the Contracting Party denying such benefits shall notify the other Contracting Party.

Article 14.

The provisions of this Agreement shall not apply to any acts or events that occurred prior to its entry into force.

Article 15.

1. The Contracting Parties agree to hold immediate consultations, at either party's request, either to resolve any dispute related to this Agreement, to review any matter concerning the implementation or application of this Agreement, or to examine any other matters related to this Agreement, including dispute resolution.

2. Consultations shall be held between the contracting parties at a place and time agreed upon through diplomatic channels.

Article 16.

This Agreement shall enter into force thirty (30) days after the date of the exchange of official notes of approval by the Contracting Parties through diplomatic channels in accordance with the constitutional procedures followed by the Contracting Parties.

Article 17.

1. This Agreement shall remain in force for a period of ten (10) years, renewable for a period of five (5) years, unless one of the contracting parties decides to terminate it during a period not exceeding one (1) year prior to the expiration of its validity.

2. In the event that investment implementation begins prior to the termination date, existing investments shall remain governed by the provisions of this Agreement until the end of the project's term as agreed upon in the contract.

This Agreement was executed in Abu Dhabi on the 18th day of October in the year 2021 AD in two original copies in the Arabic language.

On behalf of the Government of the United Arab Emirates

On behalf of the Government of the Republic of Iraq