

AGREEMENT

BETWEEN

THE KINGDOM OF NORWAY

AND

.....

FOR THE

PROMOTION AND PROTECTION OF INVESTMENTS

The Kingdom of Norway and the....., hereinafter referred to as the "Parties";

*Desiring* to develop the economic cooperation between the Parties;

*Desiring* to encourage, create and maintain stable, equitable, favourable and transparent conditions for investors of one Party and their investments in the territory of the other Party on the basis of equality and mutual benefit and hence stimulate the flow of private capital and the economic development of both Parties;

*Desiring* to strengthen their economic and investment relations in accordance with the objective of sustainable development in its economic, social and environmental dimensions, and to promote investment in a manner aiming at high levels of environmental, health, safety and labour protection in accordance with relevant internationally recognized standards and agreements in these fields to which they are parties;

*Desiring* to contribute to a stable framework for investment in order to maximize effective and sustainable utilization of economic resources and improve living standards;

*Conscious* that the promotion and reciprocal protection of investments in accordance with this Agreement will stimulate business initiatives;

*Emphasising* the importance of corporate social responsibility;

*Recognising* that the development of economic and business ties can promote respect for internationally recognised labour rights;

*Reaffirming* their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including the principles set out in the United Nations Charter and the Universal Declaration of Human Rights;

*Recognising* that the promotion of sustainable investments is critical for the further development of national and global economies as well as for the pursuit of national and global objectives for sustainable development, and understanding that the promotion of such investments requires cooperative efforts of investors, host governments and home governments;

*Recognising* that the provisions of this agreement and provisions of international agreements relating to the environment shall be interpreted in a mutually supportive manner;

*Determined* to prevent and combat corruption, including bribery, in international trade and investment;

*Recognising* the basic principles of transparency, accountability and legitimacy for all participants in foreign investment processes;

Have agreed as follows:

SECTION 1 – SCOPE AND APPLICATION

ARTICLE [1]

*SCOPE*

1. This Agreement applies to measures adopted or maintained by a Party, after the entry into force of this Agreement, relating to investors of the other Party or to investments of investors of the other Party. Section 3 [Dispute Settlement Provisions] does not apply to disputes arising out of events that have occurred before the entry into force of this Agreement.
2. This Agreement applies to investments made prior to or after its entry into force.
3. This Agreement shall apply to:
  - a. the land territory, internal waters, and the territorial sea of a Party, and the airspace above the territory, in accordance with international law.
  - b. [the exclusive economic zone and the continental shelf of a Party, in accordance with international law]
4. This Agreement shall not apply to the Norwegian territory of Svalbard.

ARTICLE [2]

*DEFINITIONS*

1. "Investor" means:
  - i. a Party
  - ii. a natural person having the nationality of, or permanent residence in, a Party in accordance with its applicable law; or
  - iii. any entity established in accordance with, and recognised as a legal person by the law of a Party, and engaged in substantive business operations in the territory of that Party, irrespective of whether their liabilities are limited

and whether or not their activities are directed at profit that seeks to make, is making or has made an investment in the other Party.

2. "Investment" means:

Every kind of asset owned or controlled, directly or indirectly, by an investor of a Party, including, but not limited to:

- i. any entity established in accordance with, and recognised as a legal person by the law of a Party, whether or not their activities are directed at profit;
- ii. shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
- iii. bonds, debentures, loans and other forms of debt, and rights derived therefrom;
- iv. rights under contracts, including turnkey, construction, management, production or revenue-sharing;
- v. contracts;
- vi. claims to money and claims to performance;
- vii. intellectual property rights;
- viii. rights conferred pursuant to law or contract such as concessions, licenses, authorisations, and permits;
- ix. any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges

In order to qualify as an investment under this Agreement, an asset must have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

SECTION 2 – TREATMENT AND PROTECTION OF INVESTORS AND INVESTMENTS

ARTICLE [3]

*NATIONAL TREATMENT*

1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than the treatment it accords in like situations<sup>1</sup> to its own investors and their investments, with respect to the establishment, acquisition, expansion, management, conduct, operation and disposal of investments.
2. National treatment shall not apply to the reservations set out in Annex [A].

ARTICLE [4]

*MOST-FAVOURLED-NATION TREATMENT*

1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than the treatment it accords in like situations<sup>2</sup> to investors and their investments of any other State, subject to the country-specific reservations set out in Annex [B], with respect to the establishment, acquisition, expansion, management, conduct, operation and disposal of investments.
2. If a Party accords more favourable treatment to investors of any other State or their investments by virtue of a free trade agreement, customs union, bi- or multilateral social security coordination instruments or by labour market integration agreements, it shall not be obliged to accord such treatment to investors of the other Party or their investments. However, upon request from another Party, it shall afford adequate opportunity to negotiate the benefits granted therein.

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<sup>1</sup> The Parties agree/ are of the understanding that a measure applied by a government in pursuance of legitimate policy objectives of public interest such as the protection of public health, human rights, labour rights, safety and the environment, although having a different effect on an investment or investor of another Party, is not inconsistent with national treatment and most favoured nation treatment when justified by showing that it bears a reasonable relationship to rational policies not motivated by preference of domestic over foreign owned investment.

<sup>2</sup> See footnote 1.

3. For greater certainty, treatment referred to in paragraph 1 of this Article does not encompass dispute resolution mechanisms provided for in this Agreement or other International Agreements.

ARTICLE [5]

*GENERAL TREATMENT AND PROTECTION*

Each Party shall accord to investors of the other Party, and their investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

ARTICLE [6]

*EXPROPRIATION*

1. A Party shall not nationalize or expropriate an investment except:
  - i. for a public purpose,
  - ii. under due process of law,
  - iii. in a non-discriminatory manner, and
  - iv. against payment of prompt, adequate and effective compensation.
2. The preceding paragraph shall not, however, in any way impair the right of a Party to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.
3. Compensation pursuant to subparagraph 1 (iv) of this Article shall amount to the value that could be obtained by selling the investment on the market (market value) or, if this results in a higher compensation, the value of the return the investor would have obtained from the investment if it had not been nationalized or expropriated (exploitation value). Compensation based on the market value shall be determined on the basis of the amount that it is likely that ordinary buyers would have offered for the investment in a voluntary sale process. Compensation based on the exploitation value shall be determined on the basis of the likely exploitation of

the investment that has a probable foundation. When real estate is nationalized or expropriated, alterations of the value caused by the project that the investment is nationalized or expropriated to carry out, or caused by completed or planned investments or activities that have a direct connection with this project, shall not be taken into account in the determination of the compensation. Furthermore, alterations of the value caused by other investment that the expropriator has completed in the latest ten years before the main hearing of the trial or other proceedings for the determination of the compensation started, shall not be taken into account. Neither shall alterations of the value caused by the expropriator's plans for future investments be taken into account. If the expropriator is a public body, alterations of the value caused by public investments shall not be taken into account even if the investment is completed or planned by another public body than the expropriator.

4. The compensation pursuant to subparagraph 1(iv) and paragraph 3 of this Article shall be determined on the basis of the situation at the time when the decision of the authority mentioned in paragraph 6 of this Article, that sets the compensation, is handed down. If the nationalizing or expropriation of the investment is carried out before this point of time the compensation shall be determined on the basis of the situation at the time when the nationalizing or expropriation was carried out.
5. When determining the compensation pursuant to subparagraph 1(iv) and paragraph 3 of this Article loss caused by payment of the compensation later than at the point of time when the nationalizing or expropriation was carried out, shall be taken into account. The compensation shall be paid and made transferable, without delay, to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.
6. The investor affected shall have a right, under the law of the nationalizing or expropriating Party, to prompt review of its claim and of the determining the compensation, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.
7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements ('TRIPS Agreement').
8. [In rare circumstances paragraphs 1 to 6 of this Article apply correspondingly where a measure or series of measures, other than nationalizing or expropriating, by a Party has an effect equivalent to expropriation, in that it substantially 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. The determination of whether paragraphs 1 to 6 of this Article shall

be applied to a measure or series of measures by a Party, in a specific situation, requires a case-by-case, fact-based inquiry that considers, among other factors:

- 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 imply that paragraphs 1 to 6 of this Article apply;
- ii. the duration of the measure or series of measures by a Party;
- iii. the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and
- iv. the character of the measure or series of measures, notably their object, context and intent.

However, paragraphs 1 to 6 of this Article do not in any circumstances apply to a measure or a series of measures, other than nationalizing or expropriating, by a Party that are designed and applied to safeguard public interests, such as measures to meet health, human rights, resource management, safety or environmental concerns. ]

## ARTICLE [7]

### *COMPENSATION FOR LOSSES*

1. Investors whose investments have suffered losses due to armed conflict or civil strife, shall benefit from treatment in accordance with Article [National treatment] and Article [Most Favoured Nation treatment] as regards restitution, indemnification, compensation or any other settlement it adopts or maintains relating to such losses.
2. [Without prejudice to paragraph 1 of this Article, an investor of a Party who, in any of the situations referred to in that paragraph, suffers a loss in the area of another Party resulting from
  - i. requisitioning of its investment or part thereof by the latter's forces or authorities,or
  - ii. destruction of its investment or part thereof by the latter's forces or authorities,

which was not required by the necessity of the situation, shall be accorded restitution or compensation .]

ARTICLE [8]

*PERFORMANCE REQUIREMENTS*

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party:
  - i. [to export a given level or percentage of goods or services;]
  - ii. [to achieve a given level or percentage of domestic content;]
  - iii. [to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;]
  - iv. [to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;]
  - v. [to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;]
  - vi. [to transfer technology, a production process or other proprietary knowledge to a natural or legal person in its territory, except when the requirement]
    - (a) is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws, or
    - (b) concerns the transfer of intellectual property and is undertaken in a manner not inconsistent with the TRIPS Agreement;]
  - vii. [to locate its headquarters for a specific region or the world market in the territory of that Party;]

- viii. [to supply one or more of the goods that it produces or the services that it provides to a specific region or the world market exclusively from the territory of that Party;]
  - ix. [to achieve a given level or value of research and development in its territory; ]
  - x. [to hire a given level of nationals;]
  - xi. [to achieve a minimum level of domestic equity participation other than nominal qualifying shares for directors or incorporators of corporations.]
2. A measure that requires an investment to use a technology to meet generally applicable health, labour rights, human rights, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1 of this Article.
  3. Performance requirements, other than those referred to in paragraph 1 of this Article, shall only be applied in the public interest and shall be set forth in the national legislation of the Party imposing the requirement and published in the official gazette or otherwise be publicly available according to Article [Transparency] so that investors may become acquainted with them before the investment decision is made. All performance requirements shall be applied against all investors and their investments in a non-discriminatory, transparent and objective manner.
  4. A Party may not apply new performance requirements to existing investments, or amend existing performance requirements in a manner restricting the commercial freedom of the investor, except where such requirements are at the same time made applicable to all other investors in that Party.

ARTICLE [9]

*TRANSFER*

1. Each Party shall ensure that all payments relating to an investment of an investor of another Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:
  - i. the initial capital and additional amounts to maintain or increase an investment;
  - ii. profits, interest, dividends, capital gains, royalties, fees and returns in kind;
  - iii. payments made under a contract including a loan agreement;
  - iv. proceeds from the sale or liquidation of all or any part of an investment;
  - v. earnings and other remuneration of personnel engaged from abroad in connection with an investment.
2. Each Party shall further ensure that such transfers may be made in a freely convertible currency. Freely convertible currency means a currency that is widely traded in international foreign exchange markets and widely used in international transactions. Transfers shall be made at the market rate of exchange prevailing on the date of transfer.
3. It is understood that paragraphs 1 and 2 of this Article are without prejudice to the equitable, non-discriminatory and good faith application of measures:
  - i. to protect the rights of creditors,
  - ii. relating to or ensuring compliance with laws and regulations
    - (a) on the issuing, trading and dealing in securities, futures and derivatives,
    - (b) concerning reports or records of transfers, or
    - (c) concerning the payment of contributions or penalties.
    - (d) concerning financial security or any other equivalent regarding the prevention and remedying of environmental damage
  - iii. in connection with criminal offences and orders or judgments in administrative and adjudicatory proceedings

ARTICLE [10]

*KEY PERSONNEL*

1. Each Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, grant natural persons of the other Party, and key personnel who are employed by natural or juridical persons of the other Party, temporary entry and stay in its territory in order to engage in activities connected with an investment, including the provision of advice or key technical services.
2. Each Party shall, subject to its laws and regulations, permit natural or legal/juridical persons of another Party to employ, in connection with an investment, any key personnel of the natural or legal/juridical person's choice provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.
3. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2 of this Article. The spouse and minor children shall be admitted for the period of the stay of that person.

ARTICLE [11]

*NOT LOWERING STANDARDS*

1. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, human rights, safety or environmental measures or labour standards. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention of an investment of an investor.
2. If a Party considers that the other Party has offered such an encouragement, it may request consultations under Article [Joint Committee].

ARTICLE [12]

*RIGHT TO REGULATE*

Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity is undertaken in a manner sensitive to health, safety, human rights, labour rights, resource management or environmental concerns.

**SECTION 3 – DISPUTE SETTLEMENT PROVISIONS**

**ARTICLE [13]**

*APPLICABLE LAW AND RULES OF INTERPRETATION*

1. A Tribunal established under this Section shall make its award based on the provisions of this Agreement interpreted and applied in accordance with the rules of interpretation of international law.
2. An interpretation by the Joint Committee of a provision of this Agreement shall be binding on a Tribunal established under this Section.

A. DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

ARTICLE [14]

*DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY*

1. This Article applies to disputes between a Party and an investor of the other Party arising directly out of an investment [made by] [of] the latter that falls under the jurisdiction of the former. The dispute must be based on a claim that the Party has breached an obligation under this Agreement and that the investor of the other Party has incurred loss or damage by that breach.
2. Any dispute under this Article shall, if possible, be settled amicably. A Party and an investor of the other Party may agree to non-binding procedures including good offices, conciliation or mediation.
3. An investor of a Party alleging a breach of this Agreement shall submit a request for consultations in writing to the Party complained against. The consultations should commence within [60] days from the date of receipt of the request for consultations. If the dispute has not been settled within [six] months of the date of receipt of the request for consultations, each Party hereby consents to the submission of such dispute to arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 (ICSID Convention) in accordance with the provisions of this Article. The consent and the submission of the dispute by an investor under this Article shall be considered to satisfy the requirements of Article 25 of the ICSID Convention [ICSID Additional Facility Rules, with the approval of the Agreement by the Secretary General to ICSID].
4. An investor may not submit a dispute for arbitration if more than ten years have elapsed from the date the investor first acquired knowledge or should have acquired knowledge of the events giving rise to the claim.
5. An investor may not submit a claim to arbitration under this Article where the investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.
6. Each request for consultations and arbitration shall include information sufficient to present clearly the issues in dispute so as to allow the Parties and the public to become acquainted with them. The request for arbitration shall not expand the scope of the dispute or change the essence of the complaint. All requests for arbitration shall be made publicly available by the Parties and by ICSID.

7. Where an investor of a Party submits a claim to arbitration under this article and the Party complained against invokes Article [Prudential Regulation] as defence, the following provisions shall apply:
- i. The Party shall, within [120] days of the date the claim is submitted to arbitration under this article, submit a request in writing to the other Party, for a joint decision as to whether, and if so, to what extent, the exception under Article [Prudential Regulation] is a valid defence to the claim. The applicable time periods for the proceedings shall be suspended until such decision has been made. The decision shall be transmitted promptly to the disputing parties, and, if constituted, to the Tribunal.
  - ii. If the Parties conclude that Article [Prudential Regulation] is a valid defence for all parts of the claim in their entirety, the decision shall be binding on the Tribunal, which shall terminate the proceedings.
  - iii. If the Parties conclude that Article [Prudential Regulation] is a valid defence for only parts of the claim, the decision shall be binding on the Tribunal with respect to those parts of the claim, and the investor may proceed with any remaining parts of the claim.
  - iv. If the Parties, within [120] days of the date of receipt of the request for a decision as set out in subparagraph 7 (i) of this Article, have not made such a decision, the investor may proceed with its claim. In such cases, at the request of the Party invoking Article [Prudential Regulation] as defense, the Tribunal shall decide as a preliminary matter whether and to what extent Article [Prudential Regulation] is a valid defense for the claim.

## ARTICLE [15]

### *CONFLICT OF INTEREST AND CODE OF CONDUCT*

Members of the Tribunal shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration and any Code of Conduct adopted by the Joint Committee pursuant to Article [The Joint Committee]. If a disputing party considers that a member does not meet the requirements set out therein, that party may propose the disqualification of this member. The proposed disqualification shall be decided in line with the procedure of Article 58 of the ICSID Convention.

ARTICLE [16]

*ADDITIONAL PROCEDURAL ISSUES*

The Tribunal shall, as appropriate, take into account the principles of *res judicata* and *lis pendens*, in accordance with international law, to hinder abuse of rights under this agreement, as well as otherwise exercising sound judicial economy. If all parties to the dispute so agree, the Tribunal may consolidate claims.

ARTICLE [17]

*THE AWARD*

1. Any arbitral award rendered pursuant to Article [Disputes between a Party and an Investor of the other Party], shall be final and binding on the parties to the dispute.
2. Where a Tribunal makes an award against a Party pursuant to Article [Disputes between a Party and an Investor of the other Party], the Tribunal may only award monetary damages, including applicable interest, as well as costs in accordance with the applicable arbitration rules. Monetary damages shall not be greater than the loss suffered by the investor and shall be reduced by any prior compensation already provided. [A Tribunal may not award punitive damages.]
3. All awards and decisions of the Tribunal shall be made publicly available.
4. The costs of arbitration shall in principle be borne by the unsuccessful party to the dispute. However, the Tribunal may apportion such costs between the parties to the dispute if it determines that apportionment is reasonable, taking into account the circumstances of the case.

ARTICLE [18]

*PARTICIPATION IN THE PROCEEDINGS*

1. The Party complained against shall, within 30 days after receiving a request for arbitration, notify the other Party in writing and transmit a copy of the request.
2. The Tribunal shall give the other Party the opportunity to:

- i. be present at the substantive meetings of the Tribunal with the parties to the dispute proceeding, except for portions of such meetings when confidential information designated as such by the party that submitted it is discussed;
- ii. make a written submission prior to the first oral hearing; and
- iii. make an oral presentation to the Tribunal at the first oral hearing;
- iv. receive all documents submitted to, or issued by, the Tribunal, and all minutes or transcripts of hearings of the Tribunal, where available;

provided that it has informed the Tribunal no later than [30 days] after the establishment of the Tribunal of its desire to participate in the proceedings.

3. The Tribunal shall have the authority to accept and consider written *amicus curiae* submissions from a person or entity that is not a party to the dispute, provided that the Tribunal has determined that they are directly relevant to the factual and legal issues under consideration. The Tribunal shall ensure an opportunity for the parties to the dispute, and to the other Party, to submit comments on the written *amicus curiae* observations.
4. The Tribunal shall reflect submissions from the other Party and from *amicus curiae* in its award.

#### ARTICLE [19]

##### *TRANSPARENCY OF PROCEEDINGS*

1. Subject to paragraph 2 of this Article, all documents submitted to, or issued by, the Tribunal, and all minutes or transcripts of hearings of the Tribunal, where available, shall immediately be made publicly available by the Tribunal.
2. When submitting information to the Tribunal, a party to the dispute may designate specific information as confidential if the information
  - i. is not generally known or accessible to the public, and
  - ii. if disclosed would cause or threaten to cause prejudice to an essential interest of any individual or entity, or to the interest of a Party.

Such information shall be treated as confidential and shall only be made available to the parties to the dispute and to the other Party.

3. If the other Party objects to the designation of information as confidential, the Tribunal shall decide if the designation meets the above mentioned criteria. If the Tribunal considers that the information does not meet the criteria, the party submitting the information may
  - i. withdraw the information, or
  - ii. withdraw the designation of the information as confidential.
4. The Tribunal shall conduct hearings open to the public and shall determine, in consultation with the parties to the dispute, the appropriate logistical arrangements. Where there is a need to protect confidential information or the integrity of the arbitral process, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

B. DISPUTES BETWEEN THE PARTIES

ARTICLE [20]

*DISPUTES BETWEEN THE PARTIES*

1. Any dispute between the Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations in the Joint Committee.
2. If the Parties are unable to reach a mutually satisfactory resolution of a matter through consultations, they may have recourse to good offices or to mediation or conciliation under such rules and procedures as they may agree.
3. A Party may not initiate arbitration against the other Party under paragraph 4 of this Article unless the former Party has requested consultations and has afforded the other Party a consultation period of no less than 60 days after the date of the receipt of the request.
4. Either Party that has complied with the consultation requirement of paragraphs 2 and 3 of this Article, may submit a dispute between them as to whether one of them has acted in contravention of this Agreement to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, as in effect on the date of this Agreement.
5. The place of the arbitration proceedings shall be The Hague, The Netherlands.
6. The language to be used in the arbitral proceedings shall be English.
7. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration.
8. Nothing in the present Article impairs the right of the Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Agreement by any peaceful means of their own choice.

ARTICLE [21]

*TRANSPARENCY OF PROCEEDINGS*

1. Subject to paragraph 4 of this Article, all documents submitted to, or issued by, the Tribunal, and all minutes or transcripts of hearings of the Tribunal, where available, shall be made publicly available by the International Bureau of the Permanent Court of Arbitrations as soon as possible..
2. The Tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. Where there is a need to protect confidential information or the integrity of the arbitral process, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.
3. The Tribunal shall have the authority to accept and consider written *amicus curiae* submissions from a person or entity that is not a Party, provided that the Tribunal has determined that they are directly relevant to the factual and legal issues under consideration. The Tribunal shall ensure an opportunity for the Parties to submit comments on the written *amicus curiae* observations.
4. When submitting information to the Tribunal, a Party may designate specific information as confidential if the information
  - i. is not generally known or accessible to the public, and
  - ii. if disclosed would cause or threaten to cause prejudice to an essential interest of any individual or entity, or to the interest of a Party
5. If the other Party objects to the designation of information as confidential, the Tribunal shall decide if the designation meets the above mentioned criteria. If the Tribunal considers that the information does not meet the criteria, the Party submitting the information may
  - i. withdraw the information, or
  - ii. withdraw the designation of the information as confidential

**C. SUBROGATION**

ARTICLE [22]

*SUBROGATION*

1. If the investments of an investor are insured against non-commercial risks, any subrogation of the claims of the investor pursuant to this Agreement shall be recognized by the other Party.
2. Disputes between a Party and an insurer shall be settled in accordance with the provisions of [Annex C] of this Agreement.

SECTION 4 - INSTITUTIONAL PROVISIONS

ARTICLE [23]

*THE JOINT COMMITTEE*

1. The Parties hereby establish a Joint Committee composed of representatives of the Parties.
2. The Joint Committee shall meet whenever necessary. Each Party may request at any time, through a notice in writing to the other Party, that a meeting of the Joint Committee be held. The request shall provide sufficient information to understand the basis for the request, including, where relevant, identification of issues in dispute. Such a meeting shall take place within 60 days of receipt of the request, unless the Parties agree otherwise.
3. The Joint Committee shall:
  - i. supervise the implementation of this Agreement;
  - ii. in accordance with Article [Disputes between the Parties], endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement;
  - iii. review the possibility of further removal of barriers to investment;
  - iv. where relevant, suggest to the Parties ways to enhance and promote investment action;
  - v. review investments covered by this Agreement;
  - vi. review case-law of investment arbitration tribunals relevant to the implementation of this Agreement;
  - vii. oversee the further elaboration of this Agreement;
  - viii. where relevant, discuss issues related to corporate social responsibility, the preservation of the environment, public health and safety, the goal of sustainable development, anticorruption, employment and human rights, and
  - ix. consider any other matter that may affect the operation of this Agreement

4. Where appropriate, the Joint Committee may:
  - i. decide to amend the Agreement, as set forth in Article [Amendments];
  - ii. interpret this Agreement, bearing in mind that this competence shall not be used to undermine the amendment provisions of Article [Amendments]. The Joint Committee should refrain from adopting interpretations of provisions already submitted to a Tribunal in a dispute between a Party and an Investor of the other Party; and
  - iii. on request of a Party, decide whether, and if so, to what extent, the exception under Article [Prudential Regulation] is a valid defense for a claim in a specific case submitted to arbitration under Article [Disputes Between a Party and an Investor of the Other Party]
5. The Joint Committee may decide to adopt a Code of Conduct for members of the Tribunal in disputes under Section 3 A.
6. The Joint Committee may take decisions as provided for in this Agreement. On other matters the Joint Committee may make recommendations. Decisions and recommendations shall be made by consensus.
7. The Joint Committee shall establish its rules of procedure.

SECTION 5 – EXCEPTIONS

ARTICLE [24]

*GENERAL EXCEPTIONS*

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international [trade or] investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary<sup>3</sup>:

- i. to protect public morals or to maintain public order;<sup>4</sup>
- ii. to protect human, animal or plant life or health;
- iii. to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- iv. for the protection of national treasures of artistic, historic or archaeological value; or
- v. for the protection of the environment

ARTICLE [25]

*PRUDENTIAL REGULATION*

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, to ensure the integrity and stability of the financial system, or to enhance market competition, including ownership control and limitation.

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<sup>3</sup> For greater certainty, the concept of "necessity" in this Article shall include measures taken by a Party as provided for by the precautionary principle, including the principle of precautionary action.

<sup>4</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society

Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

ARTICLE [26]

*SECURITY EXCEPTIONS*

Nothing in this Agreement shall be construed:

- i. to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- ii. to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (a) relating to investment in defence and security sector[s];
  - (b) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (c) taken in time of war or other emergency in international relations; or
- iii. to prevent any Party from taking any action in pursuance of its obligations for the maintenance of international peace and security, including under the United Nations Charter.

ARTICLE [27]

*CULTURAL EXCEPTIONS*

The provisions of this Agreement shall not apply to a Party's laws and measures specifically designed to preserve and promote linguistic and cultural diversity, cultural and audiovisual policy, as well as rights and obligations of the Parties under international agreements and national laws and measures relating to copyright and related rights.

ARTICLE [28]

*TAXATION*

1. Nothing in this Agreement shall affect the imposition, enforcement or collection of direct or indirect taxes imposed by a Party.
2. Nothing in this Agreement shall create any right to any benefit under an agreement for the avoidance of double taxation concluded by a Party.
3. Any dispute as to whether paragraphs 1 and 2 of this Article apply, may only be brought before the Competent Tax Authorities of the Parties according to the procedure of Article [The Joint Committee] or the national courts or appeal organs of a Party, and shall not be covered by Section [Dispute Settlement Provisions] of this Agreement.
4. If the Competent Tax Authority of one of the Parties, after the procedure of Article [The Joint Committee] has been completed, does not agree that paragraph 1 of this Article apply, but takes the position that the case should be considered under Article [Expropriation], then the dispute shall be covered by [Section [Dispute Settlement Provisions] of this Agreement.]

SECTION 6 – FINAL PROVISIONS

ARTICLE [29]

*REGIONAL AND LOCAL GOVERNMENT*

Each Party is fully responsible for the observance of all obligations and commitments under this Agreement by its respective regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

ARTICLE [30]

*TRANSPARENCY*

1. The Parties shall publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings of general application—as well as their respective international agreements that may affect the operation of this Agreement.
2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1 of this Article.

ARTICLE [31]

*CORPORATE SOCIAL RESPONSIBILITY*

The Parties agree to encourage investors to conduct their investment activities in compliance with the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and to participate in the United Nations Global Compact.

ARTICLE [32]

*AMENDMENTS*

1. Amendments to this Agreement shall be decided by the Joint Committee.
2. Amendments shall enter into force on the first day of the third month following the date of receipt of the last notification by a Party informing the other Party that its internal constitutional requirements have been fulfilled.

ARTICLE [33]

*ENTRY INTO FORCE*

1. This Agreement is subject to ratification, acceptance or approval.
2. This Agreement shall enter into force on the first day of the third month following the receipt of the last instrument of ratification, acceptance or approval.

ARTICLE [34]

*DURATION AND TERMINATION*

1. Each Party to this Agreement may, by means of a written notification to the other Party, terminate this Agreement. The termination shall take effect on the first day of the [X] month after the date on which the notification was received by the other Party.
2. In respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall remain in force for a further period of fifteen years from that date.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done at ....., this .... of ..... 20xx in duplicate [in the English, Norwegian and [XXX]] languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the  
Kingdom of Norway

For the

ANNEX A

*RESERVATIONS/EXCEPTIONS FROM NATIONAL TREATMENT*

1. A Party may, at any time, remove in whole or in part its reservations set out in this Annex by written notification to the other Party.
2. A Party may, at any time, incorporate a new reservation into this Annex, or amend an existing reservation, provided that the Party has offered compensatory adjustments that maintain the overall level of commitments of that Party under this Agreement as it existed immediately prior to the modification:
  - i. A Party shall notify its intent to modify its list of reservations to the other Party and at the same time suggest appropriate compensatory adjustments. The Joint Committee shall immediately be seized of the matter. Where the Joint Committee approves the modifications, they shall enter into force [3 months] after the decision by the Joint Committee.
  - ii. Where the Joint Committee has not made a decision within [6 months] of receipt of the notification by the modifying Party, the modification shall take effect. In such circumstances, the other Party may withdraw concessions equivalent to the modification within [6 months] thereafter.
3. A modification pursuant to this Article may not impose on an investor a requirement to sell or otherwise dispose of an investment in the territory of the Party.

ANNEX B

*EXCEPTIONS/RESERVATIONS FROM MOST FAVOURED NATION TREATMENT*

1. Article [Most-Favoured-Nations] shall not apply to treatment accorded under bilateral agreements signed by Norway prior to 1997 nor to treatment accorded under the EFTA- Singapore Free Trade Agreement signed 26 June 2002.

**[Procedures for amendments/modification must be prepared]**

ANNEX C

*DISPUTES BETWEEN A CONTRACTING PARTY AND AN INSURER*

*IN ACCORDANCE WITH ARTICLE [SUBROGATION] OF THIS AGREEMENT*

1. This Annex applies to legal disputes between an insurer and a Contracting Party, based on Article [Subrogation] of this Agreement, provided that the insurer does not have legal standing under Article 25(1) of the ICSID Convention.
2. Each Party hereby consents to the submission by an insurer of a dispute, in accordance with Article [Subrogation] of this Agreement and Paragraph 1 of this Annex, to international arbitration under the UNCITRAL Arbitration Rules (“UNCITRAL”).
3. The consent under Paragraph 2 of this Article and the submission of the dispute by an insurer shall be considered to satisfy the requirements of Article 1 of UNCITRAL.
4. Any arbitral award rendered pursuant to this Annex, shall be final and binding on the parties to the dispute and will be recognised and enforced in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958.
5. Articles [all regarding disputes between a Party and an Investor of the other Party] of this Agreement and the procedural rules of ICSID shall apply to disputes under this Annex *mutatis mutandis*.

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