Protocol

to the

Digitial Economy Partnership Agreement

The Government of the Republic of Chile, the Government of New Zealand, and the Government of the Republic of Singapore (hereinafter referred to collectively as the "Parties" and singularly as a "Party"),

RECALLING the Digital Economy Partnership Agreement (hereinafter referred to as the "Agreement") signed between the Republic of Chile, New Zealand, and the Republic of Singapore on 6 November 2020;

SEEKING to enhance certainty of the Agreement;

RECALLING that Article 12.2 (Functions of the Joint Committee) of the Agreement provides for the Joint Committee established by the Parties to consider any matter relating to the implementation or operation of the Agreement, and consider any proposal to amend or modify the Agreement, among other functions; and

SEEKING to reflect the decision adopted by the Joint Committee on this Protocol on 24 May 2023,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 – Article 1.1 (Scope) of the Agreement

Article 1.1 (Scope) of the Agreement shall be superseded by the following:

"**Article 1.1: Scope and General Provisions**

1. This Agreement shall apply to measures adopted or maintained by a Party that affect trade in the digital economy.

2. This Agreement shall not apply:

(a) to a service supplied in the exercise of governmental authority;

(b) except for Article 2.7 (Electronic Payments), to financial services;

(c) except for Article 8.3 (Government Procurement), to government procurement; or

(d) except for Article 9.5 (Open Government Data), to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

3. Article 3.3 (Non-Discriminatory Treatment of Digital Products), Article 3.4 (Information and Communication Technology Products that Use Cryptography), Article 4.3 (Cross-Border Transfer of Information by Electronic Means), and Article 4.4 (Location of Computing Facilities) shall not apply to measures adopted or maintained by a Party that it deems necessary to protect or promote

indigenous rights, interests, duties, and responsibilities[a] in respect of trade in the digital economy,[b] provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of another Party or a disguised restriction on trade in the digital economy."

"[a] For greater certainty, for New Zealand, indigenous rights, interests, duties and responsibilities include those relating to mātauranga Māori."

"[b] In the case of New Zealand, the measures referred to in this paragraph include the fulfilment of New Zealand's obligations under Te Tiriti o Waitangi/the Treaty of Waitangi. The Parties agree that the interpretation of Te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement."

ARTICLE 2 – Article 3.1 (Definitions) of the Agreement

Article 3.1 (Definitions) of the Agreement shall be superseded by the following:

"**Article 3.1: Definitions**

For the purposes of this Module:

broadcasting means the transmission of signs or signals via any technology for the reception and / or display of aural and / or visual programme signals by all or part of the domestic public;

digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;[9, 10] and

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means."

"[9] For greater certainty, digital product does not include a digitised representation of a financial instrument, including money."

"[10] The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods."

ARTICLE 3 – Article 3.3 (Non-Discriminatory Treatment of Digital Products) of the Agreement

Article 3.3 (Non-Discriminatory Treatment of Digital Products) of the Agreement shall be superseded by the following:

"**Article 3.3: Non-Discriminatory Treatment of Digital Products**

1. No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is

a person of another Party, than it accords to other like digital products.[10*bis*]

2. Paragraph 1 shall not apply to the extent of any inconsistency with a Party's rights and obligations concerning intellectual property contained in another international agreement a Party is party to.

3. The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. This Article shall not apply to broadcasting.

5. Notwithstanding paragraph 1, a Party may adopt or maintain any measure that accords differential treatment to digital products of another Party or a non-Party:

   (a) under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Protocol to the Digital Economy Partnership Agreement signed between the Republic of Chile, New Zealand, and the Republic of Singapore on the 15th day of July 2023 for the Party adopting or maintaining the measure; or

   (b) as part of a wider process of economic integration or trade liberalisation under any agreement referred to in subparagraph (a)."

"[10bis] For greater certainty, to the extent that a digital product of a non-Party is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragraph."

ARTICLE 4 – Article 3.4 (Information and Communication Technology Products that Use Cryptography) of the Agreement

Article 3.4 (Information and Communication Technology Products that Use Cryptography) of the Agreement shall be superseded by the following:

"**Article 3.4: Information and Communication Technology Products that Use Cryptography**

1. This Article shall apply to information and communication technology (ICT) products that use cryptography.[10ter]

2. For the purposes of this Article:

cryptography means the principles, means or methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorised use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;

encryption means the conversion of data (plaintext) into a form that cannot be easily understood without subsequent re-conversion (ciphertext) through the use of a cryptographic algorithm;

cryptographic algorithm or **cipher** means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext; and

key means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that an entity with knowledge of the key can reproduce or reverse the operation, while an entity without knowledge of the key cannot.

3. With respect to a product that uses cryptography and is designed for commercial applications, no Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer or supplier of the product, as a condition of the manufacture, sale, distribution, import or use of the product, to:

(a) transfer or provide access to a particular technology, production process or other information, for example, a private key or other secret parameter, algorithm specification or other design detail, that is proprietary to the manufacturer or supplier and relates to the cryptography in the product, to the Party or a person in the Party's territory;

(b) partner with a person in its territory; or

(c) use or integrate a particular cryptographic algorithm or cipher,

other than where the manufacture, sale, distribution, import or use of the product is by or for the government of the Party.

4. Paragraph 3 shall not apply to:

(a) requirements that a Party adopts or maintains relating to access to networks that are owned or controlled by the government of that Party, including those of central banks; or

(b) measures taken by a Party pursuant to supervisory, investigatory or examination authority relating to financial institutions or markets.

5. For greater certainty, this Article shall not be construed to prevent a Party's law enforcement authorities from requiring service suppliers using encryption they control to provide, pursuant to that Party's legal procedures, unencrypted communications."

"10*ter* For greater certainty, for the purposes of this Article, a "product" is a good and does not include a financial instrument."

ARTICLE 5 – Article 4.3 (Cross-Border Transfer of Information by Electronic Means) of the Agreement

Article 4.3 (Cross-Border Transfer of Information by Electronic Means) of the Agreement shall be superseded by the following:

"**Article 4.3: Cross-Border Transfer of Information by Electronic Means**

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a person of a Party.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information greater than are required to achieve the objective."

ARTICLE 6 – Article 4.4 (Location of Computing Facilities) of the Agreement

Article 4.4 (Location of Computing Facilities) of the Agreement shall be superseded by the following:

"**Article 4.4: Location of Computing Facilities**

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a person of a Party to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective."

ARTICLE 7 – Article 14.3 (Scope) of the Agreement

Article 14.3 (Scope) of the Agreement shall be superseded by the following:

"**Article 14.3: Scope**

This Module and its Annexes shall apply:

(a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement; or

(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement, or that another Party has otherwise failed to carry out an obligation under this Agreement."

ARTICLE 8 – Annexes to the Agreement

The following Annexes to the Agreement shall cease to be in operation:

(a) Annex 14-A (Scope of Module 14 (Dispute Settlement)); and

(b) Annex I (Understanding on this Agreement).[1]

ARTICLE 9 – General Provisions

1. This Protocol shall enter into force 60 days after the date on which the last Party has notified the Depositary of the Agreement in writing of the completion of its applicable legal procedures.

2. This Protocol may be signed electronically by the Parties. For greater certainty, the Parties understand that the electronic signing of this Protocol shall

[1] For greater certainty, Module 14 (Dispute Settlement) of the Agreement applies to Article 3.3 (Non-Discriminatory Treatment of Digital Products), Article 3.4 (Information and Communication Technology Products that Use Cryptography), Article 4.3 (Cross-Border Transfer of Information by Electronic Means), and Article 4.4 (Location of Computing Facilities) of the Agreement, as set out in Articles 3, 4, 5, and 6 of this Protocol.

carry the same weight and legal effect as affixing hand-signed wet-ink signatures on treaties under international law.

3. This Protocol shall constitute an integral part of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

DONE at Auckland this fifteenth day of July two thousand and twenty three, in the English language.