# AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the People's Republic of Bangladesh and the Government of the State of Kuwait. (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for the development of economic cooperation between both Parties and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of prosperity in both Contracting Parties.

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment", means every kind of asset or right, owned or controlled directly or indirectly, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of that Contracting Party and shall include in particular, though not exclusively:

(a) shares, stocks and other forms of equity participation and bonds, debentures, and other forms of debt interests in a company. and other debts and loans and securities issued by any investor of a Contracting Party;

(b) claims to money or performance pursuant to a contract having an economic value:

(c) intellectual property rights, including but not limited to copyrights, trademarks, patents, industrial designs, and technical processes. know- how, trade secrets, trade names and goodwill:

(d) any business concessions conferred by law, contract or by virtue of any licenses or permits granted pursuant to law, including concessions to prospect, explore, extract, or utilize natural resources:

(e) any, other movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges:

(f) "returns" retained for the purpose of re-investment and to proceeds from "liquidation".

Any change in the form in which assets or rights. are invested or reinvested shall not affect their character as investments. Provided such alteration is not contrary to the laws and regulations of the Contracting Party in the territory of which this investment has been made.

2. The term "investor means;

(a) the Government of that Contracting Party;

(b) a natural person holding the nationality of that Contracting Party in accordance with its applicable laws;

(c) any legal person constituted or incorporated under the law and regulations of that Contracting Party, whether or not organized for pecuniary gain and whether privately or governmentally owned or controlled. which is constituted under the laws of a Contracting party or is owned or effectively controlled by investors of a Contracting Party, and the place of effective management is situated in the host party.

3. The term "returns" means the amounts yielded by an investment, irrespective of the form in which they are paid. and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, and management fees, technical assistance or other payments or fees, and payments in kind, regardless of its type.

4. The term "territory" means:

(a) in respect of the State of Kuwait: the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with the laws of the State of Kuwait and with the international law has been or may hereafter be designated as an area over which the State of Kuwait mav exercise sovereign rights or jurisdiction.

(b) in respect of Bangladesh: the territory of the People's Republic of Bangladesh means its land territory. internal waters and territorial sea and the airspace above them as well as the maritime zones bevond the territorial sea, including the sea bed and subsoil, over which the Contracting Parties exercise sovereign rights or jurisdiction under their national laws, which shall conform to international law for the purpose of exploration of the natural resources of such areas.

5. The term "freely convertible currency" means the currency that the International Monetary Fund (IMF) determines from time to time, as freely convertible currency in accordance with the Articles of the International Monetary Fund (IMF) and any amendments thereto

## Article 2. Scope of the Agreement

1. This Agreement shall apply to all investments made by investor of either Contracting Party in the territory of the other Contracting Party accepted as such in accordance with the laws and regulations of the latter Contracting Party whether prior to or after the entry into fbrce of this Agreement.

2. This agreement shall not apply to:

(a) investment disputes that may have arisen before the entry into force or any claim, which was settled before the entry into force of this agreement.

(b) taxation.

## Article 3. Promotion and Protection of Investment

1. Each Contracting Party shall admit, encourage and create favourable conditions for investments of investors of the other Contracting Party in its territory, and subject to its right to exercise powers conferred by its laws.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with recognized principles of its laws and regulations and the provisions of this Agreement.

3. Neither Contracting party shall in any way impair by unreasonable or discriminatory measures, as regards to the management, maintenance, use, enjoyment or disposal of investments in the territory of investors of the other Contracting Party.

4. Once established, investments of investors of either Contracting Party shall not be subject to additional performance requirements which may be detrimental to their viability or adversely affect their use, management, conduct, operation, expansion, sale or other disposition.

## Article 4. National Treatment

1. Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment. acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory, according to its laws and regulations.

2. Each Contracting Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments, according to its laws and regulations.

## Article 5. Most - Favoured- Nation Treatment

1. Each Contracting Party shall accord to investors of the other party treatment no less favourable than that it accords, in like

circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Contracting Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-party with respect to the establishment. acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. However, the provisions of this Article shall not be construed so as to oblige one Contracting Party, to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting Parties is or may become a party;

(b) any international or regional agreement or other similar arrangement and any domestic legislation relating wholly or mainly to taxation.

## Article 6. Expropriation

1. (a) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to direct or indirect measures having effect equivalent to nationalization or expropriation (hereinafter collectively referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and in accordance with due process of law and against prompt, adequate and effective compensation.

(b) Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge. whichever is earlier. It shall be determined and calculated in accordance with internationally recognized principles of valuation and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing six (6) months LIBOR rate of interest or equivalent from the date of expropriation until the date of payment, soon be made without delay, be effectively realizable and be freely convertible currency to be chosen by the investor, The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. For greater certainty, expropriation shall include situations, where a Contracting Party expropriates the assets of a company or enterprise which is incorporated or constituted under the law in force in any party of its own territory, and in which investors of the other Contracting Part has an investment, including through the ownership of shares, stocks, debentures or other rights or interests, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party.

## Article 7. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement. no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely convertible.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of its investments or part thereof by its forces or authorities: or

(b) destruction of its investments or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be freely convertible.

## Article 8. Subrogation

1. If a Contracting Party or its designated Agency (the "Indemnifying Party"), makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (the "Host Contracting Party") the second Contracting Party shall recognize:

(a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims of the party indemnified;

(b) that the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The Indemnifying Party shall be entitled in all circumstances to the same treatment in respect of:

(a) the rights and claims acquired by it by virtue of the assignment;

(b) any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payments received in non-convertible currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any expenditure incurred in the territory of the host Contracting Party.

## Article 9. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments in connection with an investment into and out of its territory. Such transfers shall include, in particular, though not exclusively:

(a) the initial capital and any additional capital for the maintenance, management and development of the investment:

(b) returns;

(c) payments under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;

(d) compensations provided for under Articles 6 (Expropriation) and 7 (Compensation for Losses):

(e) proceeds from the total or partial sale or liquidation of an investment:

(f) earnings and other remuneration of personnel engaged from abroad in connection with an investment;

(g) payments referred to in Article 8 (Subrogation);

(h) payments arising out of the settlement of a dispute.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions and, except in case of payments in kind, in a freely convertible currency. In case of such delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

3. Transfers shall be made at a spot market rate of exchange prevailing in the host Contracting Party on the date of transfer for the currency to be transferred.

4. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may prevent or delay a transfer through equitable, non discriminatory and good faith application of its laws and regulations relating to:

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

(b) criminal or penal offences;

(c) ensuring compliance with order or judgments in judicial or administrative proceedings;

(d) taxation:

(e) social security, retirement or compulsory savings schemes.

5. Notwithstanding paragraphs 1 and 2, a Contracting Party may in the event of serious balance of payments difficulties or a threat thereof, impose restrictions on transfer of payments related to investments, the restrictions shall be equitable, non discriminatory and applied in good faith so as to minimize the adverse effects on the free transfer of payments ensured by

this Agreement.

## Article 10. Settlement of Disputes between a Contracting Party and an Investor of Theother Contracting Party

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.

2. If such disputes cannot be settled within a period of six (6) months from the date at which either party to the dispute requested amicable settlement by delivering a notice in writing to the other party, the dispute shall be submitted for resolution, at the election of the investor or the Contracting Party to the dispute, through one of the following means:

(a) in accordance with any applicable, previously agreed dispute settlement procedures; or

(b) domestic courts; or

(c) to international arbitration in accordance with the following paragraphs of this Article.

3. In the event that an investor or the Contracting Party to the dispute elects to submit the dispute for resolution to international arbitration the investor shall further provide its consent in writing for the dispute to be submitted to one of the following bodies:

(a) (1) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, D.C., 18 March 1965 (the "Washington Convention"), if both Contracting Parties are parties to the Washington Convention and the Washington convention is applicable to the dispute;

(2) The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules"), if the Contracting Party of the investor or the Contracting Party to the dispute, but not both, is a party to the Washington Convention;

(b) an arbitral tribunal established under the Arbitration Rules ("the Rules")of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to under Article 7 of the Rules shall be the Secretary General of the Centre): or

(c) an arbitral tribunal constituted pursuant to the arbitration rules of any arbitral institution mutually agreed upon between the parties to the dispute.

4. Notwithstanding the fact that the investor or the Contracting Party to the dispute may have submitted a dispute to binding arbitration under paragraph 3, it may, prior to the institution of the arbitral proceeding or during the proceeding, seek before the judicial or administrative tribunals of the Contracting party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not include request for payment of any damages.

5. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investinent dispute between a Contracting Party and an investor of the other Contracting Party, a Contracting Party shall not assert, as a defense, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whomsoever, whether public or private, including such other Contracting Party and its subdivisions, agencies or instrumentalities.

## Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

2. If a dispute has not been settled within six (6) months following the date on which such consultations or other diplomatic channels were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an ad hoe arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two (2) months, and such Chairman within four (4) months,

from the date on which either Contracting Party has informed either Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other arrangement invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decision by majority of votes. Such decision shall be made in accordance with this Agreement and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

## Article 12. Denial of Benefits

The Contracting Parties may decide jointly in consultation to deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such Party and to investments of such investors where the Party establishes that the enterprise is owned or controlled by persons of a Non-Party. or of the denying Party, and has no substantive business activity in the territory of the other Party.

## Article 13. Investment and Environment

Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining, or enforcing any measure that it considers appropriate to ensure that an investment activity in its territory is undertaken in accordance with the environmental laws of the Contracting Party, provided that such measures are proportional to the objectives sought.

## Article 14. Application of other Rules

If the legislation of either Contracting party or obligations under international! law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules. whether general or specific entitling investments by investors of the other Contracting party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable to the investor prevail over this Agreement.

## Article 15. Consultations and Amendments

1. Either Contracting Party may request consultations with the other Contracting Party on any matter affecting the application of this Agreement. Such consultations shall be held at a place and a time as may be agreed upon through diplomatic channels.

2. Any amendments to the provisions of this Agreement shall be mutually agreed upon, in writing, by the Contracting Parties, and shall come into force in accordance with the provisions of the entry into force of this Agreement.

## Article 16. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time, consider the entry and sojourn of senior staffs in connection with the investments under this Agreement from such countries with whom the Contracting Parties have diplomatic relations.

## Article 17. Relations between Contracting Parties

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

## Article 18. Entry Into Force

Each Contracting Party shall notify the other in writing when its constitutional requirements for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the thirtieth (30th) day after the date of receipt of the latter of the two notifications.

## Article 19. Duration and Termination

1. This Agreement shall remain in force for a period of twenty (20) years and shall continue in force thereafter for similar period or periods unless, at least one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective. The provisions of this Agreement shall continue to be effective for a period of fifteen (15) years from the date of termination of this Agreement.

In witness whereof the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done at Dhaka on this 27" day of Rajab 1437 H corresponding to 4" day of May 2016 in two originals in the Arabic and English languages. both texts being equally authentic. In case of divergency, the English text shall prevail.

For the Government of the State of Kuwait

Amir Hossain Amu, MP

Minister

Ministry of Industries

For the Government of the People's Republic of Bangladesh

Anas Khalid Al-Saleh

Deputy Prime Minister

Minister of Finance & Acting Minister of Oil