AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Portuguese Republic and the Government of the State of Kuwait, hereinafter referred to as the «Contracting States»:

Desiring to intensify the economic co-operation between the two States;

Intending to encourage and create favourable conditions for investments made by investors of one Contracting State in the territory of the other Contracting State on the basis of equality and mutual benefit;

Recognising that the reciprocal encouragement and protection of investments on the basis of this Agreement will stimulate business initiative;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1 — The term «investment» shall mean every kind of asset or right in the territory of one Contracting State that is owned or controlled directly or indirectly by an investor of the other Contracting State, and includes asset or right consisting or taking the form of:

a) Tangible and intangible, movable and immovable property as well as any other rights, such as mortgages, liens, pledges and similar rights;

b) Company, shares, stocks, debentures, or other forms of interest in the equity of companies and/or economic interests from the respective activity, such as other forms of debts and loans and securities issued by any investor of a Contracting State;

c) Claims to money or to any other rights having an economic value;

d) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trade marks, trade names, trade and business secretes, technical processes, know-how and good will;

e) Any right conferred by law, contract or by virtue of any licences or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources;

f) Goods that, under a leasing agreement, are placed at the disposal of a lessee in the territory of a Contracting State in conformity with its laws and regulations.

Any change of the form in which assets are invested including legal extension, alteration or transformation thereof does not affect their character as investment, provided that such change is made in accordance with applicable legislation of the host Contracting State.

2 — The term «returns» shall mean the amount yielded by investments, over a given period, in particular, though not exclusively, shall include profits, dividends, interests, capital gains, royalties and management, technical assistance or other payments or fees, and payments in kind, regardless of its type.

In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments.

The returns and proceeds from liquidation when they are reinvested shall be considered as investment.

3 — The term «liquidation» shall mean any disposal effected for the purpose of completely or partly giving up an investment.

4 — The term «freely convertible currency» shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the articles of Agreement of the International Monetary Fund and any amendment thereto.

5 — The term «without delay» shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

6 — The term «investors» means:

a) Natural persons having the nationality of either Contracting State, in accordance with its laws;

b) The Government of that Contracting State;

c) Any legal person constituted or incorporated under the laws and regulations of that Contracting State, such as corporations, commercial companies, associations, agencies, foundations and other statutory establishments and authorities, which main office is in the territory of that Contracting State. 7

7 — The term «territory» means the territory of either of the Contracting States, the respective inner waters, the territorial sea, or any other area over which the Contracting State concerned exercises, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2. Encouragement of Investments

1 — Each Contracting State shall in its territory and in accordance with its applicable laws and regulations admit and encourage investments by investors of the other Contracting State.

2 — Each Contracting State shall, in respect of investments admitted in its territory, grant such investments all necessary permits, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as may be determined by its laws and regulations.

3 — The Contracting States may consult with each other in any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.

4 — Each Contracting State shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality or citizenship to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting State according to its laws and regulations.

5 — Whenever goods or persons connected with an investment are to be transported, each Contracting State shall to the extent permissible under its relevant laws and regulations permit the operation of such transport by enterprises of the other Contracting State.

Article 3. Protection of Investments

1 — Investments by investors of either Contracting State shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting State in a manner consistent with recognized principles of international law and the provisions of this Agreement. Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the use, management, conduct, operation, expansion or sale or other disposition of investments.

2 — Each Contracting State shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures, directives, guidelines and administrative rulings and judicial decisions of public application as well as international agreements which pertain to or may affect the operation of the provisions of this Agreement or investments in its territory of investors of the other Contracting State.

3 — Each Contracting State shall provide effective means of asserting claims and enforcing rights with respect to investments. Each Contracting State shall ensure to investors of the other Contracting State, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to mandate persons of their choice, who qualify under applicable laws and regulations for the purpose of the assertion of

claims and the enforcement of rights with respect to their investments.

4 — Neither Contracting State may impose as a condition for the acquisition, expansion, use, management, conduct or operation of investments by investors of the other Contracting State mandatory measures, which may require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory, or any other measures having the effect of discrimination against investments by investors of the other Contracting State in favour of investments by its own investors or by investors of third countries.

5 — Each Contracting State shall observe any obligation or undertaking it may have entered into with regard to investments in its territory by investors of the other Contracting State.

Article 4. Treatment of Investments and Investors

1 — Investments made by investors of one Contracting State in the territory of the other Contracting State, as well as the returns there from, shall be accorded treatment that is fair and equitable and not less favourable than the latter Contracting State accords to the investments of its own investors or investments of investors of any third State.

2 — Investors of one Contracting State shall be accorded by the other Contracting State, as regards the management, maintenance, use, enjoyment or disposal or their investments, treatment that is fair and equitable and not less favourable that the latter Contracting State accords to its own investors or to investors of any third State.

3 — However, the provisions of this Agreement shall not be construed so as to oblige one Contracting State to extend to the investors of the other Contracting State 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 States is or may become a party;

b) Any international, regional or bilateral agreement or other similar arrangement or any domestic legislation relating wholly or mainly to taxation.

4 — The provisions of this article shall be without prejudice to the right of either Contracting State to apply the relevant provisions of their tax law which distinguishes between tax-payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Article 5. Expropriation

1 — a) Investments made by investors of one Contracting State in the territory of the other Contracting State shall not be subject to nationalization, expropriation, dispossession, freezing or blocking of the investment or subjected to other direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as «expropriation») by the other Contracting State except for a public purpose and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-dis-criminatory basis and in accordance with due process of law of general application.

b) Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the evaluation date»). Such compensation shall be calculated in a freely convertible currency to be chosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at a commercial rate established on a market basis, however, in no event less than the prevailing LIBOR — rate of interest or equivalent, from the date of expropriation until the date of payment.

2 — In light of the principles set out in paragraph 1 and without prejudice to the rights of the investor under article 9 of this Agreement, the investor affected shall have the right to prompt review by a judicial or other competent and independent authority of the Contracting State which made the expropriation, of its case, including the valuation of its investment and the payment of compensation therefore.

3 — For further certainty, expropriation shall include situations where a Contracting State expropriates the assets of a company or enterprise that is incorporated or established under the laws in force in its own territory in which an investor of the other Contracting State has an investment, including through the ownership of shares, stocks, debentures or other rights or interests.

Article 6. Compensation for Losses

1 — Except where article 5 applies, when investments made by an investor of either Contracting State suffer a loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events, considered as such by international law, in the territory of the other Contracting State, the investor shall be accorded by the latter Contracting State, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter State accords to its own investors or to the investors of any third State, whichever is more favourable to the investor.

2 — The compensation foreseen in paragraph 1 shall be, without delay, freely transferable in convertible currency.

Article 7. Transfer of Payments Related to Investments

1 — Each Contracting State shall guarantee to investors of the other Contracting State the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

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 amortisation of principal and accrued interest payments made pursuant to a loan agreement, recognised by both Contracting States to be an investment;

d) Royalties and fees for the rights referred to in article 1 paragraph 1 (d);

e) Proceeds from the sale or liquidation of the whole or any part of the investment;

f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;

g) Payments of compensation pursuant to articles 5 and 6;

h) Payments referred to in article 8;

i) Payments arising out of the settlement of disputes.

2 — Transfers of payments under paragraph 1 shall be effected without delay or restrictions and 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 the spot market rate of exchange prevailing in the host Contracting State on the date of transfer for the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund or the exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is the most favourable to the investor.

4 — For the purposes of the present Article, a transfer will be considered as done «without delay» when such transfer takes place within the time normally used for the fulfilment of the necessary formalities, which should not in any circumstances exceed thirty (30) days from the date the requirement for transfer was presented.

Article 8. Subrogation

1 — If a Contracting State or its designated agency (the «Indemnifying Party»), makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting State (the «Host State»), the Host State shall recognize:

a) The assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment;

b) The right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

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

a) The same treatment in respect of the rights and claims acquired and the obligations assumed by it by virtue of the

assignment referred to in paragraph 1 above;

b) Any payments received in pursuance of those rights and claims, as the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

Article 9. Settlement of Disputes between a Contracting State and an Investor

1 — Disputes arising between a Contracting State and an investor of the other Contracting State 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 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 party to the dispute, through one of the following means:

a) In accordance with any applicable, previously agreed dispute-settlement procedures;

b) The competent courts of the Contracting State in which the investment was made;

c) To international arbitration in accordance with the following paragraphs of this article.

3 — In the event that an investor 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, 18 March 1965 (the «Washington Convention)), if both Contracting States 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 State of the investor or the Contracting State 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);

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 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 State 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 — Each Contracting State hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraph 3 (a) and (b) or the mutual agreement of both parties to the dispute under paragraph 3 (c) except when the investor has previously submitted a dispute under paragraph 2 (b) and the competent court of the Contracting State where the investment was made has already issued an award.

6 — a)The consent given in paragraph 5, together with the consent given under paragraph 3, shall satisfy the requirement for written agreement of the parties to a dispute for the purposes of each of, chapter ii of the Washington Convention, the Additional Facility Rules, article ii of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the «New York Convention))), and article 1 of the UNCiTrAL Arbitration Rules.

b) Any arbitration under this article, as may be mutually agreed by the parties to the dispute, must be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article 1 of the New York Convention.

c) Neither Contracting State shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting State shall have failed to abide by and comply with the award rendered in such dispute. However, diplomatic protection for the purposes of this sub-paragraph shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

7 — An arbitral tribunal established under this article shall decide the issues in dispute in accordance with such rules of law as may be agreed by the parties to the dispute. In the absence of such agreement, it shall apply recognized rules of international law as may be applicable, the relevant provisions of this Agreement and the law of the Contracting State party to the dispute, including its rules on conflict of laws.

8 — For the purpose of article 25 (2) (b) of the Washington Convention, an investor, other than a natural person, which has the nationality of a Contracting State party to the dispute on the date of the consent in writing referred to in paragraph (6) and which, before a dispute between it and that Contracting State arises, is controlled by investors of the other Contracting State, shall be treated as a «national of another Contracting State) and for the purpose of article 1 (6) of the Additional Facility Rules shall be treated as a «national of another State).

9 — The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting State shall carry out promptly any such award and shall make provision for the effective enforcement in its territory of such awards.

10 — In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting State and an investor of the other Contracting State, a Contracting State shall not assert, as a defence, 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 State and its subdivisions, agencies or instrumentalities.

Article 10. Settlement of Disputes between the Contracting States

1 — The Contracting States shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.

2 — If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting State and unless the Contracting States otherwise agree in writing, either Contracting State may, by written notice to the other Contracting State, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this article.

3 — The arbitral tribunal shall be constituted as follows: each Contracting State 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 States. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting State has informed the other Contracting State 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 State 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 State or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting State or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting State shall be invited to make the necessary appointments.

5 — The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and such recognized rules of international law as may be applicable and shall be final and binding on both Contracting States. Each Contracting State shall bear the costs of the member of the arbitral tribunal appointed by that Contracting State, 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 States. 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 States. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11. Relations between Contracting States

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

Article 12. Application of other Rules

1 — If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States, in addition to this Agreement, contain rules, whether general or specific, entitling investments by investors of the other Contracting State 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.

2 — Each Contracting State shall fulfil any emerging obligations, beyond the ones foreseen in the present Agreement, regarding investments made by investors of the other Contracting State in its territory.

Article 13. Scope of the Agreement

This Agreement shall be applied to all investments made by investors from one of the Contracting States in the territory of the other Contracting State, prior to as well as after its entry into force, in accordance with the respective legal provisions, but shall not apply to any dispute concerning investments which has arisen before its entry into force.

Article 14. Consultations

Representatives of the Contracting States shall, whenever necessary, hold consultations on any matter relating to the interpretation and application of this Agreement. These consultations shall be held on the proposal of one of the Contracting States, which shall, if necessary, propose meetings at a place and a time to be agreed upon through diplomatic channels.

Article 15. Entry Into Force

The present Agreement shall enter into force thirty (30) days after the date (reception) of the last notification, in writing and by diplomatic channels, that their respective internal constitutional and legal procedures have been fulfilled for both Contracting States.

Article 16. Duration and Termination

1 — This Agreement shall remain in force for a period of fifteen (15) 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 State notifies the other Contracting State 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 ten (10) years from the date of termination of this Agreement.

In witness whereof, the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done in duplicate at Lisbon on this 23 rd day of July 2007 corresponding to 9 th day of Rajab 1428 H in two originals in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the Portuguese Republic:

Manuel Pinho, Minister for Economy and Innovation.

For the Government of the State of Kuwait:

Bader M. Al-Humaidhi, Minister of Finance.