Agreement of the Government of the State of Kuwait and the Government of the Socialist Republic of Vietnam for the Promotion and Mutual Protection of Investments

The Government of the State of Kuwait and the Government of the Socialist Republic of Vietnam, (hereinafter referred to as the "Contracting Parties");

Desiring to create favorable conditions for the development of economic cooperation between them and, in particular, for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments will be an incentive to revitalize commercial initiative and to increase prosperity in both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term “investment” means all types of assets located in the territory of a Contracting Party and which are owned or controlled by an investor of another Contracting Party, directly or indirectly, in accordance with the laws and regulations of those parties and includes assets or rights consisting of and which are made up of either:

(a) company shares, shares, and other forms of equity participation, bonds, bonds, and other forms of debt equity, other debts, loans, and securities issued by any continuing of a contracting party to other assets or performance pursuant to a value contract;

(b) money and non-economic claims;

(c) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and models, works of art, know-how, trade secrets, trade names, and goodwill;

(d) any right conferred by law, contract, or licenses under any law, including rights to exploit, explore, extract or exploit natural resources and rights to engage in other economic and commercial activities or provide services;

(e) tangible and intangible property, movable and immovable, and any property rights related thereto, such as leases, mortgages, debt liens, and encumbrances.

The term “investment” also applies to “proceeds” held for the purpose of reinvestment, which results from “liquidation” as defined by these two terms later.

A change in the form in which the assets are invested or reinvested will not affect its nature as an investment.

2. The term “investor” for a Contracting Party means:

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

(b) the government of that Contracting Party;

(c) any legal person or any other entity legally established under the laws and regulations of that Contracting Party, such as institutes and development funds agencies, charitable and scientific institutions, legal and governmental institutions, and companies.

3. The term “company” means any legal entity, whether or not established with the aim of making a financial profit, and whether it is owned or received privately or governmentally, duly organized in accordance with the prior law of the

contracting party, and the hierarchy of public institutions, corporations, partnership companies, one-person companies , branch, joint venture, federations or other similar organizations.

4. The term “proceedings” means amounts realized by an investment, regardless of the form in which it is paid, and includes, in particular, but not limited to, dividends, interest, capital gains, etc., management and technical assistance or payments, dividends, royalties, fees and commission payments, of whatever kind.

5. The term “liquidation” means any activity carried out for the purpose of total or partial termination of the investment.

6. The term “territory” in relation to a Contracting Party means all land (as well as islands), including any area outside the territorial sea which, in accordance with international law, has been defined or, after being determined in accordance with the law of a Contracting Party, as an area in which a Contracting Party may exercise the rights of Sovereignty or state.

7. The term “freely convertible currency” means any currency defined by the International Monetary Fund as convertible from one period to another as a currency that is used freely in accordance with the provisions of the International Monetary Fund Agreement and any amendments thereto.

8. "Without delay" means that period of time during which shall be required to complete the several formalities necessary to remit the payments, without any unjustified restriction or selection of such remittances.

Article 2. Investment Protection

1. Each Contracting Party shall encourage and create more favorable conditions for the investments made by the investors of the other Contracting Party in its territory, and in accordance with its rights granted to it by the force of its laws and legislation, it shall accept such investments in the territory of that Contracting Party.

2. Investments made by investors of a Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security, in conformity with the recognized principles of international law and the provisions of this Agreement. Neither Contracting Party shall, in any way, take exempt or discriminatory measures that may prejudice the management, maintenance, use, enjoyment or disposal of investments in the territory of investors of the other Contracting Party.

3. After their establishment, the investments of the investors of either of the two Contracting Parties, shall not be subject to additional performance requirements that have been specified in the schedule of commitments of the General Agreement on Trade in Services of the World Trade Organization, which hinder or restrict its use, management, disposal, operation, expansion or sale for any other action.

Article 3. Investment Treatment

1. With regard to the use, management, disposal, operation, expansion, sale or other forms of disposal of investments carried out in its territory by investors of the other Contracting Party, each Contracting Party shall accord treatment no less favorable than that granted in similar cases to investments of private investors (national treatment) or investors of any third country, whichever is the most favorable to those investments.

2. Without prejudice to the provisions of the governing article of any other agreement, of which both parties are members, the national treatment granted in the above-mentioned paragraph shall be granted in accordance with the laws and regulations prevailing in the host Contracting Party. The national treatment related to the laws and regulations applicable to the host country, which reserves the right of the host Contracting Party, shall be applied to the treatment of various investments for investors of the other Contracting party, which is applied to its investors. In this case, each Contracting Party shall maintain any economic sector or activity that is reserved for its investors, or any measures or special incentives granted only to its investors within the framework of its development policy.

3. However, the provisions of this Article shall not be construed as requiring a Contracting Party to offer to investors of the other Contracting Party the advantage of any treatment, preference, or privilege resulting from:

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

(b) any international or regional spending, bilateral agreement or other similar arrangement and any domestic legislation that relates wholly or principally to taxation.

Article 4. Compensation for Losses

1. Except when applying Article (6) the investors of one of the contracting parties whose investments are granted to the other contracting party for damages or losses due to war or any other armed conflict, emergency, rebellion, revolution, disturbances, riots, or other similar events, a treatment by the other Contracting Party with respect to restoring conditions, restitution of losses, compensation or any other settlement, not less favorable than that which the other Contracting Party accords to its investors or to investors of any third country, whichever is more favorable.

2. Without prejudice to paragraph 1, the investors of one of the Contracting Parties who suffer from the events referred to in that paragraph in the territory of the other Contracting Party a loss resulting from:

(a) the temporary seizure of their property or part of it by his forces or authorities;

(b) the destruction of their property, or part of it, by his forces or authorities, without this being in combat operations or, if the situation is deemed necessary;

shall be granted immediate, adequate and effective compensation for the damage or loss suffered by them.

Article 5. Expropriation

1(a) Investments made by investors belonging to either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed, or subject, directly or indirectly, to measures of an effect equivalent to nationalization, expropriation or expropriation (hereinafter referred to as “expropriation”) by another Contracting Party Except for a general purpose related to the national interest of that contracting party, and in return for punitive, adequate and effective compensation, provided that those measures have been taken on the basis of non-discrimination and in accordance with generally accepted legal procedures.

(b) the value of such compensation shall amount to the actual antiquity of the expropriated investment, a mark determined and calculated in accordance with internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time immediately preceding the expropriation or when the imminent expropriation became publicly known, whichever is earlier (the “valuation date”). This compensation shall be calculated in a depreciated currency (hereinafter referred to as freely transferable to be chosen by the investor, on the basis of the market value of the prevailing exchange rate for that currency on the valuation date and includes interest at a commercial rate determined by the market, provided that it is not in any case less than the prevailing interest rate between London banks (hereinafter LIBOR) or its equivalent, from the date of expropriation until the date of payment.

(c) If the fair market value mentioned above cannot be easily ascertained, then on equitable principles taking into account all the compensation factors is determined based on and related conditions such as capital invested, nature and period of investment, replacement value, increase in investment value, current returns and flow value cash calculated, book value and goodwill. The final compensation amount is to be paid immediately to the continuity.

2. The principles set forth in Paragraph 1, and without prejudice to the investor’s rights set forth in Article 8 of this Agreement, the aggrieved investor shall have the right to immediate review, by a judicial authority or other independent competent authority of that Contracting Party, of his case, including the valuation of the investment compensation payments for his investment.

3. For further clarity, expropriation includes cases in which a Contracting Party expropriates or damages the assets of a company or project that was created or established under the laws in force in its territory and in which another Contracting Party has an investment through the ownership of shares, or shares of an affiliate investor, debt securities, rights or other interests.

4. A claim for compensation in accordance with the principles and provisions of this Article also exists when the investment is actually threatened as a result of the interference of the Contracting Party in any company in which the investment belongs to investors of the other Contracting Party, and the damages are essentially on the investment.

Article 6. Transfer of Payments Related to Investments

1. Each of the two contracting exchanges guarantees the investors of another Contracting Party the free transfer of payments related to investment inside and outside its territory, including the transfer of:

(a) The original capital and any additional capital for the maintenance, management and development of the investment;

(b) proceeds;

(c) Payments under a contract, including principal and interest payments made under a loan agreement;

(d) Royalties and fees for the rights referred to in Article 1 Paragraph (d);

(e) Proceeds due from the sale or liquidation of all or any part of the investment;

(f) money earned and other remunerations of employees contracted from abroad who are related to the investment;

(g) Compensation payments according to Articles 4 and 5;

(h) The payments referred to in Article 7;

(i) payments arising from the settlement of disputes.

2. The transfer of payments under paragraph (1) shall be effected without delay or restriction, except in the case of payments in kind, and in a freely convertible currency.

3. Transfers shall be made at the spot transaction exchange rate prevailing in the host contracting party on the date of transfer for spot transactions of the currency to be converted. In the absence of a foreign exchange market, the applicable rate shall 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 specified for currency conversion of the Special Drawing Rights or the United States dollar, whichever is more favorable to the investor.

Article 7. Principle of Subrogation

1. (a) If a Contracting Party or its relevant agency (the “Guarantor Party”) makes a payment under an insurance or security relating to an investment in the territory of the other Contracting Party (the “Host Party”), the Host Party shall recognize:

(a) by assigning to the guarantor by law or legal agreement all rights and claims arising from such investment;

(b) The guarantor party has the right to exercise such rights and implement those requirements and obligations related to the investment, in accordance with the principle of subrogation of the creditor.

2. Under all circumstances, the Guarantor Party has the right to:

(a) the same treatment of rights, claims acquired and obligations assumed, as the assignment referred to in the above paragraph;

(b) any payments received by me pursuant to those rights and claims, as to the original investor's right to receive such payments in connection with the relevant investment.

Article 8. Settlement of Disputes between the Contracting Party and the Investor

1. Disputes arising between a Contracting Party and an investor of another Contracting Party in relation to an investment belonging to the latter in the territory of the first-mentioned party, shall be settled, as far as possible, by amicable means.

2. If it is not possible to settle these disputes within six months from the date of any of the two parties to the dispute requesting an amicable settlement by delivering a written notification to the other party, then the dispute shall be resolved by choosing the investor, the party to the dispute, by one of the following means.

(a) in accordance with any appropriate dispute settlement procedures agreed upon in advance;

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

3. In the event that the investor chooses to submit the dispute for settlement to international arbitration, the investor must also submit his written consent to submit the dispute for settlement through one of the following bodies:

(a) (1) The International Center for Settlement of Investment Disputes (the “Center”), established pursuant to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other Countries opened for signature at Washington on March 8, 1965 (the “Washington Agreement”) in the event that The Contracting Parties are parties to the Washington Convention and the applicability of the Washington Convention to the dispute;

(ii) the Centre, under the terms governing additional facilities for the administration of proceedings by the Secretary of the Center (the “Additional Facilities Rules”), if the Contracting Party of the investor or the Contracting Party is a 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 such rules may be modified by the parties to the dispute (the appointing body referred to in Article 7 of the Rules shall be the Secretary-General of the Centre) ;

(c) An arbitration court to be appointed based on the arbitration rules of any arbitral tribunal to be mutually agreed upon between the parties to the dispute.

4. Notwithstanding that the investor has submitted the dispute to binding arbitration pursuant to paragraph 3 above, he may, before the commencement of the arbitration proceedings or during those procedures, request from the judicial or administrative courts of a Contracting Party that are involved in the dispute to issue a judicial order to preserve his rights and interests, provided that this does not include a request for compensation for any damages.

5. Each of the Contracting Parties shall give its unauthorized exemption to present the investment dispute for the purpose of settlement through binding arbitration in accordance with the choice of the investor under paragraphs 3 (a) and (b) or the mutual agreement of the parties to the dispute pursuant to paragraph 3 (c).

6. (a) The consent in paragraph 5, together with the consent in paragraph 3, satisfies the requirement for the written consent of the parties to the dispute for the purposes of both Chapter II of the Washington Convention and the Rules for Additional Facilities, and Article II of the United Nations Convention on the Recognition, Enforcement and Enforcement of Foreign Arbitral Awards, drawn up in New York on 10 June 1958 (the "New York Convention"), and Article I of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article, as mutually agreed between the parties, shall be governed by the New York Convention. Claims submitted to be held in a party that is a party to the arbitration and in accordance with the provisions of this Agreement shall be deemed to arise from a commercial relationship or transaction for the purposes of Article of the New York Convention of Diamond Protection or the submission of an international claim (c) that neither of the Contracting Parties shall grant grants related to any dispute referred to Arbitration, unless the other Contracting Party fails to comply with or apply the judgment issued in respect of that dispute. However is not considered diplomatic protection for the purposes of this subparagraph, the exchange of unofficial diplomatic notes is solely for the purpose of facilitating the settlement of a dispute.

7. The arbitral tribunal established under this Article shall decide the issues relating to the dispute in accordance with those rules of law as agreed upon by the parties to the dispute. In the absence of such an agreement, the law of the Contracting Party to the dispute, including its rules of conflict of laws, and recognized rules of international law as they apply, shall apply, taking into account also the relevant provisions of this Agreement.

8. An investor, other than a natural person holding the nationality of a Contracting Party to the dispute on the date of the written consent referred to in Paragraph 6 and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting Party, shall be treated for the purpose of Article 25 (2) (b) of the Washington Convention as a "national of another Contracting Party" and shall for the purpose Article 1 (6) of the Additional Facility Rules 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 Party shall promptly carry out any such award and shall take the necessary measures for the effective enforcement of such awards in its territory.

10. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment 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 9. Settlement of Disputes between the Contracting Parties

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

2. If the dispute is not settled within six months from the date of requesting such consultations or other diplomatic channels by either Contracting Party, and unless the Contracting States agree otherwise in writing, either Contracting Party may, by written notification to the other Contracting Party, Submit the dispute to an arbitral tribunal established for this purpose in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: Each of the Contracting Parties appoints one member, and these two

members agree on the positions of a third party to be their President, to be appointed by the Contracting Parties. These two members shall be appointed within two months, and the President within four months from the date on which either of the Contracting Parties notifies the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the member of the Court 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 a majority of votes. This decision shall be taken in accordance with the provisions of this Agreement and the recognized rules of international law, as applicable, and it shall be final and binding on each of the Contracting Parties. Each of the Contracting Parties shall bear the fees of the member of the arbitral tribunal appointed by that Contracting Party, as well as the fees of the member of the arbitral tribunal in the arbitration proceedings. As for the fees of the President, as well as any other costs, they shall be borne equally by both Contracting Parties. The arbitral tribunal may, at its discretion, decide to assign one of the Contracting Parties a proportion greater than or all of the mentioned costs. The arbitral tribunal sets its own procedure in respect of all other matters.

Article 10. Relationships between the Contracting Parties

The provisions of this Agreement shall apply regardless of the existence of diplomatic or consular relations between the contracting parties.

Article 11. Application of other Provisions

If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition {o this Agreement, contain a rule, 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 rule shall to the extent that it is more favourable, prevail over this Agreement.

Article 12. Scope of the Agreement

This Agreement shall apply to all investments in the territory of one Contracting Party, made in accordance with its legislation, by investors of the other Contracting Party, prior to as well as after its entry into force.

Article 13. Entry Into Force

Each of the contracting parties shall notify the other in writing of their fulfillment of the constitutional requirements necessary for the entry into force of this agreement, and the agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

Article 14. Duration and Termination

1. This Agreement shall remain in force for a period of (10) ten years, and thereafter shall continue in force for a similar period or periods, unless either Contracting Party notifies the other Contracting Party in writing one year before the expiry of the first term or any subsequent period of its intention to terminate the Agreement.

2. With respect to investments made prior to the effective date of the notice of termination of this Agreement, the provisions of this Agreement shall remain in effect for a period of fifteen (15) years from the date of termination of this Agreement.

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

Done in Hanoi on this fourth day of the month of Jumada Al-Awwal 1428 AH corresponding to the 23rd of the month of Saiu 7())(2), in two original copies in Arabic, Vietnamese and English, each of the two copies being equally authentic, and in case of disagreement, the English text shall prevail.

For the Government of the Socialist Republic of Vietnam,

Fu Hong Fog

Minister of Investment and Planning

For the Government of the State of Kuwait

Bader Mishari Al-Humaidhi

Minister of Finance