AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the State of Kuwait and the Government of the Republic of South Africa, (hereinafter jointly referred to as the "Contracting Parties" and in the singular as a "Contracting Party");

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

RECOGNIZING that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of prosperity in the territories of both Contracting Parties;

HEREBY AGREE as follows:

Article 1. Definitions

In this Agreement, unless the context indicates otherwise: -

1) "investment" means every kind of asset, owned or controlled directly or indirectly by an investor of a Contracting Party and invested in the territory of the other Contracting Party in accordance with the domestic law in force in the latter's country and, in particular, though not exclusively, includes:

(a) tangible, intangible, movable and immovable property and any related property rights such as leases, mortgages, liens, pledges, usufructs and other similar rights;

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

(c) claims to money and claims to any other assets or performance pursuant to a contract having en economic value:

(d) intellectual and industrial property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and technical processes, know-how, trade secret rights, trade names and goodwill;

(e) any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to manufacture, use and sell products, and rights to undertake other economic or commercial activities and services.

Any changes of the form in which assets are invested or reinvested shall not affect their character as an investment.

For the purpose of this Agreement, "associated activities" and "returns" retained for the purposes of reinvestment and proceeds form "liquidation" as these terms are defined herein, shall be deemed and treated as "investment".

2) "investor" with respect to a Contracting Party means:

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

(b) the Contracting Party itself; and

(c) any State entity or any juridical person or other entity legally constituted under the domestic law in force in the country of that Contracting Party, such as institutions, development funds, authorities, foundations, establishments, agencies, enterprises, cooperatives, partnerships, corporations, companies, firms, organizations and business .associations or similar

entities irrespective of whether their liabilities are limited or otherwise; and any entity established outside the jurisdiction of a Contracting Party as a juridical person, which such Contracting Party or any of its nationals or any entity established within its jurisdiction owns or controls. For the purpose of this definition the State entity means a department of government, corporation, institution or undertaking wholly or partially owned or controlled by government and engaged in activities of a commercial nature.

3) "own" or "control" also includes ownership or control exercised through subsidiaries or affiliates, wherever located.

4) "returns" means 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, technical assistance or other fees or current income, and payments in kind, such as in the form of goods or services.

5) "territory" means the territory of a Contracting Party including the territorial sea, air space and any maritime area which the Contracting Party may exercise sovereign rights and jurisdiction in accordance with International Law.

6) "associated activities" means activities connected with an investment and shall include without limitation, such activities as: -

(a) the establishment, control and maintenance of branches, agencies, offices or other facilities for the conduct of business;

(b) the organization of companies, the acquisition of companies or interests in companies or in their property, the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposal of companies organized or acquired;

(c) the making, performance and enforcement of contracts reiated to investment;

(d) the acquisition, ownership, use and disposal by any legal means of property of all kinds, including intellectual property, as well as the protection thereof; and

(e) the borrowing of funds from local financial institutions, as well as the purchase, sale and issue of shares and other securities on the local financial markets, and the purchase of foreign exchange for the operation of the investments.

7) "freely convertible currency" means any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Article of Agreement of the International Monetary Fund and any amendment thereto.

8) "without delay" means 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.

9) "liquidation" includes any disposal effected for the purpose of completely or partly giving up an investment.

Article 2. Establishment and Encouragement of Investments

1) (a) Each Contracting Party shall admit in its territory and in accordance with the applicable domestic law in force investment by investors of the other Contracting Party.

(b) Should an investment by an investor which is a State entity or a Contracting Party itself be admitted in the territory of the other Contracting Party, such investor and such investment shall be subject to treatment in the territory of the host Contracting Party as if such were an investor other than a State entity or a Contracting Party itself and as if such investment was made by an investor other than a State entity or a Contracting Party itself, and the State entity or Contracting Party shall be deemed to have given consent to the conduct and execution of all judicial process which could be implemented against investors which are not a Contracting Party or State entities, foreign or otherwise.

2) Each Contracting Party shall encourage and facilitate the formation and establishment of appropriate legal entities by investors of the other Contracting Party in order to establish, develop and execute investment projects in different economic sectors as may be permitted by the domestic law in force in the country of the host Contracting Party.

3) Each Contracting Party shall in its territory endeavour to take and enforce the necessary measures as may be applicable for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting Party including all necessary consents, approvals, licenses and authorization to such an extent and on such terms and conditions as may be determined by the domestic law in force.

4) The Contracting Parties may consult with each other in any manner they may deem appropriate to encourage and

facilitate investment opportunities within their respective territories.

5) Investors of either Contracting Party shall. be permitted to engage top managerial and technical personnel of their choice regardless of nationality, and each Contracting Party shall in this respect make available all necessary facilities to the extent permitted by the domestic law in force in its country and practice. Each Contracting Party shall, subject to the domestic law in force in its country and practice relating to the entry, stay and work of a natural person, examine in good faith and give benevolent consideration to requests by investors of the other Contracting Party and key personnel who are employed by such investors including family members, to enter, leave and remain temporarily in its territory for the purpose of carrying out activities connected with the making or the management, maintenance, use, enjoyment or disposal of an investment.

6) Wherever goods or persons connected with an investment are to be transported each Contracting Party shall to the extent permissible under its relevant domestic law in force in its territory, permit the operation of such transport by enterprises of the other Contracting Party.

7) In order to create favourable conditions for assessing the financial position and results of activities related to investments, in the territory of a Contracting Party, that Contracting Party shall, notwithstanding its own requirements for bookkeeping and auditing, permit the investment to be subject also to bookkeeping and auditing according to his or its national requirements or according to internationally accepted standards (such as International Accountancy Standards (AS) drawn up by the International Accountancy Standards Committee (IASC)). The results of such accountancy and audit shall _be freely transferable to the investor.

Article 3. Protection of Investments

1) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with recognized principles of international law and the provisions of this Agreement.

2) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments.

3) Each. Contracting Party shall make public all domestic laws, regulations, judicial decisions and administrative rulings, directives, procedures and guidelines that pertain to or directly affect investments of investors of the other Contracting Party in its territory.

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

5) Each Contracting Party recognizes that in order to maintain a favourable environment for investments in its territory by investors of the other Contracting Party, it shall provide effective means of asserting claims and enforcing rights with respect to investments. Each Contracting Party shall ensure to investors of the other Contracting Party, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who qualify under its applicable domestic law for the purpose of the asserting of claims and the enforcement of rights with respect to their investments.

6) Neither Contracting Party may impose on the investors of the other Contracting Party mandatory measures, which may require or restrict the purchase of materials, energy, fuel or 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 Party in favour of investments by its own investors or by investors of third States.

7) Once established, investments shall not be subjected in the territory of the host Contracting Party to additional performance requirements which may hinder or restrict their use, enjoyment, management, maintenance, expansion or other activities in connection with such investments or adversely affect or be detrimental to their viability in any manner, having the effect of discrimination against investments by investors of the other Contracting Party in favour of investment by its own investors or by investors of a third State.

Article 4. Treatment of Investments

1) Each Contracting Party shall at all times ensure investments made in its territory by investors of the other Contracting Party, fair and equitable treatment. Such treatment shall not be less favourable than which it accords in like situations to investments of its own investors or investors of any third State, whichever is the most favourable.

2) Each Contracting Party shall accord investors of the other Contracting Party, as regards any activity carried on in connection with their investments including management, maintenance, use enjoyment, disposal or compensation of such investments, treatment not tess favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable.

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 any of the following:

(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 Contracting Party is or may become a party;

(b) any international or regional agreement or other similar arrangement or any domestic law relating wholly or mainly to taxation;

(c) special arrangements to grant special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities;

(d) any domestic law or other measure the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination in its territory.

Article 5. Compensation for Damage or Loss

1) When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbance, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment not less favourable than that the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favourable.

2) Without prejudice to paragraph (1), investors of a Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from -

(a) requisitioning of their property or part thereof by its forces or authorities; or

(b) destruction of their property 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 prompt, adequate and effective compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of their property.

Article 6. Expropriation

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

(b) Investments by investors of either Contracting Party shall not be subjected in. the territory. of the host Contracting Party to requisition, sequestration, confiscation or any other similar measures except under due process of law and in conformity with applicable principles of international law and other relevant provisions of this Agreement.

(c) The compensation referred to in sub-paragraph (a) 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 becomes publicly known, whichever is the earlier (hereinafter referred to as the "valuation 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 the prevailing commercial market rate, however, in no event less than the prevailing LIBOR rate of interest or equivalent, from the date of expropriation until the date of payment.

(d) Where the above-mentioned fair market value carmot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and

duration of the investment, replacement value, appreciation, current returns, discounted cash low value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor.

2) Without prejudice to the rights of the investor under Article 9 the investor affected shall have a right to prompt review; under the domestic law in force in the territory of the Contracting Party making the expropriation, by other competent and independent authority in the territory of that Contracting Party, of its case including the valuation of its investment and payment of compensation therefore, in light of the principles set out in paragraph (1).

(3) For further certainty, expropriation shall include situations where 2 Contracting Party expropriates the assets of a company or enterprise that is incorporated or established under the domestic law in force in its own territory in which an investor of the other Contracting Party has an investment, including through the ownership of shares, stocks, debentures or other rights or interests.

4) The term "expropriation" shall also apply to acts of sovereign powers creating interventions or regulatory measures by a Contracting Party such as the freezing or blocking of the investment, levying of arbitrary or excessive tax on the investment, compulsory sale of all or part of the investment or other comparable measures, that have a de facto confiscatory or expropriatory effect in that their effect results in depriving the investor in fact from his ownership, control or substantial benefits over his investment or which may result in loss or damage to the economic value of the investment.

Article 7. Transfer of Payments Related to Investments

1) Each Contracting Party shall guarantee to investors of the other Contracting Party 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;

(d) royalties and fees for the rights referred to in Article 1 (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 Artiole 8; and

(i) payments arising out of the settlement of disputes.

2) Transfers of payments under paragraph (1) shall be effected without delay or restrictions and, except in the 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 the exchange rate prevailing in the territory of the host Contracting Party 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 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 for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is the most favourable to the investor.

Article 8. Subrogation

1) If a Contracting Party, its designated agency or a company or other enterprise constituted or incorporated in that Contracting Party ("the Indemnifying Contracting Party") makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party ("the Host Contracting Party"), the Host Contracting Party shall recognize: -

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

(b) the right of the Indemnifying Contracting 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 Contracting Party shall be entitled in all circumstances to -

(a) the same treatment in respect of the rights and claims acquired and the obligations assumed 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.

3) Without prejudice to Article 7, any payments received in local currency by the Indemnifying Contracting Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Contracting Party for the purpose of meeting any expenditure incurred in the territory of the Host Contracting Party.

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

1) Any dispute 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 dispute cannot be settled within a period of six months from the date at which either Contracting Party to the dispute requested amicable settlement by delivering a notice in writing to the other Contracting Party, the dispute shall be submitted for resolution, at the election of the investor Contracting Party to the dispute, either -

(a) in accordance with any applicable, previously agreed dispute-settiement procedures;

(b) to international arbitration in accordance with the provisions of this Article.

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:

(a) (i) The International Centre for Settlement of Investment Disputes (hereinafter referred to as "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 (hereinafter referred to as "the Washington Convention"), if both Parties are parties to the Washington Convention and the Washington Convention is applicable to the dispute;

(ii) The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as "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;

(3) an arbitral tribunal established under the Arbitration Rules (hereinafter referred to as "the Rules") of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to under Article 8 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) An investor, notwithstanding that it may have submitted a dispute to binding arbitration under sub-article (3), may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Contracting Party that is a Contracting Party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.

5) Each Contracting Party hereby gives its unconditional! consent to the submission of an invesiment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraphs (3) (a) and (b) or the mutual agreement of both parties to the dispute under paragraph 3 (c).

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 Il of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10 1958 (hereinafter referred to as the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article shall, as may be mutually agreed by the parties to the dispute, 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 Party shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting Party shall have failed to abide by and comply with the Award rendered in such dispute. However, diplomatic protection for the purposes of this sub-article shall not include informal diplomatic exchanges for the sole purposes 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 the domestic law in force in the territory of the Contracting Party to the dispute, including its rules on conflicts of, and such recognized rules of international law as be applicable, taking into consideration also the relevant provisions of the Agreement.

8) An investor. other than a natural person which has the nationality of a Contracting 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 Party arises, is controlled by investors of the, other Contracting Party, shali for the purpose of Article 25 (2) (b) of the Washington Convention be treated as a "national of another Contracting Party" and shall for the purpose of Article 1 (6) of the Additional Facility Rules be treaied as a "national of another Party".

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 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 Party and an investor of the other Contracting Party, a Contracting Party 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 part of its alleged damages from any third Contracting Party whomsoever, whether public or private, including such other Contracting Party and its subdivisions, agencies or instrumentalities.

11) Disputes arising between the Host Contracting Party and an investor which is a State entity or a Contracting Party itself, in respect of an investment of an investor in the territory of the Host Contracting Party shall, as far as possible, be settled amicably. If such dispute could not be settled amicably, the provisions of this Article shall apply except where the Washington Convention is not applicable.

Article 10. Settlement of Disputes between the Contracting Parties

1) The Contracting Parties 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 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 hoc arbitral tribunal in accordance with the following provisions of this Article.

3) The arbitral tribunal shall be constituted as follows: (a) each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as Chairperson of the arbitral tribunal to be appointed by the Contracting Parties. (b) such members shall be appointed within two months, and such Chairperson within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4) If the periods specified in paragraph (3) 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 shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party 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 Party 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 such recognized rules of international law as may be applicable 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 of the member for its representation in the arbitration proceedings. The expenses of the Chairfaan as well as any other costs of the arbitration proceedings shall be borne in equal parts by the Contracting Parties, However, the arbitral tribunal may, at its discretion, direct that a higher proportion or ali of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11. Relations between Contracting Parties

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

Article 12. Application of other Rules

If the domestic law in force in the territory of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contains rules, whether general or specific, entitling investments or associated activities 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 13. Scope of this Agreement

This Agreement shall apply to all investments, whether existing at or made after the date of its entry into force by investors of either Contracting Party in the territory of the other Contracting Party, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before the entry into force of this Agreement.

Article 14. Entry Into Force

This Agreement shall enter into force on the date on which each Contracting Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

Article 15. Duration, Amendment and Termination

1) This Agreement shall remain in force for a period of fifteen (15) years and shall continue in force thereafter for a similar period or periods unless, 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 through the diplomatic channel to terminate this Agreement.

2) The provisions of this Agreement may be amended by negotiated agreements or consultations between the Contracting Parties. The Contracting Parties shall notify each other through an Exchange of Notes through the diplomatic channel when their respective constitutional requirements for entry into force of such amendments have been fulfilled. Such amendment shall enter into force on the date of receipt of the last notification.

3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 13 shall continue to be effective for a period of twenty (10) years from the date of termination of this Agreement.

In witness whereof, the undersigned, duly authorized thereto by their respective governments, have signed and sealed this Agreement in two originals in the Arabic and English languages, both texts being equally authentic. â

DONE at Kuwait on this 26th day of September 2005

For the Government of the Republic of South Africa

For the Government of the State of Kuwait

PROTOCOL

Protocol to the Agreement between the Republic of South Africa and the State of Kuwait for the Reciprocal Promotion and Protection of Investments

On the signing of the Agreement between the Government of the Republic of South Africa and the Government of the State of Kuwait for the Reciprocal Promotion and Protection of Investment, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the Agreement:

Ad Article 7

1. With regard to the Republic of South Africa, the provision relating to transfers under this Article shall not apply to natural persons who are nationals of the State of Kuwait and have applied for permanent residency and are deemed to be permanent residents of the Republic of South Africa and have completed the required Exchange Control Form.

This provision shall terminate upon removal of the relevant Exchange Control Limitations by the Republic of South Africa, for which early removal the Republic of South Africa shall undertake every effort possible.

3. Paragraph (1) of this Protocol shall not apply or restrict the transfer of compensation payments made in pursuant to Article 5 and 6 of this Agreement.

4. In no case shall the State of Kuwait investors, in this matter, be treated less favourable than investors of any third State.

This Protocol shall enter into force at the same time as the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective governments, have signed and sealed this Protocol in two original in the English and Arabic languages, both texts being equally authentic.

For the Government of the Republic of South Africa

For the Government of the State of Kuwait