Agreement between the Government of the Kyrgyz Republic and the Government of the State of Kuwait for the encouragement and reciprocal protection of investments

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

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

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of asset or right in the territory of the state of one Contracting Party, and includes assets or rights consisting or taking the form of:

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

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

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

(d) 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;

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

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

Any change in the form in which assets or rights are invested or reinvested shall not affect their character as investments.

2. The term "investor" with respect of a Contracting Party shall mean:

(a) the Government of the state of that Contracting Party;

(b) a natural person holding the nationality of the State of that Contracting Party in accordance with its national legislation;

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

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

4. The term "territory" shall mean:

(a) In respect of the Kyrgyz Republic: the territory of the Kyrgyz Republic including the lands, internal waters and subsoil, the air space above it, which are subject to the sovereignty and jurisdiction in accordance with the terms of international law and national legislation of the Kyrgyz Republic;

(b) In respect of the State of Kuwait: the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the national legislation of the State of Kuwait, as an area over which the State of Kuwait may exercise sovereign rights or jurisdiction.

5. The term "without delay" shall mean such period as is 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.

Article 2. Scope of the 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 State of the other Contracting Party.

Article 3. Admitance, Encouragement and Protection of Investments

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

2. Investments of investors of a Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the State of the other Contracting Party in a manner consistent with recognized principles of the national legislation of that state of the Contracting Party and the provisions of this Agreement.

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

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

Article 4. National Treatment

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

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

3. The treatment to be accorded by a Contracting Party under paragraphs 1 and 2 applies, to natural persons resident in and enterprises constituted under the national legislation of the State of the Contracting Party.

Article 5. Most-Favoured-Nation Treatment

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

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

3. However, the provisions of this Article shall not be construed so as to oblige of one Contracting Party, to extend to the

investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

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

(b) any international or regional agreement or other similar arrangement and any national legislation of the state of the Contracting Party relating wholly or mainly to taxation.

Article 6. Compensation for Losses

1. Except where Article 8 applies, when investments made by an investor of either Contracting Party suffers a loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the State of the other Contracting Party, he shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the State of the latter Contracting Party accords to its own investors or investors of any third party, whichever is most favourable to the investor.

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

(a) requisitioning of its investments or part thereof by forces or authorities of the State of the Contracting Party;

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

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective for the damages or losses they have suffered. Resulting payments shall be freely convertible.

Article 7. Expropriation

1. (a) Investments made by investors of any Contracting Party in the territory of the State of the other Contracting Party shall not be nationalized, expropriated or subjected to direct measures having effect equivalent to nationalization or expropriation (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 were taken on a non-discriminatory basis and in accordance with legislation of the state of the Contracting Party.

(b) Such compensation shall amount to the actual value of the expropriated investments 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 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 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. For further certainty, expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise that is incorporated or established under the national legislation of the state of the Contracting Party 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.

3. For the purposes of this Agreement, the term "expropriation" shall also include any interventions or regulatory measures by a Contracting Party that have a de facto expropriatory effect, in that their effect results in depriving the investor in fact from his ownership, control or substantial benefits over his

3. For the purposes of this Agreement, the term "expropriation" shall also include any interventions or regulatory measures by a Contracting Party that have a de facto 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, such as the freezing or blocking of the investment, levying of arbitrary or excessive taxes on the investment, compulsory sale of all or part of the investment, or other comparable measures.

Article 8. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of investments and payments in connection with them into and out of the territory according to national legislation of the state of the Contracting Party.

2. Transfers of payments under paragraph (1) shall be effected without delay or restrictions and, except in the case of payments in kind 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.

Article 9. Subrogation

1. If the Contracting Party 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 State of the other Contracting Party (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 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 10. Settlement of Disputes between a Contracting Party and an Investor

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

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) to the competent courts, of the state of the contracting party in which the dispute arise;

(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, D.C., 18 March 1965 (the "Washington Convention"), if the states of both Contracting Parties are parties to the W ashington Convention and the W ashington Convention is applicable to the dispute;

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

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

(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 State of the Contracting Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not include request for payment of any damages.

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

Article 11. Settlement of Disputes between the Contracting Parties

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

2. If the dispute has not been settled within one hundred and eighty (180) days following the date on which such consultations or other negotiations through 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: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third party as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within sixty (60) days, and such Chairman within one hundred and twenty (120) days, 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 above have not been complied with, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of the State 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 the State 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 the State 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 this Agreement and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12. Relations between Contracting Parties

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

Article 13. Application of other Rules

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

Article 14. Amendments

By mutual agreement of the Contracting Parties any amendments to this Agreement can be made through a separate Protocol which shall enter into force in accordance with Article (15) of this Agreement and shall form an integral part of this

Agreement.

Article 15. Entry Into Force

This Agreement shall enter into force on the date of receipt of the latter written notification through diplomatic channels by which either Contacting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 16. Duration and Termination

1. This Agreement shall remain in force for a period of twenty five (25) years and shall continue in force thereafter for similar period or periods unless, at least one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party in writing of its intention to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of termination of this Agreement. In witness whereof, the respective plenipotentiaries of both Contracting Parties have signed this Agreement.

Done in Kuwait city on 13th of December 2015, corresponding to the 2nd day of Rabee Alawal 1437 H in two originals in the Kyrgyz, Russian, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Kyrgyz Republic

Erlan Abdyldaev

Minister of Foreign Affairs

For the Government of the State of Kuwait

Anas Khaled Alsaleh

Deputy Prime Minister and Minister of Finance and Acting Minister of Oil