# Agreement between the Government of the State of Kuwait and the Government of the Republic of Djibouti for the Mutual Protection of Investments

The Government of the State of Kuwait and the Government of the Republic of Djibouti (hereinafter referred to as "the Contracting States");

Desiring to create appropriate conditions for the completion of economic cooperation between them and in particular for your investments made by investors of a Contracting State in the territory of the other Contracting State;

Considering both states that the encouragement and reciprocal protection of such investments will be a catalyst for revitalizing commercial initiative and for increasing prosperity in both Contracting States;

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement:

1. The term “investment” means all kinds of assets which are situated in the territory of a Contracting State and which are owned or controlled, directly or indirectly, by an investor from the other Contracting State, or the rights arising therefrom or directly and including not taking the form of:

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

(b) claims to money and claims to any other assets or performance under a contract of economic value;

(c) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, designs, industrial models, class processes, expertise, trade secrets, trade names, and goodwill;

(d) licenses or permits granted in accordance with the law, including rights to maple, exploration, extraction or exploitation of 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 related rights such as leases, mortgages, debt liens, and possessions.

The term investment also applies to “proceeds held for the purpose of immediate reinvestment", and to "liquidation", as defined later in this Agreement.

Any change in the form in which the assets are invested or reinvested will affect their nature as an investment.

2. The term "investor" means in relation to a Contracting State:

(a) a natural person who has the nationality of that Contracting State in accordance with the laws of that State;

(b) the government of a Contracting State;

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

3. The term “company” refers to 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, properly organized in accordance with the laws applicable to the Contracting State, or it is owned, managed or controlled by the investors of the Contracting States, and includes public

institutions, trust, partnerships, sole proprietorship, branches, joint ventures, consortiums or other organizations.

4. The term “revenues” means the revenues generated by an investor, regardless of the form in which they are filed, and includes, in particular, but not limited to, dividends, interest, capital gains, dividends, royalties, technical assistance management fees or other payments or fees and payments in kind, of any kind.

5. “Liquidation” means any disposition carried out for the purpose of termination.

6. The term "territory" means the territory of a Contracting State, including any area outside the territorial sea which, in accordance with international law, has been determined, or may hereafter be determined in accordance with the law of a Contracting State, as an area in which a Contracting State may exercise the rights of sovereignty or jurisdiction.

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

8. The term "No Delay" means the period of time that is normally required to complete the necessary formalities for the transfer of payments.

The aforementioned period starts from the day on which the transfer request is submitted, provided that it does not, in any case, exceed one month.

## Article 2. Investment Protection

1. Each of the Contracting States shall encourage and create more favorable conditions for the investments made by the investors of the other Contracting State 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.

2. Investments made by investors of a Contracting State in the territory of the other Contracting State shall be granted a fair and equitable treatment and shall enjoy complete protection and security, in a manner consistent with the recognized principles of international law and the provisions of this Agreement. Neither Contracting State shall in any way take, for example, arbitrary and discriminatory measures which may prejudice the management, maintenance, use, enjoyment, or disposal of investments in the territory of investors of the other Contracting State. Each Contracting State shall observe any obligation or will to which it may be a party in relation to investments of investors of the other Contracting State.

3. Investments of investors of either Contracting State shall not be subject to additional performance requirements for incorporation that may hinder or restrict their use, management, disposal, operation, expansion, sale, or any other act.

## Article 3. Investment Treatment

1. As regards the use, management, disposal, operation, expansion, sale or other disposition of investments made in its territory by investors of the other Contracting State, no Contracting State shall have treatment no less favorable than that which it accords in similar cases to investments of its own investors or investors of any third State, whichever is the most favorable for the investors.

2. However, the provisions of this Article shall not be construed as obligating a Contracting State to give to investors who are of the other Contracting State the advantage of any treatment, preference, or privilege from:

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

(b) any international, regional, bilateral agreement, or any other similar arrangement, and any applicable legislation relating wholly or principally to taxation.

## Article 4. Compensation for Losses

1. The investors of one of the Contracting States whose investment has been exposed to damages or losses in the territory of the other Contracting State due to war or any other armed conflict, national emergency, revolution, commotion, riot, or other similar events, on the part of the other Contracting State, with respect to the normalization of the situation, or the restoration of losses, compensation or any other settlement, not less than that which the latter contracted state grants to its investors or to the purveyors of any third state, whichever is more favourable.

2. Without prejudice to paragraph 1, the investors of one of the Contracting States who suffer a loss in their property as a

result of any of the aforementioned events in the territory of the other Contracting State and resulting from:

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

(b) the destruction of their property or part of it by its forces or authorities, without this being due to hostilities or without the necessity of the situation.

they shall be granted prompt, adequate and effective compensation for the damage or loss they have incurred.

## Article 5. Expropriation

1. (a) Investments made by investors of either Contracting State in the territory of the other Contracting State shall not be nationalized, expropriated, dispossessed or subject, directly or indirectly, to measures of an effect equivalent to nationalization, expropriation or dispossession (together referred to as (hereinafter due to expropriation) by the other Contracting State except for a general purpose related to the national interest of that Contracting State and in return for prompt, adequate and effective compensation, provided that such measures were taken on a non-discriminatory basis and in accordance with the legal procedures in force in the Contracting States.

(b) The amount of such compensation shall be the actual value of the acquired investment and shall be determined and computed in accordance with internationally recognized valuation principles on the basis of the fair market value of the expropriated investment made at the time immediately preceding the imminent expropriation or the imminent expropriation becoming publicly identified, whichever is (hereinafter referred to as “the valuation date”). This compensation is calculated in a freely convertible currency chosen by the investor, based on the market value of the exchange rate that supports that currency on the valuation date and includes interest at a commercial rate that is consolidated on the market basis, provided that it does not decrease in any report on the interest rate between banks (Libor) or its equivalent, and that prevails on and until the date of payment from the date of expropriation.

2. For further clarification, expropriation includes cases in which a Contracting State expropriates the assets of a company or enterprise created or incorporated under the laws in force in its territory in which an investor of the other Contracting State has an investment through ownership of shares, shares, debentures, rights or other interests.

3. For the purposes of this Agreement, the term “expropriation” also includes any legal intervention or action by a Contracting State that has the same effect as the expropriation and which results in the investor being in fact deprived of ownership, control or substantial interest in his investment, or which may result in loss or damage to value Economic investment of the investment, such as freezing or withholding of the investment, the imposition of an arbitrary tax on the investment, the compulsory sale of all or part of the investment, or other similar measures.

## Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments, and returns thereon both inside and outside its territory.

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

## Article 7. Subrogation

1. If a 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 other Contracting Party (the "Host State"), the Host State shall recognize:

(a) the assignment to the Indemnifying Party, by law or by legal agreement, 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:

(a) the same treatment in respect of rights and claims acquired and entitlements assumed would require 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 8. Settlement of Disputes between a Contracting State and an Investor

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

2. If it is not possible to settle those disputes within six months from the date of either of the two parties to the dispute requesting an amicable settlement by delivering a written notification to the other party. The dispute shall be presented for resolution at the choice of the investor party to the dispute by one of the following means:

(a) in accordance with any appropriate procedures for the settlement of the dispute previously agreed upon;

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

3. In the case of the investor's choice is to submit the dispute for settlement by means of international arbitration, the investor must also provide his written consent to submit the dispute to settlement through one of the following means:

(a) (1) The International Center for the Settlement of Investment Disputes (the "Center"), which was established pursuant to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1965 (the Washington Convention) in the event that the Contracting States are parties In the Washington Convention and the applicability of the Washington Convention to the dispute;

(2) the Center, under the rules governing the Additional Facility facilities for the administration of proceedings by the Secretariat (Additional Facility Rules), if the Contracting State of the investor or the Contracting State 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 arbitral tribunal to be appointed pursuant to the arbitration rules of any arbitral tribunal to be mutually agreed upon by 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 Party that is a party to the dispute, interim injunctive relief for the preservation of its rights and interests, provided it does not request for compensation for 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, a Contracting Party shall not assert, as a defence, its sovereign immunity. In addition, 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 States

1. The Contracting States 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 on which such consultations or other diplomatic channels were requested by either Contracting State, and unless the Contracting Parties agree otherwise in writing, either Contracting State may by written notification to the other Contracting State, the dispute shall be submitted to an arbitral tribunal established for this purpose and in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: Each of the two Contracting States appoints one member, and these two members agree on a citizen of the third country to be their president, who shall be appointed by the two Contracting Parties, and these two members shall be appointed within two months, and the president 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 are not 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 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 vote. These decisions shall be taken in accordance with the provisions of this Agreement and the applicable rules of international law, and it shall be final and binding on all recognized by the two Contracting States. Each Contracting State shall pay the fees of the member of the arbitral tribunal appointed by each Contracting State, as well as the fees of its representative in the arbitration proceedings. As for the president's fees, as well as any other costs, they shall be borne equally by both Contracting States, and the arbitral tribunal may, at its discretion, decide to assign one of the Contracting States a proportion greater than or all of the mentioned costs. The arbitral tribunal sets its own procedures with respect to all other matters.

## Article 10. Relations between Contracting States

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

## Article 11. Application of other Obligations

If the laws of either Contracting State or obligations under international law existing at present or which may be austere at a later time, except between the two Contracting States in addition to this Agreement, include others, whether general or specific, investments or which are made by the residents of the other Contracting State shall be accorded treatment more favorable than prescribed. in this Agreement, this provision shall prevail over the Agreement to the extent that it provides a more favorable treatment.

## Article 12. Scope of Application

This Agreement shall apply to all investments, whether existing on the date of entry into force of this Agreement or made after that date, by investors of either Contracting State in the territory of the other Contracting State.

## Article 13. Entry Into Force

Each Contracting State shall notify the other in writing of its fulfillment of this Agreement, subject to the constitutional requirements necessary for the entry into force of the Agreement on the thirtieth day after the date of receipt of the last notification.

## Article 14. Duration

1. This Agreement shall remain in force for a period of thirty (30) years, and thereafter shall continue in force for a similar period or periods, unless either Contracting State notifies the other Contracting State in writing one year prior to 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 this notice of termination, the provisions of this Agreement shall remain in effect for twenty (20) 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 Djibouti on the 26th of Rajab, 1430 AH corresponding to the 19th day of the month of July, 2009, in two original copies in the Arabic language, each of the two copies being equally authentic.

For the Government of the Republic of Djibouti

Osman Ahmed Musa

Minister of Investment Development

For the Government of the State of Kuwait

Mustafa Jassim Al-Shamali

Minister of Finance