Agreement between the Government of the State of Kuwait and the Government of Jamaica for the Mutual Promotion and Protection of Investments

The Government of the State of Kuwait and the Government of Jamaica, hereinafter referred to collectively as the "Contracting Parties" and individually as "Kuwait" or "Jamaica";

Desiring to create conditions conducive to the development of economic cooperation between them and to facilitate investments made by investors of a Contracting State in the territory of the other State;

Recognizing that the promotion and protection of such investments will serve as an incentive to stimulate commercial initiative and increase prosperity in both Contracting States;

Desiring to create conditions conducive to investments made by investors of one in the territory of the other Contracting Party on the basis of equality and mutual benefit, and convinced that these objectives can be achieved without compromising public health, safety, labor, and environmental standards;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement;

1. The term "investment" means all types of assets owned or controlled, directly or indirectly, by an investor of a Contracting State in the territory of the other Contracting State, and includes assets or rights consisting of or taking the form of any of the following:

a) shares in a company, or equity interests and other forms of ownership interest, debentures, and debt securities and other forms of debt claims in a company, as well as other debts, bonds, and securities issued by any investor of a Contracting State;

b) claims for money and claims for any other property or performance under a contract of a pecuniary nature; copyrights, publications, and trademarks

c) intellectual property rights, including, without limitation, copyrights, patents, designs, industrial models, technical processes, know-how, and, trade names, and goodwill, whether granted by law or by decree;

d) any rights granted by law, contract, or pursuant to any licenses or permits granted in accordance with the law, including rights to prospect, explore, extract, or exploit natural resources, and the rights to engage in other economic and commercial activities or provide services; and

e) any other tangible and intangible, movable and immovable property, and any property rights related to leases, mortgages, debt privileges, and possessory rights.

The term "retained" also applies to 'assets' retained for the purpose of reinvestment, and "proceeds" as defined below;

A change in the form in which the assets were retained or reinvested shall not affect their nature as retained assets.

2. The term "invested" refers with respect to a Contracting State:

a) the government of that Contracting State;

b) an individual who holds the nationality or citizenship of that Contracting State and who resides therein in accordance with its applicable laws and who makes an investment in the other Contracting State;

c) legal entities, including companies, institutions, trade unions, and other organizationsand other organizations, whether incorporated or established under the laws and regulations of that Contracting State, which are owned by natural persons who are citizens residing in that Contracting State, or any entity in the territory of the Contracting State whose center of management and control is located within the territory of that Contracting State.

3. The term “company” means any legal entity, whether incorporated or unincorporated, established for the purpose of making a profit in accordance with the law and whether privately or publicly owned or operated, which is organized as requiredthe laws of the Contracting State, or is owned or effectively managed by investors of one of the Contracting States, and includes public institutions, secretariats, partnerships, sole proprietorships, branches, joint ventures, and other business associations or organizations, of whatever nature.

4. The term “income from the sale of goods that constitutes an investment” means income, regardless of the form in which it is paid, and includes, in particular but not limited to, dividends, interest, and capital gains, stock dividends, royalties, management fees, and other similar payments, fees, or charges and in-kind contributions, regardless of their form.

5. The term “liquidation” means any action taken to effect the full or partial termination of the investment.

6. The term “territory” means:

(a) with respect to the State of Kuwait, the territory of the State of Kuwait, including any area outside the territorial sea that has been or may be defined in the future pursuant to Kuwaiti laws and in accordance with international law as an area in which Kuwait may exercise sovereign rights or jurisdiction;

(b) With respect to Jamaica, the territory of Jamaica, including the archipelagic waters and the territorial sea, and any area defined or which may be defined, in accordance with international law, under Jamaican law as an area in which Jamaica may exercise sovereign rights or jurisdiction.

7. The term “freely convertible currency” means any currency designated by the International Monetary Fund, from time to time, as a freely convertible currency pursuant to the provisions of the Articles of Agreement of the International Monetary Fund and any amendments thereto.

8. The term “without delay” means “the period of time normally required to complete the formalities necessary for the transfer of payments; such period shall commence on the day on which the request for transfer is made, provided that it shall in no event exceed one month.

Article 2. Promotion and Protection of Investments

1. Each Contracting State shall promote and foster conditions more conducive to investments made by the other Contracting State in its territory, and, in accordance with the rights granted to it under its laws, shall accept such investments.

2. Investments made by investors of one Contracting State in the territory of the other Contracting State shall be accorded fair and equitable treatment and shall enjoy full protection and security, in accordance with recognized principles of international law and the provisions of this Agreement; neither Contracting Statetake any discriminatory or restrictive measures that would impair the management, construction, use, enjoyment, or disposal of investments in the territory of the other Contracting State

3. Each Contracting State shall observe any obligation or commitment to which it may be a party regarding investments made by investors of the other Contracting State. Investments made by investors of either Contracting Party shall not be subject to additional requirements that may hinder or affect their acquisition, management, disposal, improvement, expansion, sale, or any other disposition.

4. Each Contracting Party shall, to the best of its ability and in accordance with its laws, grant the necessary facilities to facilitate such consultations, licensing agreements, and contracts for technical and commercial assistance and administrative support, as may be required.

Article 3. Treatment of Investments

1. With regard to the use, management, disposal, operation, expansion, sale, or other forms of disposal of investments made in its territory by investors of the other Contracting State, each State shall accord treatment no less favorable than that which it accords in cases to investments made by its own investors or by investors of any other Contracting State.

2. Nevertheless, the provisions of this Article shall not be construed as obliging a Contracting State to grant to

investors nationals of the other Contracting State 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 State is or may become a party

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

Article 4. Compensation for Losses

1. Investments shall be subject to the provisions of Article 6, where investors of one Contracting State suffer losses in the territory of the other Contracting State due to war or any other armed conflict, a state of national emergency, a revolution, civil unrest, or other similar events in the territory of the other Contracting State, the investor shall be granted, by the latter Contracting State, in respect of the restoration of the situation to its previous state or compensation or other equitable settlement no less favorable than that granted by the other Contracting State to its own nationals or to investors of any third country, whichever is more favorable.

2. Without prejudice to paragraph 1 of this Article, investors of either State affected by the events referred to in that paragraph in either of the two States who suffer a loss as a result of any territory of the other Contracting State arising from:

(a) the temporary seizure of their property by the forces or authorities of that State;

(b) or the destruction of their property by its forces or authorities, provided that such actions are not due to hostilities or necessitated by the exigencies of the situation,

shall be granted prompt, adequate, and effective compensation for the damages or losses incurred.

Article 5. Expropriation

1. (a) Investments made by investors of either Contracting State in the the territory of the other Contracting State shall not be nationalized, expropriated, or deprived of their rights of possession, nor shall they be subjected directly or indirectly to measures having an effect equivalent to nationalization, expropriation, or deprivation of possession (hereinafter collectively referred to as “expropriation”) by the Contracting State, except for a public purpose relating to the national interest of that Contracting State and in return for prompt, adequate, and effective compensation, provided that such measures have been taken on a non-discriminatory basis and in accordance with legal procedures of general application.

For the purposes of this Article, “measure taken for a public purpose” includes any measure adopted or applied to protect or promote legitimate public interest objectives such as public health, safety, and security.

(b) A Contracting State shall not be obliged to compensate an investor for assets that have been expropriated, confiscated, or deprived of possession by a Contracting State as a result of a final court decision relating to criminal proceedings, provided that the amount of such compensation shall be the actual value of the expropriated investment, and shall be determined and calculated in accordance with internationally recognized valuation principles based on the fair market value of the immediately prior to the expropriation or when the imminence of the expropriation became publicly known, whichever is earlier (hereinafter referred to as the “valuation date”). Such compensation shall be calculated in a currency freely convertible used by the investor, based on the market value of the prevailing exchange rate for the currency on the valuation date and shall include interest at a commercial rate determined on a market basis, provided that the interest rate shall in no event be less than the prevailing interbank rate in London (LIBOR) or its equivalent, calculated from the date of expropriation until the date of payment.

(c) If the fair market value mentioned above cannot be readily ascertained, the compensation shall be determined based on equitable principles taking into account all relevant factors and circumstances, such as the investor’s capital, the nature and duration of the investment, theappreciation of the investment, current returns, the value of expected future cash flows, book value, and goodwill. The amount of compensation so determined shall be paid immediately.

2. Without prejudice to the investor’s rights under Article 8 of this Agreement, the aggrieved investor the right to immediate review of his case, under the law of the Contracting State that carried out the expropriation, by a court of competent jurisdiction or another independent competent body of that Contracting State, including the valuation of his investment and the payment of compensation for such investment, in light of the principles set forth in paragraph 1.

3. For greater certainty, expropriation includes cases in which a Contracting State takes ownership of assets in a company or enterprise established or incorporated under the laws in force in its territory, which belongs to an investor of the other

Contracting State, including through ownership of shares, equity interests, debt securities, rights, or other interests.

Article 6. Payments Related to Investments

1. Each Contracting State shall grant investors of the other Contracting State the freedom to transfer payments related to investments within and outside its territory after fulfilling the financial and other legal requirements arising in the host State.

2. The transfers of payments provided for in paragraph 1 shall be effected without delay or restriction and in a freely convertible currency.

3. In the case of payments in kind, the transfer shall be effected without delay and in accordance with the laws and regulations in force in the host Contracting State. In the event of such a delay, including the delay mentioned in paragraph 3, in making the required transfers, the affected party shall be entitled to receive interest for the duration of the delay.

4. Notwithstanding the foregoing, the Contracting State shall not be obligated to make payments or effect transfers to an investor unless the International Monetary Fund certifies that the Contracting State has experienced a balance of payments deficit, external financial difficulties, or any other payments shall be made in a manner that places the investor in a position no less favorable than that which the investor would have enjoyed had compensation been paid immediately upon the date of expropriation as referred to in Article 5 or pursuant to Article 4 regarding compensation for losses.

Article 7. Subrogation

1. If a Contracting State or its agency (the "Insurer") makes a payment to an investor pursuant to a commercial risk insurance policy, which it has issued in connection with any investment or any part thereof in the territory of the other Contracting State (the Host State), the Host State shall acknowledge:

(a) the assignment, whether by law or legal procedure, of all rights or claims arising from the investment;

(b) the guaranteeing party shall exercise all such rights, enforce all such claims, and assume all obligations relating to the investment pursuant to the assignment, thereby taking the place of the creditor.

2. The guaranteeing party shall, under all circumstances, be entitled to fair treatment with respect to:

a) The rights, claims, and obligations undertaken pursuant to the agreement referred to in paragraph 1 above;

b) Any payments received in connection with such rights and claims.

3. The original investor shall also have the right to invest pursuant to this Agreement with respect to the acquisition of the relevant assets.

Article 8. Settlement of Disputes between Contracting States and Investors

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

2. If such disputes are not settled within six months from the date of the settlement attempt, and provided that the party to the dispute has submitted a written notice to the other party, the investor or the Contracting State may resort to the local courts.

3. Procedure for exercising the right referred to in paragraph 2: If the dispute is not resolved through the procedures mentioned, the dispute shall be submitted for resolution to the local court of the contracting state for a period of eighteen months. The investor or the Contracting State may resolve the dispute in accordance with any mutually agreed-upon procedures for dispute settlement.

4. If the dispute is not settled within eighteen (18) months as provided for in paragraph 3, or if the option referred to in paragraph 2 has not been exercised, the investor or the Contracting State may choose to settle the dispute through an international arbitral tribunal by submitting a written request through one of the following means:

(a) 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 in Washington on March 18, 1965 (" Washington Convention") if both Contracting States are parties to the Washington Convention and the Washington Convention applies to the dispute; or

(b) an arbitral tribunal constituted in accordance with the Arbitration Rules ("the Rules") of the United Nations Commission on International Trade Law (UNCITRAL), as such Rules may be amended by the parties to the dispute (and the appointing authority referred to in Article 7 of those Rules shall be the Secretary-General of the United Nations, unless an arbitral tribunal is appointed pursuant to the arbitration rules of any arbitral institution agreed upon by the parties to the dispute).

5. Notwithstanding the fact that the investor has submitted the dispute to arbitration pursuant to paragraphs 3 and 4, the investor may, prior to the commencement of arbitration proceedings or during such proceedings, to seek relief before the civil or administrative courts of the Contracting State of the party to the dispute to preserve his rights and interests, provided that this does not include a claim for damages.

6. A Contracting State shall not, in any judicial or arbitral proceedings or otherwise, or in complying with any decision or award relating to a dispute between a Contracting State and an investor, be bound by the decision or award of the other Contracting State. No counterclaim or set-off may be raised against the investor concerned in respect of any amount received or to be received under a contract as a trustee, for damages or any other compensation for all or part of the damages claimed by any third party, whether public or private, including that other Contracting State and its subdivisions, agencies, or institutions.

Article 9. Settlement of Disputes between Contracting States

1. The two Contracting Parties shall, to the extent 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 resolved through consultations via diplomatic channels within six (6) months from the date of the request for dispute settlement by either Contracting State, and unless the two Contracting States agree otherwise, either Contracting State may, by means of written notification to the other Contracting State, submit the dispute to an arbitral tribunal to which such submission shall be made in accordance with the provisions set forth in this Article.

3. The arbitral tribunal shall be constituted as follows: Each Contracting State shall appoint one member, and these two members shall agree upon a national of a third State to serve as their chairperson, who shall be appointed by the two Contracting States; these two members shall be appointed within two months. The chairperson shall be appointed within four (4) months from the date on which either Contracting State notifies the other Contracting State of its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointment procedures are not completed within the time limits specified in paragraph 3 of this Article, either Contracting State may, without further delay, invite the President of the International Court of Justice to make the required appointments; if the President is a national of one of the Contracting States or is otherwise unable from performing the assigned task, the next member of the International Court of Justice in seniority who is not a national of either of the two Contracting States shall be requested to make the necessary appointments.

5. The Arbitral Tribunal shall render its decision by majority vote, and such decision shall be made in accordance with the provisions of this Agreement and the recognized rules of international law applicable at the time of its entry into force; it shall be final and binding on both Contracting States, and each Contracting State shall bear the fees of the member of the Arbitral Tribunal appointed by that Contracting State as well as the fees of its representative in the arbitration proceedings; as for the fees of the President as well as any other costs shall be borne by the two Contracting States in equal shares. The arbitral tribunal may, at its discretion, decide to charge one of the Contracting States with a portion of the said costs, the arbitral tribunal shall conduct its proceedings in accordance with the provisions of this Convention.

Article 10. Diplomatic Relations

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

Article 11. More Favourable Provisions

1. If the laws of either Contracting State or the obligations under international law in force or subsequently arising between the Contracting States contain provisions, whether general or specific, granting investments and returns made by investors of the other Contracting State more favorable treatment than that provided for in this Agreement, such provisions shall prevail under this Agreement to the extent that they provide for more favorable treatment.

2. Each Contracting State shall observe any obligation to which it may be a party relating to investments by investors of the other Contracting State. This Agreement shall apply to all investments, whether existing on the date of entry into force of

this Agreement or made thereafter, by investors of either Contracting State in the territory of the other Contracting State.

Article 12. Personnel

Investors of one of the Contracting States shall be permitted to employ senior management and technical staff of their choice, regardless of nationality, and each Contracting State shall to this regard to provide all necessary facilities to the extent permitted by its laws and regulations. Each Contracting State shall, in accordance with its laws and regulations relating to entry, residence, and employment, consider in good faith and give favorable consideration to applications by investors of the other Contracting State for natural persons and key personnel appointed by such investors, including family members, to enter, leave, and temporarily reside in its territory for the purpose of carrying out activities related to the establishment, management, maintenance, use, enjoyment, or disposal of the investment.

Article 13. Social Relations

Investors and their investments should strive to contribute as much as possible to the sustainable development of the host country and the local community through the practice of high standards of social responsibility, consistent with the scale, scope, and nature of the investment, in addition to the obligation to comply with all applicable laws and regulations of the host country and the obligations set forth in this Agreement.

Article 14. Amendments to the Agreement

1. The Contracting States may, by mutual agreement, introduce any amendment or addition to this Agreement in writing through the usual diplomatic channels.

2. Upon agreement and entry into force in accordance with the constitutional requirements of both Contracting States and the provisions of this Agreement, the amendment or addition, whether through a protocol or by other means, shall constitute an integral part of this Agreement.

Article 15. Entry Into Force

Each of the contracting states shall notify the other state in writing upon fulfilling its constitutional requirements for this agreement to enter into force or for any subsequent amendments after its entry into force, and the agreement or any amendments thereto shall enter into force on the thirtieth day following the date of receipt of the last notification.

Article 16. Duration

1. This Agreement shall remain in force for an initial period of twenty (20) years and shall continue thereafter for an indefinite period or periods, unless either Contracting State notifies the other Contracting State in writing of its intention to terminate this Agreement, and such termination shall take effect one year after the date of the notice of termination.

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 twenty (20) years from the date of termination of this Agreement.

In witness whereof, the authorized representatives of both Contracting States have signed this Agreement.

Done at Kuwait on this twentieth day of Jumada al-Awwal 1434 AH, corresponding to the 20th day of April 2013, in two original copies in the Arabic and English languages, each of which bears equally authentic and certified.

For the Government of Jamaica

Jerry Anthony

Minister of Industry, Investment, and Trade

For Government of the State of Kuwait

Mustafa Jassim Al-Shammari

Deputy Prime Minister and Minister of Finance