AGREEMENT BETWEEN THE STATE OF KUWAIT AND THE REPUBLIC OF TURKEY FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the State of Kuwait and the Government of the Republic of Turkey (hereinafter collectively referred to as the Contracting States and each referred to as Contracting State).

Desiring to create favourable conditions for greater economic cooperation between them and in particular for investments by investors of one Contracting State in the territory of the other Contracting State in different development activities which may be of mutual benefit to both Contracting States.

Recognizing that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting States.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" means every kind of investment in the territory of one Contracting State owned or controlled, directly or indirectly, by investors of the other Contracting State, including assets, equity, debt, claims, and service and includes:

(a) movable and immovable property as well as any other property rights jji rem such as mortgages, liens, pledges, usufruct and similar rights;

(b) shares, stocks and debentures of companies or other rights or interests in such companies and government issued securities?

(c) claims to money or to any performance having economic value associated with an investment;

(d) copyrights, trademarks, patents, industrial designs, technical processes and other industrial property rights, know-how, trade secrets, trade names and goodwill;

(e) any right conferred by law or contract and any licences and permits pursuant to law, including the right to search for, extraction and exploitation of natural resources;

(f) reinvestment of returns.

(2) Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment.

(3) The term "investor" shall mean any natural or juridical person of one Contracting State who invests in the territory of the other Contracting State.

(4) An "investment dispute" shall mean a dispute involving (a) the interpretation or application of an investment agreement between a Contracting State and an investor of the other Contracting State; (b) the interpretation or application of any investment authorization granted or approved by a Contracting State's competent authority to such investor; or (c) a breach of any right conferred or created by this Agreement with respect to an investment.

(5) The term "natural person" shall mean with respect to either Contracting State a natural person holding the nationality of that State in accordance with its laws.

(6) The term "juridical person" shall mean with respect to either Contracting State, any entity established in accordance with,

and recognized as a juridical person by the law of the Contracting State, such as institutions, development funds, agencies, enterprises, cooperatives, corporations, authorities, foundations, companies, partnerships, firms, establishments, organizations, business associations or similar entities.

(7) The term "own" or "control" shall mean ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates.

(8) The term "returns shall mean amounts yielded by an investment including profits, interest arising from approved loans, capital gains, share dividends, royalty or earnings and payment in kind

(9) "Associated activities" include the organization, control, operation, maintenance and disposition of company branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

(10) "Territory" means the territory of one Contracting State including any area in which the laws of that Contracting State are in force, as well as the Maritime Zones over which that Contracting State has, in accordance with international law, sovereign rights to explore and exploit its natural resources.

Article 2. Promotion and Protection of Investments

(1) Each Contracting State shall encourage and create favourable conditions for investors of the other Contracting State to make investments in its territory and, in accordance with its national laws, shall admit such investments and activities associated therewith.

(2) Once established, investments shall at all times enjoy full protection and security, in a manner consistent with international law.

(3) Each Contracting State shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, maintenance, operation, use, enjoyment, acquisition, disposal of investments or rights related to investment and its associated activities in its territory of investors of the other Contracting State shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures.

(4) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance,

Consents, approvals, 1icences and authorizations to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host State.

(5) With respect to its tax policies, each Contracting State should strive to accord fairness and equity in the treatment of investment of investors of the other Contracting State.

(6) The Contracting States recognize that, consistent with this Article, conditions of competitive equality should be maintained where investments owned or controlled by a Contracting State or its agencies and instrumentalities are in competition, within the territory of such State, with privately owned or controlled investments of investors of the other Contracting State.

(7) To attain the objectives of this Agreement, the Contracting States shall encourage and facilitate the formation and establishment of joint legal entities such as joint ventures, holding companies, joint stock companies or other similar business organizations between investors of the Contracting States to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State.

(8) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by laws of the host State.

(9) Each Contracting State shall seek to avoid performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

(10) Each Contracting State shall provide effective means of asserting claims and enforcing rights with respect to investment agreements and investment authorizations.

(11) Each Contracting State shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments.

(12) This Agreement shall also apply to investments by investors of either Contracting State in the territory of the other Contracting State made before its coming into force.

Article 3. Most-favoured-nation Provisions

(1) Each Contracting State shall in its territory accord investments and returns of investors of the other Contracting State treateraent not less favourable than that which it accords

To investments and returns of its own investors or to investments and returns of investors of any third State whichever is the most favourable.

(2) Each Contracting State shall in its territory accord investors of the other Contracting State, treatment not less favourable than which it accords to its own investors or to investors of any third State whichever is the most favourable.

(3) All activities involving the purchase, sale and transport of raw and secondary materials, energy, fuels and means of production and operations of all types shall be accorded treatment not less favourable than that accorded to the investment or associated activities carried out by the investors of that host State or third State investors whichever is the most favourable.

PROVIDED that nothing in this Article or in the immediately preceding Article shall be interpreted as imposing a legal obligation on either Contracting State to extend to the investors of the other, the benefit of any treatment, preference or privilege which may be accorded to any other State or its investors by virtue of the formation of a customs union, an economic union, a free trade zone, regional or sub-regional arrangement relating to movement of capital to which either Contracting State may be a party.

Article 4. Compensation for Damage or Loss

Investors of one Contracting State whose investments in the territory of the other Contracting State suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the latter Contracting State shall be accorded by the latter.Contracting State treatment as regards any measures it adopts in relation to such losses not less favourable than that which the latter Contracting State accords to its own investors or to investors of any third State whichever is the most favourable.

Article 5. Nationalisation or Expropriation

(i) Investments of investors from either Contracting State shall not be nationalised, expropriated or subjected to measures having effect directly or indirectly equivalent to nationalisation or expropriation (such as forced transfer or freezing) in the territory of the other Contracting State except for a public purpose in the national interest of that State, for prompt, adequate and just compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law.

(ii) Investments from either Contracting State shall not be subject to sequestration, confiscation or any similar measures in the territory of the other Contracting State save with the order of a court of competent jurisdiction in commercial and civil matters issued in accordance with laws in force.

(iii) Such compensation shall be computed on the basis of the fair market value of the investment at the time when the decision of nationalisation or expropriation was announced or became publicly known and shall be determined in accordance with recognized principles of valuation such as market value. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles generally recognized. The compensation shall be paid without undue delay and allowed to be freely repatriated. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which he would have been, had the compensation been paid immediately on the date of expropriation.

Article 6. Transfers

(1) Each Contracting State shall allow without undue delay the free transfer out of its territory in any freely convertible currency of:

(a) the net profits, dividends, royalties, technical assistance and technical service fees, and other returns, accruing from any investment by an investor of the other Contracting State;

b) the proceeds accruing from the sale, total or partial liquidation of any investment made by an investor of the other Contracting State;

(c) principal and interest payments arising under approved loan agreements;

(d) compensation pursuant to Articles 4 and 5 and payments arising out of an investment dispute;

(e) the earnings of nationals of the other Contracting State, who are allowed to work in connection with an investment in its territory, in accordance with laws and regulations of that Contracting State.

(2) Without restricting the generality of Article 3 of this Agreement the Contracting States undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

(3) For the purposes of this Agreement, exchange rates shall be determined in accordance with the prevailing official or market rate of exchange, whichever is applicable, on the date of transfer with respect to spot transactions in the currency or currencies to be transferred.

(4) For the purposes of this Agreement "without undue delay" shall mean that transfers shall be completed as rapidly as possible in accordance with normal commercial transaction procedures and in no case shall be delayed beyond three months from the date of application.

(5) Transfers, however, shall be subject to such reasonable regulatory procedures as shall, from time to time, be in force in the host State and shall likewise be subject to the right of the Host State to impose reasonable restrictions for temporary periods in accordance with the International Monetary Fund practice.

Article 7. Investment Insurance

If a Contracting State forms an insurance scheme for any of its investors it may consult with the other Contracting State regarding appropriate treatment of such scheme.

Article 8. Settlement of Investment Disputes

(1) In the event of an investment dispute between a Contracting State and an investor of the other Contracting State, the parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations in good faith. If such consultations or negotiations are unsuccessful, the dispute may be settled through the use of non-binding, third party procedures upon which such investor and the Contracting State mutually agree. If the dispute cannot be resolved through the foregoing procedures, the dispute shall be submitted for settlement in accordance with any previously agreed, applicable dispute settlement procedures.

(2) (a) The investor may choose to consent in writing to the submission of the dispute to the International Centre for Settlement of Investment Disputes ("Centre") for settlement by arbitration, at any time after one year from the date upon which the dispute arose, provided:

(i) the dispute has not, for any reason, been submitted by the investor for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute; and

(ii) the investor concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Contracting State that is a party to the dispute and a final award has not been rendered.

(b) Each Contracting State hereby consents to the submission of araj investment dispute to the Centre for settlement by arbitration.

(c) Arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States and the "Arbitration Rules" of the Centre.

(3) Any dispute settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

(4) For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either

Contracting State but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Contracting State, shall be treated as an investor of such other State.

(5) Neither Contracting State shall pursue through diplomatic channel any matter referred to arbitration until the proceedings have terminated and a Contracting State has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

Article 9. Settlement of Disputes between Contracting States

(1) Should any dispute arise concerning the interpretation or application of this Agreement the Governments of the Contracting States shall try to settle the dispute by meaningful and direct negotiations.

(2) If the dispute cannot be so settled it shall, upon the request of either Contracting State, be submitted to an arbitral tribunal in accordance with the provisions of this Article.

(3) The arbitral tribunal shall be constituted in the following way. Within two months of the receipt of the request for arbitration, each Contracting State shall appoint one member of the tribunal. The two members shall then select a national of a third State which has diplomatic relations with the State of Kuwait and the Republic of Turkey and who shall act as Chairman (hereinafter referred to as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article either party shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State or 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 State shall be invited to make the appointment.

(5) The Arbitral Tribunal Shall determine Its Own procedures.

(6) The Arbitral Tribunal Shall Reach Its Decision By a Majority of votes. Such Decision Shall Be Binding. Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States. The tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Contracting States.

Article 10. Relations between Governments