Agreement Between the Government of the State of Kuwait and the Government of Brunei Darussalam for the encouragement and mutual protection of investments

The Government of the State of Kuwait and the Government of Brunei Darussalam (hereinafter referred to collectively as the “Contracting Parties” and each referred to as the “Contracting Party”);

Desiring to create favorable conditions for the development of economic cooperation between them and, in particular, for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments will be an incentive to revitalize commercial initiative and to increase prosperity in both Contracting Parties;

Have agreed as follows

Article 1.

For the purposes of this Agreement:

1. The term “investment” means all types of assets established or acquired located in the territory of a Contracting Party and which are owned or controlled by an investor of the other Contracting Party, directly or indirectly, and includes assets or rights consisting of or taking the form of:

a) company shares, stocks and other forms of equity interest, debentures, debentures and other forms of corporate debt rights, and other debts, loans and securities issued by any investor of a Contracting Party;

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

c) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and models, technical processes, expertise, trade secrets, trade names and goodwill in accordance with the relevant laws of each Contracting Party;

d) Any right established by law, contract or under any licenses or permits granted by law, including rights to prospect, exploration, extraction or exploitation of natural resources and rights to engage in other economic and commercial activities.

e) Tangible and intangible, movable and immovable property and any related property rights such as rents, mortgages, debt liens and encumbrances.

The term "investment" also applies to "proceeds" held for the purpose of reinvestment, resulting from "liquidation" as these terms are defined herein.

Any change in the form in which the assets are invested or reinvested will not affect its nature as an investment.

2. The term “investor” means in relation to a Contracting Party:

a) the government of that Contracting Party;

b) a natural person holding the nationality or citizenship of that Contracting Party in accordance with the laws in force;

c) Any legal person established or legally established under the laws and regulations of that Contracting Party, such as social institutions, development funds, agencies, charitable and scientific institutions, legal institutions, organizations, and companies.

3. The term “company” means any legal entity, whether or not established for the purpose of making a financial profit, and

whether it is owned or controlled by the private or government sector, duly organized in accordance with the applicable law of the Contracting Party or is actually owned or managed by investors in the Contracting Party It includes public institutions, trusts, partnerships, one-man companies, branch, joint venture, unions or other similar organizations.

4. The term “returns” means amounts generated by an investment, regardless of the form in which they are paid, and includes, in particular, but not limited to, profits, interest, capital gains, dividends, royalties, management fees or other payments or fees, and payments in kind, of any kind.

5. The term “territory” means:

a) With regard to the State of Kuwait: The territory of the State of Kuwait, including any area outside the territorial sea, which, in accordance with international law, has been determined or may subsequently be defined in accordance with the laws of the State of Kuwait as an area in which the rights of sovereignty or jurisdiction may be exercised.

b) With regard to the Sultanate of Brunei Darussalam: the territory of Brunei Darussalam, including its territorial sea, and extending to the airspace above this territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including the seabed and subsoil, which are specified or may Determined under the laws of Brunei Darussalam, which exercises the rights of sovereignty and jurisdiction in accordance with international law.

6. The term “freely convertible currency” means any currency that the International Monetary Fund determines from one period to another as a freely used currency in accordance with the Articles of the International Monetary Fund Agreement and any subsequent amendments thereto.

7. The term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization signed in Marrakesh on 15 April 1994, which may be amended.

Article 2. Scope of the Agreement

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 Party or in the territory of the other Contracting Party in accordance with its laws and regulations.

Article 3. Protection of Investments

1. Each of the Contracting Parties shall encourage and create more favorable conditions for the investments made by the investors of the other Contracting Party in its territory, and in accordance with its rights granted to it by the force of its laws and legislations, it shall accept such investments in accordance with its laws and policies.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and enjoy full protection and security, in a manner consistent with the principles of international customary law recognized and the provisions of this Agreement. Investment returns, and in the event of reinvestment, those returns will enjoy the same investment protection. Neither Contracting Party shall, in any way, take arbitrary or discriminatory measures that would prejudice the management, maintenance, use, enjoyment or disposal of investments in the territory of investors of the other Contracting Party.

3. Each of the Contracting Parties shall observe any obligation or undertaking to which it may be a party in relation to investments by investors of the other Contracting Party.

4. One Contracting Party shall not impose on investment to investors of the other Contracting Party any performance requirements that could harm their health or adversely affect the safety of its use, management, operation, expansion, sale or disposal, which are inconsistent with the TRIMS Agreement set forth in Annex A1 of the World Trade Organization Agreement.

Article 4. Treatment of Investments

1. Each Contracting Party shall accord to the investments made by the investors of the other Contracting Party a treatment no less favorable than that which it accords to its investments or to the investments of the investors of any third country, whichever is more favourable.

2. In addition, each Contracting Party shall grant investors of the other Contracting Party treatment no less favorable than that accorded to its own investors or investors of any third country, whichever is more favourable.

3. Notwithstanding this, the provisions of this Article shall not be construed as obligating a Contracting Party to offer to investors of the other Contracting Party the advantage of any treatment, preference or privilege resulting from:

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

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

Article 5. Expropriation

1. (a) Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subject, directly or indirectly, to measures having an effect equivalent to nationalization or expropriation in a manner or dispossession referred to collectively hereinafter as "expropriation" by the other Contracting State except for a public purpose and in accordance with law on a non-discriminatory basis and article of fair and equitable compensation and for prompt, adequate and effective compensation.

(b) the amount of such compensation shall be the fair value of the expropriated investment, determined and computed in accordance with internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time immediately before the expropriation took place or the imminent expropriation became publicly known; Whichever is earlier (hereinafter referred to as "the valuation date"). This compensation is calculated in a freely convertible currency chosen by the investor, on the basis of the market value of the prevailing exchange rate for that currency on the valuation date and includes interest at a commercial rate determined on the basis of the market, provided that no This commercial rate is in any case less than the prevailing interest rate among London banks (Libor) or its equivalent, from the date of expropriation until the date of payment.

2. For the purposes of this Agreement, the term "expropriation" also includes any statutory interventions or procedures by a contracting party that have the same effect as expropriation and that result in the investor's actually depriving the investor of his ownership or dominance over or his essential interests in his investment or that may result in a loss or Damage to the economic value of the investment, such as the freezing or seizure of the investment, the compulsory sale of all or part of the investment, or other similar actions.

3. The aggrieved investor under the legislation of the contracting party that expropriated the property has the right to prompt review by a judicial authority or any other independent authority of that contracting party to consider his case and evaluate his investment and the amount of compensation in accordance with the principles set forth in this article. The contracting party making the expropriation shall ensure by all means that such review shall take place without unreasonable delay.

4. When a Contracting Party expropriates the assets of a company incorporated or established under law in force in any part of its territory in which the investors of the other Contracting Party hold shares, it shall ensure that the terms of paragraph (1) of this Article apply to the extent necessary to secure reasonable and equitable compensation in respect of for the investments of investors of the other Contracting Party who own such shares.

Article 6. Compensation for Losses

1. When investments made by an investor of any Contracting Party suffer loss due to war, other armed conflict, national emergency, revolution, civil disobedience, disturbances, riots or other similar events in the territory of the other Contracting Party, the investor shall be granted by the latter Contracting Party A treatment in terms of restoring conditions, guaranteeing losses, compensation or other settlement, a treatment not less favorable than that granted by the last contracting party to its investors or investors of any third country, whichever is more favorable.

2. Without prejudice to paragraph (1), the investors of one of the contracting parties who suffer loss or damage as a result of any of the events referred to in that paragraph in the territory of the other contracting party and resulting from:

a) confiscation of their property or part of it by its forces or authorities;

b) the destruction of their property, or part thereof, by its forces or authorities, without being caused by hostilities or without being required by the necessity of the situation,

they shall be given prompt, adequate and effective compensation for the damage or loss they have suffered without unreasonable disturbance.

Article 7. Transfers Related to Investment

1. Each of the Contracting Parties guarantees the investors of the other Contracting Party the free transfer in accordance with the laws and regulations for investments and the payments related to them inside and outside its territory.

2. For the purposes of this Article, an "unacceptable delay" is the period which would normally be 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.

3. The transfer of payments under paragraph (1) shall be effected without unreasonable delay or limitations, except in the case of payments in kind, in a freely convertible currency. In the event of a delay in making the required transfers, the affected investor is entitled to receive interest for the delay period in accordance with local rules and regulations.

4. Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Articles 5 and 6 of this Agreement.

5. The conversion shall be made in the original investment currency or any convertible currency without unacceptable delay. Transfers are made at the applicable market exchange rate prevailing on the day of the transfer.

6. Notwithstanding paragraphs (1), (2) and (3), a Contracting Party may delay or prevent such transfers through a fair, non-discriminatory and good faith application of its laws relating to:

a) bankruptcy, insolvency or protection of the rights of creditors;

b) the issuance, trading or dealing of securities, term investments, options or derivatives;

c) criminal or criminal offences;

d) ensuring compliance with orders or rulings in judicial proceedings or administrative rulings;

e) Investors' obligations arising from social insurance, general retirement or mandatory savings programmes.

Article 8. Subrogation

1. If a Contracting Party or its relevant agency (the “Guarantor Party”), makes a payment under an indemnity or guarantee against non-commercial risks that it has undertaken in connection with an investment in the territory of the other Contracting Party (the “Host State”), the Host State shall recognize:

a) to assign to the guarantor by law or legal transaction all rights and claims arising from such investment;

b) The guarantor party's right to exercise such rights, implement those claims, and undertake all investment-related obligations based on the principle of substituting for the creditor.

2. In all circumstances, the guarantor has the right:

a) to the same treatment of rights and claims acquired and obligations assumed under the assignment referred to in paragraph 1 above;

b) any payments received pursuant to such rights and claims, as the original investor was entitled to receive under this Agreement in connection with the relevant investment.

Article 9. Disputes between a Contracting Party and an Investor

1. Disputes arising between a Contracting Party and an investor of the other Contracting Party in relation to an investment belonging to the latter in the territory of the first-mentioned party 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, then the dispute shall be subject to resolution, by choosing the investor as a party to the dispute by one of the following means:

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

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

3. In the event that the investor chooses to submit the dispute to international arbitration, the investor must also submit his written consent to submit the dispute for settlement through one of the following bodies:

(a) (1) The International Center for the Settlement of Investment Disputes (the “Center”) established pursuant to which the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1965 (the “Washington Agreement”), in the event that the Contracting Parties are Parties to the Washington Convention and that agreement is applicable;

(2) under the rules governing the Additional Facilities for the Administration of Proceedings by the Secretary-General of the Center (the Additional Facilities 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 ;

b) an arbitral tribunal established under the Arbitration Rules (the “Rules”) of the United Nations Commission on International Trade Law (UNCITRAL), as these Rules are modified by the parties to the dispute (the appointing body referred to in Article 7 of the Rules is the Secretary-General of the Centre);

c) An arbitral tribunal to be established based on the arbitration rules of any arbitral tribunal to be mutually agreed upon between the parties to the dispute.

4. Notwithstanding that the investor has submitted the dispute to binding arbitration under paragraph 3, it may, before or during the commencement of the arbitral proceedings, petition the judicial or administrative courts of the Contracting Party to which we are a party to the dispute for an interim injunction To preserve his rights and interests, provided that this does not include a request for compensation for any damages.

5. A Contracting Party shall not assert its sovereign immunity in any judicial, arbitral or otherwise proceeding or in the enforcement of any decision or judgment relating to an investment dispute between a Contracting Party and an investor of the other Contracting Party. Nor may any counterclaim or right of set-off be established on the fact that the concerned investor has received, or will receive, based on an insurance contract, compensation for damage or any other compensation for all or part of the damages claimed by any third party whatsoever, whether general or private, including the other Contracting Party and its divisions, sub-divisions and its agencies or services.

Article 10. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties 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 of requesting such consultations or other diplomatic channels by either of the Contracting Parties, and unless the Contracting Parties agree otherwise in writing, either Contracting Party may, by written notification to the other Contracting Party, submit the dispute to an arbitral tribunal established for this purpose in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be formed for each individual case in the following manner. Within a period of two months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The two members later shall choose a citizen of a third country where each of the Contracting Parties has diplomatic relations, and upon the approval of both Contracting Parties, will be appointed president of the tribunal. The president shall be appointed within a period of two months from the date of appointment of the other two members.

4. If the periods specified in paragraph (3) above are not observed, either of the Contracting Parties 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 one of the Contracting Parties or finds an impediment preventing him from performing the said task, he shall ask the Vice President of the International Court of Justice to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of one of the Contracting Parties or finds an impediment to perform the said task, the member of the International Court of Justice next in seniority and who is not a national of one of the Contracting Parties shall be required to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. This decision shall be taken in accordance with the provisions of this Agreement and the recognized rules of international law, as applicable, and shall be final and binding on both contracting parties. Each of the Contracting Parties shall bear the fees of the member of the arbitration court appointed by that contracting party 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 parties. The arbitration court may, at its discretion, decide to assign one of the contracting parties a proportion greater than or all of the said costs. The arbitral tribunal shall determine its own procedure in respect of all other matters.

Article 11. Most Favorable Treatment

If the legislation of either Contracting Party or obligations under international law existing now or which may subsequently arise between the Contracting Parties, in addition to these, grants investments or made by the Agreement containing provisions, whether general or special, to investors of the other Contracting Party more favorable treatment than those set forth in this Agreement, this provision shall prevail over this Agreement to the extent that it provides a more favorable treatment.

Article 12. Entry Into Force

Each of the Contracting Parties shall notify the other in writing of its fulfillment of the legal or domestic requirements necessary for the entry into force of this Agreement, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

Article 13. Amendments

1. This Agreement may be amended with the consent of the two parties through the exchange of diplomatic notifications or in any other way, as agreed upon by the contracting parties.

2. Such amendment shall enter into force in accordance with Article (12), provided that it shall be effected without prejudice to any rights or obligations accrued or incurred under this Agreement prior to the commencement of its entry into force.

Article 14. Duration

1. This Agreement shall remain in force for a period of twenty-five (25) years. It will thereafter remain in force for a period or similar periods, unless either Contracting Party notifies the other Contracting Party in writing one year prior to the expiry of the first period or any subsequent period of its intention to terminate the Agreement.

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 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 on this day, Monday, Rabi` al-Akhir 19, 1430 AH, corresponding to the thirteenth of April 2009, in three original copies in Arabic, Malay and English, and each of the copies is equally authentic, and in case of disagreement, the English text shall prevail.

For the Government of Brunei Darussalam

Behin Dato' Haji Muhammad bin Haji Daoud

Minister of Energy in the Prime Minister's Office

For the Government of Kuwait

Mustafa Jassim Al-Shamali

Minister of Finance