AGREEMENT

between

THE STATE OF KUWAIT

and

THE REPUBLIC OF BULGARIA

FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting State in the territory of the other Contracting State;

Recognizing that the reciprocal promotion and protection under international agreement of such investments will be conducive to the stimulation of investors' initiatives and will assist the expansion of economic relations.

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

(1) The term "investment" shall mean every kind of assets owned or controlled directly or indirectly by an investor of a Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that State. Without restricting the generality of the foregoing, the term "investment" shall include:

(a) property and other real rights;

(b) shares, stocks and debentures of companies or other rights or interests in such companies, loans associated with investments and securities issued by the Government of either Contracting State;

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

(d) copyrights and other similar rights, trademarks, patents, industrial designs 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 issued pursuant to law, including rights to prospect, explore, extract or utilize natural resources, and rights to manufacture, use and sell products.

Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested.

(2) The term "investor" means:

(a) With respect to the Republic of Bulgaria:

(i) a natural person who is a national of the Republic of Bulgaria, in accordance with its applicable legislation;

(ii) any company, firm, partnership, organization or association with or without juridical personality, incorporated or constituted in accordance with the laws of the Republic of Bulgaria, with a seat in its territory; and

(iii) any entity established outside the jurisdiction of the Republic of Bulgaria as a juridical person and in which the Republic of Bulgaria or any of its nationals or any juridical person established within its jurisdiction has a predominant interest.

(b) With respect to the State of Kuwait:

(i) a natural person who is a national of the State of Kuwait, in accordance with its laws;

(ii) any entity established or constituted in accordance with the laws of the State of Kuwait, with or without juridical personality, such as institutions, development funds, enterprises, agencies, cooperatives, partnerships, corporations, authorities, foundations, companies, firms, establishments, organizations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise; and

(iii) any entity established outside the jurisdiction of the State of Kuwait as a juridical person and in which the State of Kuwait or any of its nationals or any entity established within its jurisdiction has a predominant interest.

(3) The term "returns" shall mean all amounts yielded by investments, such as profits, dividends, interests, and other lawful income including payment in kind.

(4) "Associated activities" include the organization, control, operation, maintenance and disposition of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business, the acquisition, use, protection and disposition of property including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares.

(5) The term "territory" shall mean the territory under the sovereignty of the Republic of Bulgaria or the State of Kuwait, including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the respective State exercises sovereign rights or jurisdiction in conformity with international law.

ARTICLE 2

Promotion and Admission

(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 laws, shall admit such investments and activities associated therewith.

(2) (a) Each Contracting State shall in accordance with its legislation endeavour to take and enter into force the necessary measures for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(b) 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, licences and authorizations to such an extent and on such terms and conditions as may be determined by the legislation of the host State.

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

(4) The Contracting States shall periodically consult between themselves concerning investment opportunities within the territory of each other in various sectors of the economy to determine where the investments from one Contracting State into the other may be most beneficial in the interest of both Contracting States.

(5) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in accordance with their respective laws and regulations.

(6) Once established, the investments shall not be subjected to additional performance requirements in the host State which might hinder their operation or development.

ARTICLE 3

Protection and Treatment

(1) Investments by investors of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State in a manner consistent with the provisions of this Agreement. Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or any other associated activities in connection with investments in its territory of investors of the other Contracting State.

(2) Each Contracting State shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting State. This treatment shall not be less favourable than that accorded by each Contracting State to investments made within its territory by its own investors or by investors of any third state, whichever is most favourable.

(3) Each Contracting State shall accord investors of the other Contracting State, as regards activities associated with investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third state, whichever is most favourable.

(4) Each Contracting State recognizes that in order to maintain a favourable environment for investments in its territory by investors of the other Contracting State, it shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties.

(5) Each Contracting State shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments in its territory of investors of the other Contracting State.

(6) In case of reinvestment of the returns of an investment, these reinvestments and their returns shall enjoy the same treatment and protection as the initial investment.

ARTICLE 4

Exceptions

(1) If a Contracting State has accorded special advantages, preferences or privileges to investors of any third state by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements

leading to such unions or institutions, that Contracting State shall not be obliged to accord such advantages, preferences or privileges to investors of the other Contracting State.

(2) The treatment provided for under Article 3 shall not apply to taxes, fees, charges and to fiscal deductions and exemptions granted by either Contracting State to investors of third state by virtue of double taxation agreements or other agreements regarding matters of taxation, or on the basis of reciprocity with a third state.

(3) Either Contracting State reserves the right to make or maintain, in compliance with its legislation, limited exceptions from national treatment granted according to paragraphs (2) and (3) of Article 3.

ARTICLE 5

Compensation for Losses

Investors of one Contracting State whose investments in the territory of the other Contracting State suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting State, shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting State accords to its own investors or to investors of any third state, whichever of these standards is the most favourable from the point of view of the investor. Payments resulting from any provision in this Article shall be freely transferable, made without delay and shall include interest at the current LIBOR rate of interest until the date of payment and be effectively realizable in convertible currency.

ARTICLE 6

Sequestration and Confiscation

Investments of either Contracting State or any of its investors shall not be subject to sequestration, confiscation or any similar measures except under due process of law.

ARTICLE 7

Nationalisation or Expropriation

(1) (a) Investments of either Contracting State or any of its investors shall not be nationalised or expropriated in the territory of the other Contracting State except for the public interest related to the internal needs of that State by due process of law for prompt, adequate and just compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application and are not contrary to any undertaking to the investor which that State may have given.

(b) Such compensation shall amount to the actual value of the investment and shall be computed on the basis of the fair market value of the investment immediately prior to the point of time when the decision for nationalisation or expropriation was announced or became publicly known and shall be determined in accordance with other recognised principles of valuation in addition to market value in the host State. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. 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 or nationalisation. To achieve this goal the compensation shall include interest at the current LIBOR rate of interest from the date of nationalisation or expropriation until the date of payment. The amount of compensation finally determined shall be promptly paid to investors in freely convertible currencies and allowed to be freely repatriated without delay. Measures for the determination and payment of such compensation shall be made in an appropriate manner not later than at the moment of expropriation or nationalisation.

(c) Where a Contracting State nationalises or expropriates the assets of a juridical person which is considered as its own juridical person pursuant to paragraph (2) of Article 1 of this Agreement and in which the other Contracting State or any of its investors owns shares, stocks, debentures or other rights or interest, it shall apply the provisions of paragraph (1) of this Article so as to ensure due compensation to this investor.

(2) The provisions of paragraph (1) shall also apply in the event of liquidation, to the proceeds from the liquidation.

(3) The investor shall be entitled to have the legality of the expropriation or nationalisation reviewed by the competent authorities of the Contracting State having induced the expropriation or nationalisation.

(4) Notwithstanding the provisions of paragraph (3), the investor shall also be entitled to have the amount of the compensation reviewed by an international ad hoc arbitral tribunal according to Article 10.

ARTICLE 8

Transfer of Payments Related to Investments

(1) Each Contracting State shall grant to investors of the other Contracting State the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

(a) the initial capital plus any additional capital for the maintenance and development of the investment;

(b) returns;

(c) payments under a contract, including amortisation of principal and accrued interest payment pursuant to a loan agreement;

(d) royalties and fees for the rights referred to in Article 1 (1) (d);

(e) proceeds from the sale or liquidation of the whole or any part of the investment;

(f) earnings and other remunerations of personnel engaged from abroad in connection with the investment;

(g) payments of compensation pursuant to Articles 5,6 and 7;

(h) payments referred to in Article 9; and

(i) payments arising out of the settlement of a dispute.

(2) Transfers of payments under paragraph (1) shall be effected without delay in a convertible currency at the applicable rate of exchange in the host State.

(3) Transfers shall be made at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

ARTICLE 9

Subrogation

(1) If a Contracting State (or its designated Agency) makes payment to any of its investors under an indemnity or guarantee it has granted in respect of an investment or any part thereof in the territory of the host State, or has otherwise become subrogated to any of the rights of such investor upon observation of counter collections and claims with respect to such investments, the host State shall recognize:

(a) the right of the other Contracting State (or its designated Agency) arising from the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction, and

(b) that the other Contracting State (or its designated Agency) is entitled by virtue of subrogation to enforce such right.

(2) If such other Contracting State acquires any amounts in such manner as above, it shall be accorded in respect thereof treatment as provided for in Article 3 of this Agreement.

ARTICLE 10

Disputes between an Investor and a Contracting State

(1) Disputes between an investor of one of the Contracting States and the other Contracting State concerning an investment of the former, shall as far as possible and in the absence of any previously agreed dispute-settlement procedures, be settled amicably.

(2) If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting State.

(3) In case of disputes with regard to Articles (5), (6), (7), (8) and (9) of this Agreement the investor concerned may, instead, choose to submit the dispute for settlement by arbitration to:

(a) an ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as those rules may be modified by the parties to the dispute; or,

(b) the International Centre for Settlement of Investments Disputes, in the event that both Contracting States are parties to the Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 (Washington Convention), provided that the latter Convention is applicable to the dispute in question.

(4) The award shall be final and binding on both parties to the dispute and be enforced in accordance with the domestic laws of the Contracting State concerned.

ARTICLE 11

Settlement of Disputes between Contracting States

(1) Any disputes between the Contracting States concerning the interpretation or application of this Agreement shall be settled, as far as possible, through friendly consultation by both States through diplomatic channels.

(2) If the dispute cannot be so settled within six months following the date on which such consultation were started, 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 for each particular case 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 to 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 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 necessary appointments. 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 necessary appointments. 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 necessary appointments.

(5) The Chairman and the members of the Arbitral Tribunal must be citizens of states with which the two Contracting States maintain diplomatic relations.

(6) The Arbitral Tribunal shall reach its award based upon the provisions of the present Agreement, the relevant domestic laws and the universally accepted principles of international law. Its decisions shall be made by majority of votes and shall be binding on both Contracting States. Each Contracting State shall bear the cost of the arbitrator it designates, as well as the expenses for its representation in the arbitration procedures. The costs of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting States. The Arbitral Tribunal shall determine its own procedure.

ARTICLE 12

Relations between Governments

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

ARTICLE 13

Preservation of Rights

(1) This Agreement shall not supersede, prejudice or otherwise derogate from:

(a) laws, regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Contracting States,

(b) international legal obligations, or

(c) obligations assumed by either Contracting State, including those contained in an investment agreement or investment authorisation, that entitle investments or associated activities of investors of the other Contracting State to treatment more favourable than that accorded by this Agreement in like situations.

(2) Each Contracting State shall observe any contractual obligations it may have entered into towards an investor of the other Contracting State with regard to investments approved by it in its territory.

(3) Nothing in this Agreement shall prejudice any rights or benefits accruing under the national laws of the host State or international law adopted by both States to interests of an investor in the territory of the other Contracting State.

ARTICLE 14

Application

This Agreement shall also apply to all investments made by investors of either Contracting State in the territory of the other Contracting State after the year 1946 and accepted in accordance with the respective legislations of either Contracting State.

ARTICLE 15

Entry into Force

(1) Each Contracting State shall notify the other that this Agreement has been duly ratified in accordance with its constitutional requirements.

(2) This Agreement shall enter into force on the thirtieth date after the receipt of the last notification.

ARTICLE 16

Duration and Termination

(1) This Agreement shall remain in force for a period of 25 (twenty-five) years and shall continue in force thereafter for a similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other Contracting State of its intention to terminate the 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 20 (twenty) years from the date of termination of the present Agreement.

In witness whereof the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done in duplicate at Kuwait on this 12 day of SAFAR 1418H corresponding to 17 day of June 1997, in the Arabic, Bulgarian and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the State of Kuwait

For the Republic of Bulgaria

PROTOCOL

On signing the Agreement between the State of Kuwait and the Republic of Bulgaria For The Reciprocal Promotion and Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

1. **With respect to Article 1, paragraph (1)**

A Contracting State may require legal persons referred to in Article 1 paragraph 2 to submit proof of such control in order to obtain the benefits provided for in the provisions of this Agreement. For example, the following may be considered acceptable proof:

(a) that the legal person is an affiliate of a legal person having its seat in the territory of the other Contracting State,

(b) that the legal person is economically subordinated to a legal person having its seat in the territory of the other Contracting State,

(c) that the votes directly or indirectly controlled or the percentage of capital owned by natural or legal persons of the other Contracting State makes it possible for them to exercise control.

2. **With respect to Article 1, paragraph 2 (b):**

For the purposes of this Agreement the State of Kuwait shall be deemed to be a juridical person.

3. **With respect to Article 3:**

(a) 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 and related activities carried out by investors of the host State or of any third state, whichever is most favourable. There shall be no impediments to the normal exercise of such activities, provided they are carried out in accordance with the laws, regulations and administrative practices of the host State and in observance of the provisions of this Agreement.

(b) nationals authorised to work in the territory in the one of the Contracting States shall be accorded the appropriate support for the exercise of their professional activities in connection with an investment made in the territory of the host State in accordance with its applicable legislation.

(c) The Contracting States shall facilitate in the light of their domestic laws, regulations and administrative practices issuance of entry visas and authorizations pertaining to sojourn, work and travel of the nationals of one Contracting State pursuant to an investment in the territory of the other Contracting State, and members of their families.

4. **With respect to Articles 5, 7 and 8:**

The term "without delay" within the meaning of Articles 5, 7 and 8 is deemed to be fulfilled if a repatriation is made within such period as is normally required according to international financial custom and, in any case, not later than three months, provided that the investor has settled his tax obligations to the host State.

5. **With respect to Article 7:**

The provisions of Article 7 shall also apply to conversion to public ownership, subjection to public control, as well as any other deprivation or such limitation of property by sovereign measures, such as freezing, blocking of assets or compulsory sale of all or part of the investment or other similar measures which in their consequences will be tantamount to expropriation or nationalisation.

Done in duplicate at Kuwait on this 12 day of 1418 H corresponding to 17 day of June 1997, in the Arabic, Bulgarian and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the State of Kuwait

For the Republic of Bulgaria

AGREEMENT
ON THE AMENDMENT OF THE AGREEMENT
between
THE STATE OF KUWAIT
and
THE REPUBLIC OF BULGARIA

FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS signed on June 17th , 1997, (herinafter referred to as "the original Agreement")

The Contracting States have agreed as follows:

ARTICLE 1

In Article 4 of the original Agreement, paragraph 1 is deleted and it is replaced by a new paragraph 1:

"1. The non-disciriimination, national treatment and most-favoured nation treatment provisions of this Agreement shall not apply to all actual or future advantages accorded by either State by virtue of a Contracting State's membership of, or association with, a customs, economic or monetary union, a common market or a free trade area, to nationals or companies of its own, of member states of such union, common market or free trade area, or of any other third state."

ARTICLE 2

In Article 8 of the original Agreement, a new paragraph 4 is added after paragraph 3 and it reads as follows :

" 4. Notwithstanding paragraphs 1, 2 and 3 of this Article, such transfer might be subject to equitable, non-discriminatory and good faith application of temporary measures, accorded by regulatory procedures of the European Union or Gulf Cooperation Council. Such measures shall be promptly notified to the other Contracting state. "

ARTICLE 3

1. This Agreement shall be considered as an integral part of the original Agreement between the State of Kuwait and the Republic of Bulgaria for the reciprocal promotion and protection of investments, signed on June 17th , 1997.

2. This Agreement is subject to ratification and shall enter into force on the date of receiving the second notification.

Done in two originals at Kuwait on the 10th day of Moharam 1428 H, corresponding to 29th day of January 2007, in the Arabic, Bulgarian and English languages, all texts being equally authentic. In case of divergency the English text shall prevail.

For the Government of the State of Kuwait

Bader Al-Humaidhi
Minister of Finance



For the Government of the Republic of Bulgaria

Rumen Ovcharov
Minister of Economy and Energy

