AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF BAHRAIN

AND

THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM

ON

THE RECIPROCAL PROMOTION

AND

PROTECTION OF INVESTMENTS

The Government of the Kingdom of Bahrain and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam (hereinafter collectively referred to as the "Contracting Parties", and each referred to as the "Contracting Party");

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

Recognising 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 States;

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

(a) "companies" means:

(i) in respect of the Kingdom of Bahrain: corporations, firms or business associations incorporated or constituted under the laws in force in Bahrain;

(ii) in respect of Brunei Darussalam: any kind of juridical entity including any partnership, corporation, body corporate, firm, association or other organisation that is duly incorporated or constituted in accordance with the legislation of Brunei Darussalam;

(b) "income from debt-claims" means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures;

(c) "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other property rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other similar forms of participation in a company as well as securities issued by a Contracting Party;

(iii) rights to money or to any performance under contract having an economic value;

(iv) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how and goodwill in accordance with the relevant laws of the respective Contracting Party;

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources; and

(vi) Islamic investments;

(d) "investors" means any national or company of a Contracting Party;

(e) "nationals" means:

(i) in respect of the Kingdom of Bahrain, natural persons deriving their status as Bahraini nationals according to the applicable laws of Bahrain;

(ii) in respect of Brunei Darussalam, natural persons who are accorded the status of a national of Brunei Darussalam under the applicable laws of Brunei Darussalam;

(f) "returns" means the monetary amounts yielded by an investment such as profit, income from debt-claims, capital gains, dividends, royalties and fees;

(g) "territory" means:

(i) in respect of the Kingdom of Bahrain, the territory of the Kingdom of Bahrain as well as the maritime areas, seabed and subsoil over which Bahrain exercises, in accordance with international law, sovereign rights and jurisdiction;

(ii) in respect of Brunei Darussalam, the territory of Brunei Darussalam including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including sea-bed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam, over which it exercises its sovereign rights and jurisdiction in accordance with international law.

ARTICLE 2
Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement. However, this Agreement shall not apply to disputes concerning an investment that have arisen before its entry into force.

ARTICLE 3
Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and policy.

2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

3. Investments by investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. Returns from investment and, in the event of their re-investment, the returns thereon shall enjoy the same protection as the investment. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory by investors of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 4
National Treatment and Most-Favoured-Nation Treatment

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State.

2. In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

3. The provisions of paragraphs (l) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, the benefit of any treatment, preference or privilege resulting from:

   (a) any existing or future customs unions or a free trade area or a common market or similar international agreement to which it is or may become a party; or

   (b) any matter pertaining wholly or mainly to taxation.

4. Unless specifically excepted, the treatment provided for in this Article shall apply to the whole of this Agreement.

ARTICLE 5
Nationalisation or Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include an additional daily rate of compensation at a fair and equitable commercial rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and freely transferable. Where the market value cannot be ascertained properly, the compensation shall be determined in accordance with internationally recognised accounting principles.

2. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out without unreasonable delay.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6
Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be effectively realisable and freely transferable in accordance with Article 7.

2. Without prejudice to Paragraph 1 of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that Paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

   a) requisitioning of their property by its forces or authorities, or

   b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

   shall be accorded restitution or fair and adequate compensation.

ARTICLE 7
Free Transfer

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

   (a) capital and additional capital amounts used to maintain and increase investments;

   (b) net operating profits including dividends and income from debt-claims in proportion to their share-holdings;

   (c) repayments of any loan including income from debt-claims thereon, relating to the investment;

   (d) payment of royalties and service fees relating to the investment;

   (e) proceeds from sales of their shares;

   (f) proceeds received by investors in case of sale or partial sale or liquidation; and

   (g) the earnings of nationals of one Contracting Party who works in connection with investment in the territory of the other Contracting Party.

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

3. The transfer shall be made in the currency of the original investment or any other convertible currency or currencies without undue delay. Transfers shall be effected at the applicable market exchange rate prevailing on the day of the transfer.

ARTICLE 8
Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors, and shall not lead to a double compensation. As regards the transfer of payments made by virtue of such rights or claims, Article 7 shall apply *mutatis mutandis*.

ARTICLE 9
Settlement of Disputes Between an Investor and a Contracting Party

1. Disputes concerning investments between one Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. Any such dispute which has not been amicably settled within a period of six months may, if both Parties agree, be submitted for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies.

3. Should the Parties fail to agree on a dispute settlement procedure provided for under paragraph (2) of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute shall, upon the request of either party to the dispute, be referred to arbitration. The arbitration procedure shall be as follows:

   (a) if the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, such a dispute shall be referred to the Centre; or

   (b) if both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or

   (c) to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

      (i) the parties to the dispute shall appoint their respective arbitrators within two (2) months from the date when one of the parties to the dispute informs the

other of its intention to submit the dispute to arbitration. The two arbitrators thus appointed shall, by mutual agreement, choose the third arbitrator who will act as the presiding arbitrator of the tribunal. The third arbitrator shall be appointed within two (2) months from the date of the appointment of the last of the two arbitrators. The third arbitrator shall not be a national of either Contracting Party;

(ii) if within the periods specified in sub-paragraph (c) (i) of this Article, the necessary appointments have not been made, either party to the dispute may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointment. If the Vice President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments;

(iii) the arbitral award shall be made in accordance with the provisions of this Agreement and shall be final and binding for the parties in dispute; and

(iv) the arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

4. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of its loss.

ARTICLE l0
Settlement of Disputes Between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible, be settled through diplomatic consultations and negotiations.

2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, with whom both Contracting Parties enjoy diplomatic relations and who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the second of the two members.

4. If within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary

appointments. If the President is a national of either Contracting Party 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 is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be final and binding on both Contracting Parties. In all other respects, the tribunal shall determine its own procedures.

ARTICLE 11
Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

ARTICLE 12
Applicable Laws

1. Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. Notwithstanding paragraph (1) of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.

ARTICLE 13
Application of other Rules

If the provisions of law of either Contracting Party or obligations under bilateral or multilateral agreements existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable prevail over this Agreement.

ARTICLE l4
Entry into Force

Each Contracting Party shall notify the other of the completion of the legal formalities required for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth (30th) day after the date of the latter of the two notifications.

ARTICLE l5
Amendments

1. This Agreement may be amended by mutual consent by means of an exchange of diplomatic notes or in any other manner as may be agreed by the Contracting Parties.

2. Such amendment shall come into force in accordance with Article 14 and shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the coming into force of such amendment.

ARTICLE 16
Duration and Termination

1. This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate this Agreement. This Agreement shall stand terminated one year from the date of receipt of such written notice.

2. Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, this Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

3. The Protocol annexed hereto shall form an integral part of this Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Manama... on this ..14th.. day of January, 2008 in two originals each in the Arabic, Malay and English languages, all texts being equally authoritative. In case of any divergence, the English text shall prevail.

For the Government of the Kingdom of Bahrain

For the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam

PROTOCOL TO THE AGREEMENT BETWEEN

THE GOVERNMENT OF THE KINGDOM OF BAHRAIN

AND

THE GOVERNMENT OF HIS MAJESTY THE SULTAN

AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM

ON

THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

On signing the Agreement between the Government of the Kingdom of Bahrain and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, the undersigned representatives have, in addition, agreed on the following provisions which shall form an integral part of the Agreement:

1. Additional Article 4

   a) Measures undertaken by one Contracting Party in pursuit of its development objectives to stimulate the creation of industries in its territory and applied only to its nationals or companies are not considered to be contrary to the obligations of Article 4, provided they do not substantially impair established and admitted investments of investors of the other Contracting Party.

   b) Measures that have been taken for reason of public order and security, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 4.

   c) The provisions of Article 4 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party, tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.