The OPEC Fund for International Development

AGREEMENT FOR THE ENCOURAGEMENT AND PROTECTION OF INVESTMENT

BETWEEN

THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT

DATED

MAY 19, 2003

The OPEC Fund for International Development

AGREEMENT, dated May 19, 2003, between the Socialist Republic of Vietnam (hereinafter called the Host Country) and the OPEC Fund for International Development (hereinafter called the OPEC Fund).

Whereas OPEC Member States, being conscious of the need for solidarity among all developing countries and aware of the importance of financial cooperation between them and other developing countries, have established the OPEC Fund to provide financial support to the latter countries, in addition to the existing bilateral and multilateral channels through which OPEC Member States extend financial assistance to other developing countries;

And whereas the OPEC Member States have additionally empowered the OPEC Fund to partake in the stimulation of capital flows thereto and, specifically, to assist in financing private sector activities involving entities located in the territories of other developing countries, including the Host Country, with a view to optimizing the aforementioned objective of financial cooperation;

And whereas the Host Country and the OPEC Fund being mindful that a stable framework for the envisaged investments will conduce to the effective utilization of economic resources and contribute towards the improvement of living standards; and, accordingly, have resolved to conclude an agreement for the encouragement and protection of such investment activities;

Now, therefore, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

1.01 Wherever used in this Agreement, and unless the context otherwise requires, the following terms have the following meanings:

(a) "Investment" means every kind of investment owned or controlled directly or indirectly by the OPEC Fund in the territory of the Host Country and, without prejudice to the generality of the foregoing, includes investment consisting or taking the form of:

(i) shares, stock, and other form of equity participation, and bonds, credits, debentures, and other forms of debt interests, in a company;

(ii) tangible property, including moveable property; and intangible property, including rights, such as leases, mortgages, liens, pledges and rights to payment arising under any form of debt instrument of whatever nature;

(iii) contractual rights, such as those under construction or management contracts, production or revenue-sharing contracts, or other forms of contracts;

(iv) rights conferred by or pursuant to law, such as licenses and permits; and

(v) intellectual property, including copyrights and related rights, patents, industrial designs, as well as advisory services.

(b) "Company" means any entity established under or pursuant to and defined in the Host Country's laws and regulations.

(c) "OPEC Fund" means the OPEC Fund for International Development established by the Member States of the Organization of the Petroleum Exporting Countries (OPEC) by virtue of the Agreement signed in Paris on January 28, 1976, as amended.

(d) "Host Country" means the Socialist Republic of Vietnam, including any administrative subdivision or any agency thereof.

(e) "Territory" means the territory of the Host Country, including its territorial sea as well as the exclusive economic zone over which the Host Country exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea bed and of the sea bed and its sub-soil.

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ARTICLE II
GENERAL PRINCIPLES

2.01 With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, the Host Country shall accord treatment thereto no less favourable than that it accords, in like situations, to investments in its territory by any other multilateral development finance institution operating in the Host Country (hereinafter referred to as "most favoured party").

2.02 The Host Country shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect investments are promptly published or otherwise made publicly available.

2.03 The Host Country shall provide effective means of asserting claims and enforcing rights with respect to investments and shall not in any way impair, by unreasonable or discriminatory measures, the management, conduct, operation, sale or other disposition of any such investment.

2.04 The Host Country shall at all times accord to investments in its territory fair and equitable treatment and full protection and security, and shall in no case accord less favourable treatment than that required by or under international law.

2.05 The Host Country shall pursuant to its laws and regulations accord to the OPEC Fund and its investments or, as the case may require, the officials, agents and other representatives of the OPEC Fund, treatment no less favourable than the Host Country accords to the most favoured party and its investments (hereinafter referred to as "most favoured party treatment"), and such treatment shall extend but not be limited to the issuance of visas or permits to enter and remain in its territory for the purpose of initiating, appraising, establishing or administering, winding up or otherwise terminating any investment or any other activity connected therewith located in its territory.

2.06 The most favoured party treatment shall not be construed so as to oblige the Host Country to extend to investments the advantages resulting from:

(a) any existing or future customs or economic union, a free trade area or regional economic organization of which the Host Country is or becomes a member; or

(b) without prejudice to Article VII, any international or bilateral agreement or arrangement relating wholly or mainly to taxation.

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ARTICLE III
PRIOR NOTIFICATION OF INVESTMENT PROPOSAL AND CONCURRENCE THEREON

3.01 The OPEC Fund shall prior to each investment inform the Government of the Host Country about the envisaged investment in the form of a written project proposal. Such a proposal will contain a summary statement regarding the envisaged investment as well as any supplementary detailed information that the Host Country may reasonably request, and will be forwarded by the OPEC Fund to the Governor of the State Bank of Vietnam, or other representative of the Host Country designated in that behalf, for further consideration.

3.02 The OPEC Fund shall not finance any investment in the territory of the Host Country without a written concurrence of the Host Country to such financing.

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ARTICLE IV
EXPROPRIATION

4.01 The Host Country shall not expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II above.

4.02 Compensation shall be paid without delay and shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken; and be fully realizable and freely transferable. The fair market value of such investment shall not be adversely affected by any change in value occurring because the expropriatory action had become known before the date of expropriation or its implementation.

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ARTICLE V
COMPENSATION FOR LOSSES

5.01 The Host Country shall accord most favoured party treatment to investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or similar events.

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ARTICLE VI
PAYMENTS AND TRANSFERS

6.01 The Host Country shall permit all transfers relating to an investment to be made without restrictions and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) principal, interest, royalty payments, management fees, technical assistance and other fees;

(d) payments made under a contract; and

(e) compensation pursuant to Articles IV and V.

6.02 The Host Country shall permit transfers to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

6.03 Notwithstanding sections 6.01 and 6.02, the Host Country may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

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

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(e) threats to national security.

6.04 Notwithstanding Sections 6.01 and 6.02, transfers and other payments receivable by the OPEC Fund in respect of an investment may be subject to any generally applicable foreign exchange restrictions, regulations and controls in force in the Host Country arising from exceptional balance of payments difficulties of limited duration and in consonance with the exercise in good faith of powers conferred in that behalf by law.

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ARTICLE VII
EXEMPTION FROM TAXATION

7.01 The Host Country shall pursuant to its laws and regulations accord to the OPEC Fund, its assets, property, operations, and any obligations or security issued or guaranteed by the OPEC Fund, and any other transactions undertaken by the OPEC Fund in connection with any investment in the territory of the Host Country, authorized by or pursuant to this Agreement, treatment of taxation or duties no less favourable than that it accords to any other multilateral development finance institutions operating in the Host Country; and references in this Article to the OPEC Fund shall, mutatis mutandis, be construed as including references to the officials, agents and other representatives of the OPEC Fund specified in Section 2.05 above.

7.02 Notwithstanding Section 7.01, the reference therein to the officials, agents and other representatives of the OPEC Fund shall not include nationals and other third parties resident in the Host Country.

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ARTICLE VIII
CONSULTATION

8.01 The parties to this Agreement agree to consult promptly, on the request of either, to resolve any dispute, controversy or claim in connection with this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement or the realization of the objectives of this Agreement.

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ARTICLE IX
ARBITRATION CLAUSE

9.01 Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement, that is not resolved through consultations, shall be submitted upon request of either party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the parties to the contrary, the UNCITRAL Arbitration Rules, in force and effect on the date of this Agreement, shall govern.

9.02 The Host Country and the OPEC Fund will each appoint one arbitrator and the two arbitrators so appointed shall together appoint the third arbitrator as chairman, failing which such third arbitrator shall be appointed by the International Court of Arbitration in Paris, France. Where the UNCITRAL Arbitration Rules do not provide for a particular situation, the arbitrators shall in their absolute discretion determine what course of action should be followed and the arbitrator's decision shall be final.

9.03 Any arbitration under this Agreement shall be held in a state (not being the Host Country or any Member State of the OPEC Fund) that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, United States of America, on June 10, 1958; and the English Language shall be used throughout the arbitral proceedings.

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ARTICLE X
GOVERNING LAW

10.01 This Agreement and all documents executed in connection therewith as well as their validity, enforcement, and interpretation, and all disputes arising thereunder, shall be governed by the applicable provisions of this Agreement and shall be supplemented by the applicable principles of international law.

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ARTICLE XI
MAINTENANCE OF OTHER RIGHTS AND OBLIGATIONS

11.01 This Agreement shall not be construed so as to derogate from any obligations of the Host Country under the following measures, especially in cases where such measures entitle investments to treatment more favourable than that accorded by this Agreement, that is to say:

(a) the laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of the Host Country;

(b) international legal obligations; or

(c) any other obligations assumed by the parties to this Agreement, including those contained in an investment authorization or an agreement or other legally enforceable undertaking for or in connection with an investment.

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ARTICLE XII
COMMUNICATIONS

12.01 Any notice or other communication required or permitted to be given or made under this Agreement shall be in writing. Such notice or communication shall, as appropriate for the concerned requirement, be deemed to have been duly given or made when it has been delivered by hand, mail, telex or telefax or other electronic means to the party to which it is required to be given or made, at the party's address specified below or at any other address as the party shall have specified in writing to the party giving the notice or making the communication.

For the Host Country:

The Governor
State Bank of Vietnam
47 – 49 Ly Thai To Street
Hanoi
THE SOCIALIST REPUBLIC OF VIETNAM

Telefax: 84-4-8250612

For the OPEC Fund:

The Director-General
The OPEC Fund for International Development
P.O. Box 995
A-1011 Vienna
AUSTRIA

Telefax: 43-1-5139238

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ARTICLE XIII
ENTRY INTO FORCE, DURATION AND TERMINATION

13.01 This Agreement shall enter into force following the receipt by the OPEC Fund of the instrument of ratification, a legal opinion or certification, or other documentary evidence of approval by the Host Country of this Agreement and upon the written certification by the OPEC Fund that all its internal legal requirements for the entry into force of this Agreement have been fulfilled.

13.02 This Agreement shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with Section 13.03.

13.03 Each Party may terminate this Agreement at the end of the initial ten years period or at any time by giving one year's written notice to the other Party.

13.04 Notwithstanding the termination of this Agreement, all other provisions thereof, except those relating to the establishment of a new investment, shall continue to apply to any investments established or acquired prior to the date of its termination and remain in force for an additional period of ten years from the said date.

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IN WITNESS whereof, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in Vienna in two copies in the English language, each considered an original and both to the same and one effect as of the day and year first above written.

FOR THE SOCIALIST REPUBLIC OF VIETNAM:

Signature: _____

Name: H.E. Hoang Van Nha
Ambassador of Vietnam to the Republic of Austria

FOR THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT:

Signature: _____

Name: Dr. Y. Seyyid Abdulai
Director-General

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