AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE STATE OF ISRAEL FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of South Africa and the Government of the State of Israel (hereinafter jointly referred to as "the Parties and in the singular as a Party),

DESIRING to intensify economic cooperation to the mutual benefit of both countries;

INTENDING to create favourable conditions for greater investments by investors of either Party in the territory of the other Party; and

RECOGNISING that the reciprocal promotion and protection of investments on the basis of this Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

HAVE AGREED as follows:

Article 1. Definitions

(1) In this Agreement, unless the context indicates otherwise -

(a) "investments" shall comprise any kind of assets, implemented in accordance with the domestic legislation of the Party in whose territory the investment is made including, but not limited to -

(i) movable and immovable property, as well as any other rights in rem, in respect of every kind of asset;

(ii) rights derived from stocks, shares, bonds, debentures and other kinds of interests in companies;

(iii) claims to money, goodwill and other assets and to any performance having an economic value;

(iv) rights in the field of intellectual property, including patents, trade marks, geographical indications, industrial designs,, technical processes, copyrights and related rights, undisclosed business information, trade secrets and know-how, topographies of integrated circuits and plant-breeders rights;

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

(b) Host Party means the Party in whose territory the investment is made, and the other Party shall be called, in relation to that investment, the Home Party;

(c) "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees;

(d) "investor" shall comprise -

(i) (a) with respect to the Republic of South Africa: a natural person who is a national of the Republic of South Africa who is not also a national or permanent resident of the State of Israel; or

(b) with respect to the State of Israel: a natural person who is a national or permanent resident of the State of Israel who is not also a national of the Republic of South Africa;

(ii) a legal entity, including a corporation, a firm, an association or a partnership -

(a) that was incorporated or constituted under the domestic legislation of the Home Party; or

(b) that is controlled, directly or indirectly, by persons who are nationals or permanent residents of the Home Party, and it fulfills one of the following conditions:

(i) its registered office, center of management, or practical management is located in the territory of either Party;

(ii) a substantial part of its economic activity is located in the territory of either Party;

(iii) it was incorporated or constituted under the domestic legislation of the Host Party:

(e) "territory" means:

(i) With respect to the Republic of South Africa, the territory of South Africa as well as those maritime areas including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the Republic of South Africa excersices, in accordance with international law, sovereign rights and jurisdiction.

(ii) with respect to the State of Israel; the territory of the State of Israel including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the State of Israel exercises sovereign rights or jurisdiction in conformity with international law,

(f) The term "freely usable currency" shall mean a currency that the International Monetary Fund determines, from time to time, as a freely usable currency in accordance with the Articles of the Agreement of the International Monetary Fund and Amendments thereto.

(2) The provisions of this Agreement relating to investments shall apply to the reinvestment of the returns of an investment, which shall be granted the same treatment granted to the original investment, if the reinvestment is effected in accordance with the domestic legislation of the Host Party. A change in the form of the investment or a change in the form of the reinvestment shall not affect their character as investments within the meaning of this Agreement if the change is effected in accordance with the domestic legislation of the Host Party.

Article 2. Promotion and Protection of Investments

(1) Each Party shall, in its territory, encourage and create favourable conditions for investments by investors of the other Party and, subject to its legislation and subject to its right to exercise the powers conferred by its legislation, shall admit such investments.

(2) Investments made by investors of each Party shall be accorded fair and equitable treatment in accordance with the provisions of this Agreement, and shall enjoy full protection and security in the territory of the other Party. Neither Party shall in any way impair by unreasonable measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

Article 3. Most Favoured Nation and National Treatment

(1) Neither Party shall, in its territory, subject investments or returns of investments of investors of the other Party, to treatment less favourable than that which it accords to investments or returns of investments of its own investors or to investments or returns of investments of an investor of any third state.

(2) Neither Party shall, in its territory, subject investors of the other Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third state..

(3) The provisions of sub-articles (1) and (2), shall not preclude a differential treatment in the domestic legislation of a Party or in the exercising of the powers conferred by that legislation, regarding rights or privileges granted to its own investors, or to investments or returns of investments of its own investors. Notwithstanding, neither Party shall derogate from the provisions of Articles 4 to 6 of this Agreement.

Article 4. Compensation for Loss

(1) Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the Host Party shall be accorded by the Host Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Party accords to its own investors or to investors of any third state. Resulting payments shall be freely transferable.

(2) Without prejudice to sub-article (1) of this Article, investors of one Party who suffer losses in the territory of the other 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 adequate compensation. Resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investments of investors of either 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 Party, except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation.

Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable rate provided by the domestic legislation of that Party until the date of payment, shall be made without delay, be effectively realisable and be freely transferable.

The investors affected shall have a right, under the domestic legislation of the Party, making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of the legality of the expropriation and of the valuation of their investment, in accordance with the principles set out in this Article.

(2) Notwithstanding the forgoing, with respect to intellectual property rights, the Parties may permit the unauthorised use of an intellectual property right, provided such authorisation is made in conformance with the principles set forth in the Agreement of Trade Related Aspects of Intellectual Property Rights ("TRIPS") (1994).

Article 6. Repatriation of Investments and Returns

(1) Each Party shall guarantee to investors of the other Party the rights of unrestricted transfer, in accordance with the terms of this Article, of their investments in the territory of the other Party, including but not limited to - -

(a) the principal and additional amounts to maintain or increase an investment;

(b) returns;

(c) repayment of loans; and,

(d) the proceeds from the liquidation or the sale of the whole or any part of the investment.

(2) Transfers shall be effected without delay in the freely usable currency in which the capital was originally invested or in any other freely usable currency agreed by the investor and the Host Party; provided that the investor has complied with all his/her fiscal obligations.

(3) Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the basis of transfer pursuant to the exchange regulations in force.

(4) Notwithstanding the forgoing -

(i) When a Party is in serious balance of payments difficulties or in serious difficulties for the operation of the exchange of rate policy or monetary policy, or under threat thereof, that Party may, in conformity with the conditions laid down within the framework of the General Agreement on Trade Tariffs (GATT) and with Articles VUI and XIV of the Statutes of the International Monetary Fund, adopt restrictive measures which may not go beyond what is necessary to remedy the situation, for a period not exceeding six months. The Party shall notify the other Party, as soon as possible, as to the measures taken, and the expected timetable for their removal;

(ii) Such measures shall be equitable, non-discriminatory, and in good faith.

Article 7. Exceptions

(1) Either Party may take measures strictly necessary for the maintenance or protection of its essential security interests.

Such measures shall be taken and implemented in good faith, in a non-discriminatory fashion and so as to minimize the deviation from the provisions of this Agreement.

(2) The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of either Party or of any third state shall not be construed so as to oblige one Party to extend to the investors of the other, the benefit of any treatment, preference or privilege resulting from -

(a) any international agreement of arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(b) any existing' or future customs union, free trade area agreement or similar international agreement within the meaning of "free trade agreement" in accordance with Article XXIV of the GATT Agreement, to which either Party is or will be Party;

(c) any existing or future bilateral or multilateral agreement concerning intellectual property; and,

(d) any Agreement for the Reciprocal Promotion and Protection of Investments concluded by either Party and a third state, that was signed before 1 st of July, 2003.

Article 8. Settlement of Investment Disputes between a Party and an Investor

(1) Any investment dispute between a Party and an investor of the other Party, concerning the interpretation or application of this Agreement, shall be settled through negotiations.

(2) If a dispute referred to in sub-article (1) cannot be settled within six (6) months of a written notification of this dispute, it shall on the request of the investor be settled as follows:

(a) by a competent court of the Host Party; or

(b) by conciliation; or

(c) by arbitration by the International Center for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, D.C. on March 18, 1965, provided that both Parties are Parties to the Convention; or

(d) by arbitration under the Additional Facility Rules of ICSID: Provided that only one of the Parties is a Party to the ICSID Convention; or

(e) by an ad hoc arbitration tribunal, which is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six (6) months of the date of selection of the Chairman, and the arbitral panel shall render its written and reasoned decisions within two (2) months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

(3) Each Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article. This consent and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of -

(a) Chapter II of the ICSID Convention or the Additional Facility Rules of ICSID for written consent of the parties;

(b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("The New York Convention"), for an agreement in writing..

(4) Unless otherwise agreed, an investor who has submitted the dispute to national jurisdiction may have recourse to the arbitral tribunals mentioned in sub-article (3) so long as a judgment has not been delivered on the subject matter of the dispute by a national court.

(5) The award shall be final and binding. Each Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

Article 9. Disputes between the Parties

(1) Disputes between the Parties concerning the interpretation or application of this Agreement, should be settled through the diplomatic channel, which may include, if both Parties so desire, referral to a Bilateral Commission composed of representatives of both Parties or to conciliation.

(2) If a dispute referred to in sub-article (1) cannot be settled within six (6) months from notification of this dispute it may, upon the request of either Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each case in the following way: within two (2) months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. The two arbitrators shall then select a national of a third state on approval of the two Parties, and this person shall be Chairman of the tribunal: The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

(4) If, within the periods specified in subarticle (3), the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the Secretary General of the Permanent Court of Arbitration at the Hague (hereinafter referred to as the PCA) to make any necessary appointments. If the Secretary General of the PCA is a national of either Party or is otherwise prevented from discharging the said function, then the Deputy Secretary General of the PCA who is not a national of either Party shall be invited to make the necessary appointments.

(5) Unless otherwise agreed, the arbitration shall be conducted in accordance with the UNCITRAL arbitration rules. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six (6) months of the date of selection of the Chairman, and the arbitral panel shall render its written and reasoned decisions within two (2) months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

(6) The arbitral tribunal shall reach its decision by a majority vote. Such decision shall be binding on both Parties.

(7) Each 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 Parties.

Article 10. Subrogation

(1) If a Home Party or its designated agency makes a payment under an indemnity given in respect of an investment in the territory of the Host Party, the Host Party shall recognize -

(a) the assignment by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) that the Home Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

(2) The Home Party or its designated agency shall be entitled in all circumstances to -

(a) the same treatment in respect of rights, claims and obligations acquired by it, by virtue of the assignment; and

(b) any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

(3) In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

Article 11. Application of other Rules

If the domestic legislation in force in the country of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to the present Agreement contain rules, whether general or specific, entitling investors or investments of investors of one 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 12. Application of the Agreement

The provisions of this Agreement shall apply to investments made upon or before the entry into force of this Agreement, but shall not apply to an investment subject to a dispute and/or any claim which has arisen before the entry into force of this Agreement.

Article 13. Entry Into Force

This Agreement shall enter into force after each Party has notified the other in writing, through the diplomatic channel, of its compliance with the internal legal or constitutional requirements necessary for the entry into force of this Agreement. The

date of the entry into force shall be the date of the last notification.

Article 14. Amendment, Duration and Termination

(1) This Agreement may be amended by mutual consent of the Parties through an Exchange of Diplomatic Notes. The amendment shall enter into force by the same procedure set forth in Article 13.

(2) This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Party shall have given to the other, through the diplomatic channel, written notice of termination. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investment for a period of ten (10) years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the Hebrew and English languages, both texts being equally authentic.

Done in .... this.... day of....200..., which corresponds to the..... day of....,

For the Government of the Republic of South Africa.

For the Government of the State of Israel.

Protocol to the agreement between the government of the republic of south africa and the government of the state of israel on the reciprocal promotion and protection of investments

On the signing of the Agreement between the Government of the Republic of.South Africa and the Government of the State of Israel for the Reciprocal Protection and Promotion of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the Agreement:

Ad Article 6

1. With regard to.the Republic of South Africa, the provisions relating to transfer under this Article shall not apply to natural persons who are nationals of the State of Israel, and have applied for permanent residency and are deemed to be permanent residents of the Republic of South Africa and have completed the required Exchange Control. Form.

2. This provision shall terminate upon removal of the relevant Exchange Control limitation by the Republic of South Africa, for which early removal the Republic of South Africa shall undertake every effort possible.

3. Paragraph (1) of this Protocol shall not apply or restrict the transfer of compensation payments made pursuant to Articles 4, 5 and 8 of this Agreement.

4. In no case shall the Israeli investors, in this matter, be accorded treatment less favourable than that accorded to investors of any third state.

This Protocol shall enter into force at the same time as the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed and sealed this Protocol in two originals in the English and Hebrew languages, both texts being equally authentic.

For the Government of the Republic of South Africa.

For the Government of the State of Israel.