# AGREEMENT BETWEEN THE GOVERNMENT OF JAMAICA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Jamaica and the Government of the Argentine Republic;

Hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation between both countries;

Aiming at creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and protection of such investments on the basis of an agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's laws. It includes in particular, though not exclusively:

a. Movable and immovable property as well as any other property rights, such as mortgages, liens and pledges;

b. Shares, stocks and any other kind of participation in companies;

c. Title to money and claims to performance having a financial value only when duly contracted and documented in accordance with the regulations of the country where the investment was made and directly related to a specific investment;

d. Intellectual property rights including, in particular copyrights, patents, industrial designs, trade-marks, trade names, technical processes, know-how and goodwill;

e. Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change in the legal form under which the assets have been invested or reinvested shall not affect their qualification as investment in accordance with this Agreement.

This Agreement shall apply to all investments, whether made before or after the date of the entry into force of this Agreement. However, the Parties confirm their mutual understanding that the provisions of this Agreement do not bind either Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of entry into force of this Treaty.

2. The term "investor" means:

a. Any natural person who is a national of a Contracting Party in accordance with its laws;

b. Any legal person constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party, whether or not for pecuniary profit.

3. The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons, not having entered that territory as investors, have been residents in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

4. The term "returns" means all amounts yielded by an investment such as profits, dividends, interests, royalties and other current income.

5. The term "territory" means the national territory of either Contracting Party, including those maritime areas, adjacent to the outer limit of the territorial sea, of the national territory, over which the Contracting Party concerned may, in accordance with international law, exercise sovereign rights or jurisdiction.

## Article 2. Promotion of Investments

Each Contracting Party shall, within the framework of its national policies, encourage and create favourable conditions for investors of the other Contracting Party to invest capital in the territory, and they shall consult with each other as to the most effective ways to achieve that purpose.

Each Contracting Party shall admit such investments subject to its laws and regulations.

## Article 3. Protection of Investments

1. Each Contracting Party shall at all times, ensure fair and equitable treatment of the investments by investors of the other Contracting party and shall not impair the management, maintenance, use, enjoyment or disposal thereof through unjustified or discriminatory measures.

2. Each Contracting Party, once it has admitted investments in its territory by investors of the other Contracting Party shall grant full legal protection to such investments and shall accord them treatment which is no less favourable than that accorded to investments by its own investors or by investors of third States.

3. Notwithstanding the provisions of Paragraph 2), of this Article, the treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, customs union, common market or regional agreement.Paragraph 2), of this Article, the treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, customs union, common market or regional agreement.

4. The provisions of Paragraph 2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other contracting Party the benefit of any treatment, preference or privilege resulting from an international agreement relating wholly or mainly to taxation.Paragraph 2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other contracting Party the benefit of any treatment, preference or privilege resulting from an international agreement relating wholly or mainly to taxation.

5. The provisions of Paragraph 2) of this Article shall neither be construed so as to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing for concessional treatment concluded by the Argentine Republic and Italy on 10 December 1987 and with Spain on 3 June 1988.Paragraph 2) of this Article shall neither be construed so as to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing for concessional treatment concluded by the Argentine Republic and Italy on 10 December 1987 and with Spain on 3 June 1988.

## Article 4. Expropriation and Compensation

1. Neither of the Contracting Parties shall take any measure of nationalization or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law. The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation was publicly announced, shall include interest from the date of expropriation at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable. In determining the compensation, due weight shall be given to any factors which might have affected the value before the measures wore publicly announced.

2. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party

due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors on to investors of any third State.

## Article 5. Transfer of Funds

1. Each Contracting Party shall grant investors of the other Contracting Party the unrestricted right to transfer payments related to investments, in particular, though not exclusively, of:

a. The capital and additional sums necessary for the maintenance and development of the investments;

b. The returns;

c. The proceeds from a total or partial sale or liquidation of an investment;

d. The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other;

e. Compensations provided for in Article 4.Article 4.

2. Transfers shall be effected without delay in freely convertible currency, at the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which procedures shall not impair the substance of the rights set forth in this Article.

## Article 6. Subrogation

1. If a Contracting Party or any agency designated by it makes a payment to any of its investors under a guarantee or insurance it has Contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or its agency to any right or title held by the investor. The Contracting Party or any agency thereof shall, within the limits of subrogation, be entitled to exercise the same rights which the investor would have been entitled to exercise.

2. In the case of subrogation as defined in Paragraph 1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its agency.Paragraph 1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its agency.

## Article 7. Application of other Rules

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

## Article 8. Settlement of Disputes between the Contracting Parties

a. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel;

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

c. 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 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 other two members.

d. 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.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.

e. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be 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 related to the Chairman and the remaining costs shall in principle 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 binding on both Contracting Parties. The tribunal shall determine its own procedure.

## Article 9. Settlement of Disputes between an Investor and the Host Contracting Party

1. Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

2. If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it may be submitted to:

a. The competent, tribunal of the Contracting Party in whose territory the investment was made, or

b. International arbitration according to the provisions of Paragraph 3).Paragraph 3).

3. Where a dispute has been raised by the investor and the Parties disagree as to the choice of (a) or (b), the opinion of the investor shall prevail.

4. Pursuant to Paragraphs 2) and 3), where an investor or a Contracting Party has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.Paragraphs 2) and 3), where an investor or a Contracting Party has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.

5. In case of international arbitration, the dispute shall be submitted either to:

a. The International Centre for the Settlement of Investment Disputes (ICSID) created by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature in Washington D.C. on 18th March, 1965, once both Contracting Parties herein become members thereof. As far as this provision is not compiled with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or"Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature in Washington D.C. on 18th March, 1965, once both Contracting Parties herein become members thereof. As far as this provision is not compiled with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or

b. An arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

6. If after a period of three months following written notification of the submission of the dispute to arbitration there is not agreement on the selection of a forum under Section 5 (a) or Section 5 (b), the parties to the dispute shall be bound to submit it to the International Centre for the Settlement of Investment Disputes.

7. The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

8. The arbitral decisions shall be final and binding for the Parties in the dispute. Each Contracting Party shall execute them in accordance with its laws.

## Article 10. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 9 shall remain in force for a further period of ten years from that date.Articles 1 to 9 shall remain in force for a further period of ten years from that date.

FOR THE GOVERNMENT OF JAMAICA

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC