# Agreement between the Government of Ukraine and the Government of the State of Israel on the Promotion and Mutual Protection of Investments

The Government of the State of Israel and the Government of Ukraine,

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

INTENDING to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party,

And,

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of the present 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. For the purposes of the present Agreement:

(a) "Investments" shall mean any kind of assets, implemented in the legislation of the Contracting Party in whose territory the investment is made, including, but not limited to:

1. Movable and immovable property, as well as any other rights in rem, in respect of every kind of asset;

2. Rights derived from shares, bonds and other kinds of interests in companies;

3. Claims to money, goodwill and other assets and to any performance having an economic value;

4. Rights in the field of intellectual property, technical processes and know-how;

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

(b) "Host Contracting Party" shall mean the Contracting Party in whose territory the investment is made, and the term "Home Contracting Party" shall mean, in relation to that investment, the other Contracting Party.

(c) "Returns" shall mean 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 or royalties.

(d) "Investor" shall mean:

(1)

(i) 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 or permanent resident of Ukraine;

(ii) With respect to Ukraine: a natural person who is a national or permanent resident of Ukraine who is not also a national or permanent resident of the State of Israel;

(2) A legal entity

(i) That was incorporated, constituted or otherwise duly organized under the legislation of the Home Contracting Party; or

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

(A) Its registered office, center of management, or practical management is located in the territory of either Contracting Party;

(B) A substantial part of its economic activity is located in the territory of either Contracting Party;

(e) "Legal entity" shall mean any organization including a corporation, a firm, an association or a partnership.

(f) "Territory" of a Contracting Party shall mean:

1) With respect to the State ofIsrael: the territory of the State ofIsrael 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.

2) With respect to Ukraine: the territory of Ukraine including the territorial sea, as well as the continental shelf and the exclusive economic zone over which Ukraine exercises sovereign rights or jurisdiction in conformity with international law.

(g) "Freely usable currency" shall mean any 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.

(h) "Legislation" of a Contracting Party shall mean the laws and regulations of the State of the Contracting Party.

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 legislation of the Host Contracting 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 legislation of the Host Contracting Party.

3. For the sake of further clarification, this Agreement does not apply to the transactions of granting or receiving by investors of each Contracting Party any credits, loans and returnable financial aid.

## Article 2. Promotion and Protection of Investment

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

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

## Article 3. Most Favored Nation and National Treatment

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

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

## Article 4. Compensation for Losses

1. Investors of the Home Contracting Party whose investments in the territory of the Host Contracting 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 Contracting Party, shall be accorded by the Host Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the Host Contracting Party accords to its own investors or to investors of any third state. Payments in accordance with this Article

shall be freely transferable.

2. Without prejudice to paragraph (1) of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses 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 adequate compensation. Payments in accordance with this Article shall be freely transferable.

## Article 5. Expropriation

1. Investments of investors of the Horne Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter: "expropriation") in the territory of the Host Contracting Party, except for a public purpose related to the internal needs of the Host Contracting Party, and in accordance with the following terms:

(a) The expropriation shall be made in accordance with the laws of the Host Contracting Party, on a non-discriminatory basis and against prompt, adequate and effective compensation not less favourable than that accorded to the investors of the Host Contracting Party. Payments in accordance with this Article shall be freely transferable.

(b) 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 law of that Contracting Party until the date of payment, shall be made without delay, be effectively realizable and be freely transferable.

(c) The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of the State of that Contracting 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 Contracting Parties may permit the unauthorized use of an intellectual property right, provided such authorization is made in conformance with the principles set forth in the Agreement of Trade Related Aspects ofIntellectual Property Rights (''TRIPS'') (1994).

## Article 6. Repatriation of Investment and Returns

1. Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party all the rights and benefits regarding the unrestricted transfer of their investments and returns which were in force on the day the current investment was implemented; provided, however, that the investor has complied with all his fiscal obligations and has fulfilled all the requirements of the exchange regulations. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

2. In the event the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that no such modifications shall adversely affect the position of an investment which has already been admitted into the territory of that Contracting Party.

## Article 7. Exceptions

The provision of this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of either Contracting Party or of any third state shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any international agreement or 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 to which either Contracting Party is or may become a party;

(c) The definitions of "investment" (Article 1, paragraph 1) and "reinvestment" (Article 1, paragraph 2) and the provisions of Article 6 contained in Agreements entered into prior to January 1, 1992.

## Article 8. Reference to International Centre for Settlement of Investment Disputes

1. Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter: the "Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former.

2. A company which is incorporated or constituted under the law or legislation in force in the territory of one Contracting Party and in which, before such a dispute arises, the majority of shares are owned by investors of the other Contracting Party shall, in accordance with Article 25(2)(b) of the Convention, be treated for the purposes of the Convention as a company of the other Contracting Party.

3. If any such dispute should arise and cannot be resolved, amicably or otherwise, within three (3) months from written notification of the existence of the dispute, then the investor affected may institute conciliation or arbitration proceedings by addressing a request to that effect to the Secretary-General of the Centre, as provided in Article 28 or 36 respectively of the Convention. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received, in pursuance of an insurance contract, an indemnity in respect of some or all of his or its losses.

4. Neither Contracting Party shall pursue, through the diplomatic channel, any dispute referred to the Centre, unless:

(a) The Secretary-General of the Centre or a conciliaton commission or an arbitral tribunal constituted by it decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

## Article 9. Disputes between the Contracting Parties

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

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, 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 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.

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 Chairman of the International Chambre of Commerce in Paris (hereinafter: the "ICC") to make any necessary appointments. If the Chairman is a national of either Contracting Party or is otherwise prevented from discharging the said function, then one of the Vice-Chairmen 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 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 of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

## Article 10. Subrogation

1. If one Contracting Party or its designated Agency (hereinafter: the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting party (hereinafter: the "Second Contracting Contracting "Party"), the second Contracting Party shall recognize:

(a) The assignment to the First Contracting Party by law, legislation or by legal transaction of all the rights and claims of the

party Indemnified; and

(b) That the First Contracting Party 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 First Contracting Party shall be entitled in all circumstances to:

(a) The same treatment in respect of the 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.

## Article 11. Application of other Rules

If the provisions of law or legislation 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 contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the present Agreement.

## Article 12. Application to Investments

The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made on or before the entry into force of this Agreement.

## Article 13. Entry Into Force

Each Contracting Party shall notify the other Contracting Party of the completion of the ratification procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the latter notification.

## Article 14. Modification of the Agreement

The provisions of this Agreement may be modified or supplemented by the mutual written consent of the Contracting Parties, after the entry into force of this Agreement. Such modification or supplement shall enter into force pursuant to the provisions of Article 13.

## Article 15. Duration and Termination

This Agreement shall remain in force for a period of 10 years. If twelve months before the expiration of the 10 year period neither Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement, then this Agreement shall continue in force until the expiration of 12 months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 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, duly authorized thereto by their respective Governments, have signed this Agreement.

Made in Kyiv on June 16, 1994, corresponding to 7 Danube 5754, in duplicate, in Ukrainian, in Hebrew and English, all texts being equally authentic.

In case of differences in interpretation, the English text will prevail.

For the Government of Ukraine (signature)

For the Government of the State of Israel (signature)