AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE GOVERNMENT OF ROMANIA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the State of Israel] and the Government of Romania (hereinafter: the "Contracting Parties"),

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

Intending to create favorable conditions for increasing investments by investors of ei- ther Contracting Party in the territory of the other Contracting Party,

and,

Recognizing that the reciprocal promotion and protection of investments on the basis of the present Agreement 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 the present Agreement:

a) The term "investments" shall comprise any kind of assets implemented in accordance with the laws and regulations of the Contracting 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";

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

iii) claims to money and other assets and to any activity having an economic value;

iv) rights derived from goodwill, rights in the field of intellectual property, technical processes and know-how;

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

b) A change in the form in which assets are invested or reinvested in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, does not affect their character as investments within the meaning of this Agreement.

c) The term "investor" shall comprise:

In respect of the State of Israel:

i) physical persons deriving their status as citizens or permanent residents of the State of Israel from the law in force in the State of Israel; or

ii) companies including corporations, firms or associations incorporated or constituted in accordance with the law of the State of Israel.

With respect to physical persons - an individual who possesses both Israeli and Romanian citizenship, who invests in Israel shall not be considered a Romanian investor, for the purposes of this Agreement.

With respect to legal persons - a legal person constituted under Romanian law and having its main office in Romania which is controlled, either directly or indirectly, by Israeli citizens shall not be considered as Romanian investors, for the purposes

of this Agreement.

In respect of Romania:

any physical person holding Romanian citizenship, in accordance with the law in force, as well as any legal person constituted under Romanian law and having its head office in Romania.

d) The term "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profit, interest, capital gains, royalties and fees.

e) The term "territory" shall comprise the State territory of each Contracting Party, including the territorial sea as well as the continental! shelf and the exclusive economic zone over which the State concerned exercises, in conformity with internal and international law, sovereignty, sovereign rights or jurisdiction.

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, 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.

3. Each Contracting Party undertakes to provide effective means of asserting claims and enforcing rights with respect to this Agreement, investment authorizations and proper- ties. Neither Contracting Party shall impair the right of investors of the other Contracting Party to have access to its courts of law, administrative tribunals and agencies and all other bodies exercising judicial powers.

4. Each Contracting Party shall make public al! laws and regulations that pertain to or affect investments of investors of the other Contracting Party in its territory.

Article 3.. Most Favored Nation Treatment

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

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 favorable than that which it accords to its own investors of any third State.

3. The provisions of this Article 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; or

b) any existing customs or economic union, any free trade area agreement or any similar international agreement to which either of the Contracting Parties is or may become a party.

Article 4.. 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, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity 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 favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments 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. Resulting payments shall be freely transferable.

Article 5.. Expropriation and Compensation

1. Investments of investors of either 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 other Contracting Party, except:

a) for a public purpose related to the internal needs of that Contracting Party;

b) on a non-discriminatory basis, and

c) against prompt, adequate and effective compensation.

2. The compensation shall:

a) 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;

b) include interest as provided by law until the date of payment; and

c) be made without delay, be effectively realisable and be freely transferable.

3. In the event that market value cannot be easily ascertained, the compensation shall be determined based on equitable principles taking into account, inter alia, the capital in- vested, its appreciation or depreciation, current returns, replacement value and other relevant factors.

4. 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 that Contracting 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.

Article 6.. Transfers of Currency

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments in free convertible currency relating to these investments, in particular, though not exclusively:

(a) the capital and additional sums necessary for the maintenance and development of the investment;

(b) returns, according to Article 1 (d) of the Agreement;

(c) funds in repayment of loans regularly contracted and documented and directly related to a specific investment;

(d) the proceeds from the total or partial sale, alienation or liquidation of an investment;

(e) compensations provided for in Articles 4 and 5;

(f) the earnings of citizens of one Contracting Party who are allowed to work in conformity with the existing laws and regulations, in connection with an investment in the territory of the other Contracting Party.

2. Transfers shall be effected without undue 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, at the rate of exchange applicable on the date of transfer, pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made and provided that the investor has complied with all his fiscal obligations.

In the event the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that such modifications shall not adversely affect the rights to repatriate investments and returns, as were in force at the time the investment was made. However, if the said modifications grant investments and returns more favorable terms than were in force at the time the investment was made, the more favorable terms shall prevail.

3. The Contracting Parties undertake to accord transfers referred to in paragraphs 1 and 2 of this Article a treatment no less favorable than that accorded to transfers related to investments made by investors of any third State.

Article 7.. Settlement of Investment Disputes between a Contracting Party and an Investor

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled, as far as possible, amicably by consultations and negotiations be- tween the parties to the dispute.

2. If any such dispute should arise and cannot be resolved, amicably or otherwise, with- in six months from written notification of the existence of the dispute, then the investor affected may institute settlement proceedings by addressing a request, either to:

- the competent court of the Contracting Party in whose State territory the investment has been made or

~ the international arbitration, according to the provisions of paragraph 3 of this Article.

Where the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or to the international arbitration, the investor shall be entitled to withdraw his request from the chosen procedure and submit the dispute to the other procedure, provided that a final and binding decision has not yet been rendered.

3. In case of international arbitration the dispute may, at the choice of the investor concerned, be submitted to:

the International Centre for the Settlement of Investment Disputes (hereinafter referred to as the "Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965.

4. Where the investor chooses the international arbitration, the Contracting Party which is a party to the dispute hereby consents to the submission of the investment dispute to such arbitration.

5. The Contracting Party which is a party to the dispute shall, at no time whatsoever during the procedures involving investment disputes, assert as a defense its immunity, or the fact that the investor has received compensation under an insurance contract, covering the whole or part of the incurred damage or loss.

6. 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 conciliation 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 not comply with any award rendered by an arbitral tribunal.

7. The arbitral decisions shall be final and binding for the parties to the dispute. 8. All sums received as a result of a settlement shall be freely transferable.

Article 8.. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months from the notification of the dispute between themselves, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a citizen of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the Permanent Court of Arbitration.

4. If both arbitrators cannot reach an agreement as concerns the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the Permanent Court of Arbitration.

5. If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the Permanent Court of Arbitration is prevented from carrying out the said function or if he is a citizen of either Contracting Party the appointment shall be made

by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a citizen of either Contracting Party, the appointment shall be made by the most senior Judge of the Court, who is not a citizen of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall deter- mine its procedure.

7. Each Contracting Party shall bear the cost of the arbitrator it has appointed 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.

8. The decisions of the tribunal are final and binding for each Contracting Party. Article 9. Subrogation

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 Party"), the Second Contracting Party shall recognize:

a) the assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified and that the First Contracting Party is entitled to the same treatment in respect of the rights and claims as the party indemnified; and

b) that the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, and to any payments received in pursuance of such rights and claims, to the same extent as the party indemnified.

Any payments received in non-convertible currency by the First Contracting Party, in pursuance of the rights and claims acquired, shall be freely available to the First Contracting Party for the purpose of meeting any expenditure incurred in the territory of the Second Contracting Party.

Article 10.. Application of other Rules

If the provisions of 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 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 extend that they are more favorable, prevail over the present Agreement.

Article 11.. Scope of Application

1. This Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to, or after the entry into force of this Agreement.

2. However, the disputes arising prior to the entry into force of this Agreement will be settled according to the provisions of the Agreement between the Government of Romania and the Government of the State of Israel for the promotion and reciprocal protection of investments done at Jerusalem, on September 2, 1991.

Article 12.. Entry Into Force

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

2. Without prejudice to the provisions of paragraph 2 of Article 11 of this Agreement, from the date of its entry into force, this Agreement shall replace the Agreement between the Government of Romania and the Government of the State of Israel for the promotion and reciprocal protection of investments done at Jerusalem, on September 2, 1991.

Article 13.. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter, it shall continue in force until the expiration of twelve 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 the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten 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.

Done in duplicate at Jerusalem this 3 day of August 1998, which corresponds to the 11th day of Av 5758, in the Hebrew, Romanian and English languages, all three texts being equally authentic. In case of diversions of interpretations, the English text shall prevail.

For the Government of the State of Israel:

BENJAMIN NETANYAHU

For the Government of Romania:

RADU VASILE