AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE STATE OF ISRAEL FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of India and the Government of the State of Israel (hereinafter referred to as the 'Contracting Parties;

Desiring to create conditions favourable for fostering greater investment by Investors, of one State in the Territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investment will be conductive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

(a) "companies" means:

Corporations, firms and associations incorporated or constituted or established under the law in force in any part of the respective Contracting Parties;

(b) "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

(i) Movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company. and any other similar forms of participation in a company;

(iii) Rights to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, goodwill, technical processes and know how in accordance with the relevant laws of the respective Contracting Party;

(v) Business concessions conferred by law or under contract, Including concessions to search for an extract oil and other minerals;

(c) "investors" means any national or company of a Contracting Party;

(d) "nationals" means:

(i) In respect of investments made in India: natural persons who are nationals of the State of Israel.

(ii) In respect of investment made in Israel: persons deriving their status as Indian nationals from the law in force in India as long as they have not acquired nationality or permanent resident status of the State of Israel.

(e) "returns" means the monetary amounts yielded by an investment such as profit, interest, proceeds from partial or total liquidation of an investment including capital gains, dividends, royalties and fees;

(f) "territory" means:

(i) In respect of India: the territory of the Republic of India including its territorial waters and the airspace above it and other

maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

(ii) In respect of state of Israel: the territory of State of Israel including its territorial waters and the airspace above it including the Exclusive Economic Zone and continental shelf over which the State of Israel has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws In force and International law.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for Investors of the other Contracting Party to make Investments in its territory, and admit such investments in accordance with its laws and policy.

(2) Investments and returns of investors of each Contracting party shall at all times be accorded fair and equitable treatment In the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Treatment

(1) Each Contracting Party shall accord to investments of investors of the other Contracting Party. including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own Investors or to investments of Investors of any third State.

(2) In addition, each Contacting Party shall accord to investors of the other Contracting Party, Including in respect of returns on their investment, treatment which shall not be less favourable than that accorded to investors of any third State.

(3) The Provisions of paragraphs 1 and 2 above 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 of privilege resulting from:

(a) Any existing or future customs union, free trade area agreement or similar international agreement to which it is or may become a party, or

(b) Any matter pertaining wholly or mainly to taxation.

Article 5. Expropriation

(1) Investments of investors of either Contracting 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 Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine 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 a fair and equitable rate, unless a rate has been determined by law in which case such rate shall apply until the date of payment, shall be made without unreasonable delay, be effectively realisable and be freely transferable.

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that 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. The Contracting Party making the expropriation shall make every endeavour to ensure that such review Is carried out promptly.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a stage of national emergency or civil disturbances 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 favourable 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.

Article 7. Repatriation of Investment and Returns

(1) Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis, provided that investor has complied with all his fiscal obligations and subject to the relevant laws and exchange regulations of the host Contacting Party. Such funds may include:

(a) Capital and additional capital amounts, used to maintain and increase investments;

(b) Net operating profits including dividends and interest in proportion to their share-holding;

(c) Repayments of any loan, including Interest thereon, relating to the investment;

(d) Payment of royalties and services fees relating to the investment;

(e) Proceeds from sales of their shares;

(f) Proceeds received by investors in case of sale or partial sale or liquidation;

(g) The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article 6 of this Agreement.

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph 1 of this Article shall be permitted In the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

(4) In the event of modifications In exchange control regulations regarding the repatriation of funds—

(i) The Government of the Republic of India guarantees that such modifications shall not adversely affect the right to repatriaate Investments and returns as provided for in paragraph 1 of this Article;

(ii) The Government of the State of Israel guarantees that such modifications shall not adversely affect the rights to repatriate Investments and their returns, as were in force at the time the investment was made. However, if the said modifications grant new investments and their returns more favourable terms, converning repatriation of the investments and transfer of the returns, than those that were in force at the time the investment was made, the more favorable terms shall apply.

Article 8. Subrogation

Where one Contracting Party or its designated agency has guaranteed any Indemnity against noncommercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or Its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) Any such dispute which has not been amicably settled within a period of six months may, if both parties agree, be submitted:

(a) For resolution in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial or administrative bodies: or

(b) To international conciliation.

(3) Should the Parties fail to agree on a dispute settlement procedure provided under paragraph 2 of this Article or where a

dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to Arbitration. The Arbitration procedure shall be as follows:

(a) If the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment disputes between States and nationals of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes such a dispute shall be referred to the Centre; or

(b) To an ad-hoc arbitral Tribunal by either party to the dispute in the following manner:

(i) The arbitral tribunal shall consist of three arbitrators. Each Party shall select an arbitrator. These two arbitrators shall appoint by the mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with the Governments of the parties to the dispute. The arbitrators shall be appointed within two months from the date on which one of the parties to the dispute informed the other of its intention to submit the disputes to arbitration;

(ii) The arbitral award shall be made in accordance with the provisions of this Agreement, the relevant national laws including the rules on the conflict of laws of the Contracting Party where the investment dispute arises as well as the generally recognized principles of international law;

(iii) If the necessary appointments are not made within the period specified in paragraph (3) (b) (i), either party may, in the absence of any other agreement. request the Secretary General of the Permanent Court of Arbitration to make the necessary appointments;

(iv) The tribunal shall reach Its decision by a majority of votes;

(v) The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award. The award shall be enforced In accordance with national laws of the Contracting Party where the investment has' been made;

(vi) The arbitral tribunal shall state the, basis of its decision and state reasons upon the request of either party;

(vii) Each party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned;

(viii) During conciliation or arbitration proceedings or the enforcement of an award, the Contracting Party Involved In the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage. In this case the other Contracting Party will respect the award made in the arbitration or conciliation proceedings and shall not initiate fresh proceedings for the same matter as covered in the award.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiations.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, 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 if 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 Secretary General of the Permanent Court of Arbitration to make any necessary appointments. If the Secretary General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Deputy Secretary General shall be invited to make the necessary appointments. If the Deputy Secretary General is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the Permanent Court of Arbitration next In seniority who is not a national of either Contracting Party shall be Invited to make the necessary appointment.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decisions 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 award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Entry and Sojourn of Personnel

Each Contracting Party shall, subject to and in' accordance with its laws, regulations and related procedures thereunder, consider favourably questions concerning entry, stay and work in its territory of nationals of the other Contracting Party who carry out activities connected with investments as defined in this agreement.

Article 12. Applicable Laws

(1) All investments shall, subject ot this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) Notwithstanding para 1 of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis, provided that the investor may seek judicial review of such action in accordance with the laws of the host Contracting Party.

Article 13. 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 favourable than is provided for by the present agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 14. Entry Into Force

Each Contracting Party shall notify the other Contracting Party in writing through the diplomatic channels of the completion of Its Internal legal procedures required for bringing this Agreement. Into force. This Agreement shall enter into force on the date of the later notification.

Article 15. Duration and Termination

(1) This Agreement shall remain in force for a period of ten yeas and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other contracting Party a written notice of its Intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on this the 29th day of Jan, 96 which corresponds to 9th day of Magha of Saka 1917 and day 5776 in two originals each in the English, Hindi and Hebrew languages, the three texts being equally authoritative.

In case of any divergence of Interpretation, the English text shall prevail.

Sd/- Sd/-

For the Government of For the Government of

The Republic of India The State of Israel

At the time of the signing the Agreement between the Government of the Republic of India and the Government of the Israel for the Promotion and Protectin of Investments (hereinafter the "Agreement"), the parties have reached an understanding that with regard to Article 4 of the Agreement concerning the granting of Most Favoured Nation Treatment, the provisions for repatriation and the definition of Investment and reference to Investment contained in the Promotion and Protection of Investments prior to January 1, 1992 shall not apply.

2. The Protocol shall form an integral part of the Agreement

Done at New Delhi on this the 29th day of Jan, 96 which corresponds to 9th day of Magha of Saka 1917 and day 5776 in two originals each in the English, Hindi and Hebrew languages, the three texts being equally authoritative.

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