AGREEMENT BETWEEN THE GOVERNMENT OF THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS.

The Government of the Portuguese Republic and the Government of the Republic of Zimbabwe, hereinafter referred to as the Contracting Parties:

Desiring to intensify economic co-operation between both States;

Intending to create favourable conditions for investments by investors from one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and contractual protection of such investment are apt to stimulate private business initiative and to increase the prosperity of both nations;

Have agreed as follows:

Article 1. For the Purpose of this Agreement:

1) The term «investments» means every kind of assets and rights related to investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter, including mainly but not exclusively:

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

b) Shares, stocks or other forms of interest in the equity of companies and or economic interest resulting from the respective activity;

c) A claim to money or any performance having an economic value;

d) Intellectual property rights such as copyrights, patents (utility models), industrial designs, trade and service marks, trade names, trade and business secrets, technical processes, know-how and good will;

e) Concessions conferred by law under a contract or an administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investments;

2) The term «returns» means the amounts yielded by an investment, over a given period such as profits, dividends, interests, royalties or other forms of income related to the investments, including any payments on account of technical assistance or management.

In cases where the returns of an investment, as defined above, are invested in the form described in paragraph 1, the income resulting from the reinvestment shall also be considered as income related to the first investment;

3) The term «investor» means:

a) Natural persons, nationals of either Contracting Party, in accordance with its applicable law;

b) Corporations, including commercial companies or other companies or associations or consortia, which have a principal office in the territory of either Contracting Party and are constituted in accordance with the law of that Contracting Party;

4) The term «activities related to investments» means the organization, control, maintenance and administration of investments, companies, branches, offices, agencies or factories and the conclusion, compliance with and follow-up of agreements regarding the acquisition, use, fruition or administration of property, including industrial property, equity loans,

or issue of shares or other bonds and the purchase of foreign currency;

5) The term «laws» includes legislation as well as administrative rules and regulations published in the official gazette, or otherwise publicly issues.

Article 2.

1— Each Contracting Party shall in its territory promote, as far as possible, investment by investors of the other Contracting into its territory in accordance with its laws. In shall in any case accord such investments fair and equitable treatment.

2— Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3.

1— Neither Contracting Party shall in its own territory subject investments made by investors from the other Contracting Party to treatment less favourable than that accorded to investments made by investors of any third State.

2— Neither Contracting Party shall subject investors of the other Contracting Party to treatment less favourable than that accorded to investors of any third State with regard to activities related to their investments in the territory of the former Contracting Party.

3— The foregoing provisions of this article shall not affect more favourable treatment already accorded or to be accorded by Contracting Parties to investments made by investors from third States resulting from:

a) Membership of customs unions, free trade areas and organizations or other types of economic assistance, cooperation or integration;

b) Agreements on avoidance of double taxation and other agreements of a fiscal nature.

Article 4.

1— Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2— Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except by virtue of law for a public purpose and against prompt, adequate, and effective compensation.

Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or impending expropriation, rationalization or other comparable measure becomes publicly known. The compensation shall be paid without delay and shall carry the usual commercial interest until the date of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization, or other comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or other comparable measure and the amount of such compensation shall be subject to review by due process of law.

3— Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party to war or other armed conflict, revolution, a state of national emergency or revolt shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors, or to investors of any third State, whichever is the more favourable, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

Article 5.

1— Subject to its laws, any alteration to which shall not operate to render less favourable the conditions applicable to an investment at the time of its admission, or as the case may be, at the time of the entry into force of this Agreement, each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of sums related to their investments, in particular:

a) Capital and additional amounts necessary to maintain or increase the investment;

b) The returns defined in article 1, 2;

c) Funds in service, repayment and amortisation of loans directly connected with the investment;

d) The proceeds obtained from the sale or from the total or partial liquidation of the investment;

e) Any compensation or other payment referred to in article 4.

2— The transfers referred to in this Article shall be made without delay at the exchange rate applicable on the date of the transfer.

3— For the purpose of this Article a transfer shall be considered as having been made without delay when this is done within the period normally required for fulfilling the relevant formalities in the territory of the Contracting Party where the investment is situated. The period shall begin on the day on which the application accompanied by the required documents is made and may in no case whatsoever exceed forty-five days.

Article 6.

1— If either Contracting Party or its agency makes any payment to any of its investors under a guarantee in respect of an investment made in the territory or the other Contracting Party, the former Contracting Party shall be subrogated to the rights and claims of the investor concernedand may exercise them to same extent as that investor. Articles 4 and 5 shall, mutatis mutandis, apply to any such subrogated right or claim.

2— In the case of a subrogation in terms of paragraph 1, the investor concerned shall not institute any legal proceedings without previous authorization from the subrogated Contracting Party or its agency.

Article 7.

1— Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably throuth diplomatic channels.

2— If the Contracting Parties fail to reach such settlement within twelve months after entering into negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3— The arbitral tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two months and the chairman shall be appoited within three months from the date on which either Contracting Party notifies the other that it wishes to submit the dispute to an arbitral tribunal.

4— If the deadlines specified in paragraph 3 are not complied with, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to proceed with the required appointments. If the President is prevented from doing so or is a national of either Contracting Party, the appointments shall be made by the Vice-President.

If the Vice-President is also a national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a national of either Contracting Party.

5— The chairman of the arbitral tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

6— The arbitral tribunal shal rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties.

Each Contracting Party shall be responsible for the costs of its own member and of its representatives at the arbitration proceedings.

Both Contracting Parties shall assume an equal share of the expenses incurred by the chairman as well as any other expenses. The tribunal may make a different decision regarding costs. In all other respects, the tribunal shall determine its own rules of procedure.

7— The arbitral tribunal shall reach its decision on the basis of this Agreement, any agreements in force between the Contracting Parties and general international law, and shall take into account as may be appropriate, the domestic law of the Contracting Party in which the investment in question is situated.

Article 8.

1— Disputes between a Contracting Party and a investor of the other Contracting Party concerning an investment of such investor in the territory of the former Contracting Party shall, as far as possible, be settled amicably between the parties concerned.

2— If the dispute is not settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor concerned, be submitted for arbitration. Each Contracting Party hersby conserts to submit the dispute do arbitration.

Unless the parties in dispute agree otherwise, the dispute shall be submitted for arbitration under the Convention on the Settlement of Investments Disputes between States and Nationals of Nationals of Other States of March 1965.

3— The award shall be binding on the parties and shall not be subject to any appeal or remedy other than that provided for in the said Convention. The award shall be enforceable in accordance with the domestic law of the Contracting Party in whose territory the investment in question is situated.

4— During arbitration proceedings or proceedings for the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor concerned has received compensation under an insurance contract in respect of all or part of his or its damage or losses.

Article 9.

1— If the laws of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a provision, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provision shall, to the extent that it is more favourable, prevail over this Agreement.

2— Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 10.

This agreement shall remain in force notwithstanding any conflict which may arise between the Contracting Parties, without prejudice to their right to take such temporary measures as are permitted under the general rules of international law. Such measures shall be abrogated at the latest on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations exist between the Contracting Parties at that time.

Article 11.

This agreement shall apply to all investments made agter its entry into force by investors of either Contracting Party in the territory of the other Contracting Party which have been or are:

a) Made in accordance with the laws of the latter Contracting Party; and

b) Specifically approved by the competent authorities of the latter Contracting Party, where such approval is required in terms of its laws.

Article 12.

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of either Contracting Party at a place and at a time to be agreed upon through diplomatic channels.

Article 13.

1— This Agreement shall enter into force on the date on which both Contracting Parties notify, each other in writting that their respective internal constitutional procedures have been fulfilled.

2— This Agreement shall remain in force for a period of ten years and shall be extended thereafter for an indefinite period

unless denounced in writting by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting Party giving twelve months written notice to the other Contracting Party.

3— In respect of investments made prior to the date of termination of this Agreement the provisions of Articles 1 to 12 shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

Done in Harare this 5th day of May in the year 1994 in the Portuguese and English languages, both texts being equally authentic.

For the Government of the Purtuguese Republic:

Luis Palha da Silva.

For the Government of the Republic of Zimbabwe:

Tichaendepi R Masaya.