AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE AND THE GOVERNMENT OF THE ITALIAN REPUBLIC ON PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Zimbabwe and the Government of the Italian Republic (hereafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to capital investment by investors of one Contracting Party in the territory of the other Contracting Party;

And

Acknowledging that offering encouragement and mutual protection to such investment, based on international Agreements, will contribute to stimulating business ventures, which foster the prosperity of both Contracting Parties,

Hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall be construed to mean any kind of property invested, before or after the entry into force of this Agreement, by a natural or legal person of a Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of that Party, irrespective of the legal form chosen, as well as of the legal framework.

Without limiting the generality of the foregoing, the term "investment" comprises in particular, but not exclusively:

a) Movable and immovable property and any ownership right in rem, including real guarantee rights on property of a Third Party, to the extent that it can be invested;in rem, including real guarantee rights on property of a Third Party, to the extent that it can be invested;

b) Shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities in general;

c) Credits for sums of money or any service right having an economic value connected with an investment, as well as reinvested incomes and capital gains;

d) Copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) Any economic rights accruing by law or by contract and any licence and franchise granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources.

f) Any increases in value of the original investment.

Any modification in the form of the investment does not imply a change in the nature thereof.

2. The term "investor" shall be construed to mean any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries and affiliates and branches controlled in anyway by the above natural and legal persons.

3. The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that State in accordance with its laws.

4. The term "legal person", in reference to either Contracting party, shall be construed to mean any entity having its head office in the territory of one of the Contracting Parties and recognised by it, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money accruing to an investment, including in particular profits or interests, interest income, capital gains, dividends, royalties or payments for assistance, technical services and others as well as any considerations in kind such as, but not exclusively, raw materials, produces or products live-stock.

6. The term territory shall be construed to mean, in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereignty, and sovereign or jurisdictional rights, under international law.

7. "Investment agreement" means an agreement between a Party (or its agencies) and an investor of the other Party concerning an investment.

8. "Non-discriminatory treatment" means treatment that is as favourable as the most favoured national treatment or at least the most-favoured-nation treatment.

9. "Right of access" means the right to be admitted to carry out investments in the territory of the other Contracting Party.

10. The term "laws" includes legislation as well as administrative rules and regulations which are officially published and issued to the general public.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, not less favourable than the one provided for in paragraph 1 of Article 3.

3. Investments of nationals or companies of each Contracting Party shall at all times 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 nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Each Contracting Party shall create and maintain, in its territory a legal framework which guarantees to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

Article 3. The Most Favoured Nation Treatment

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.

2. If the legal framework 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 nationals or companies of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such provision shall to the extent that it is more favourable prevail over this Agreement.

3. The provisions under paragraphs 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of Third States by virtue of their membership of a Customs or Economic Union, of a Common Market, of a Free Trade Area, of a regional or subregional Agreement, of an international multilateral economic Agreement or under Agreements signed in order to prevent double taxation or to facilitate cross border trade.

Article 4. Compensation for Damages or Losses

Should investors of one of the Contracting Parties incur losses or damages on their investments in the territory of the other

Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer adequate compensation in respect of such losses or damages irrespective whether such losses or damages have been caused by governmental forces or other subjects. Compensation payments shall be freely transferable without undue delay.

The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable then investors of Third States.

Article 5. Nationalisation and Expropriation

1. The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanentiy or temporarily, save where specifically provided by current, national or local, legislation and/or regulations and orders handed down by courts or tribunals having jurisdiction.

2. Investments of investors of one of the Contracting Parties shall not be, de jure or de facto, directly or indirectly, nationalised, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, except for public purposes or national interest and in exchange for immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.de jure or de facto, directly or indirectly, nationalised, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, except for public purposes or national interest and in exchange for immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3. The just compensation shall be established on the basis of real market value immediately prior to the moment in which the decision to nationalise or expropriate is announced or made public.

In the absence of an understanding between the host Contracting Party and the investor during the nationalisation, or expropriation procedure, compensation shall be based on the same reference parameters, and exchange rates, taken into account in the documents for the constitution of the investment.

The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the nationalisation or expropriation has been announced or made public.

4. Without restricting the scope of paragraph 3 of this Article, in case that the object of nationalisation, expropriation, or similar, is a company with foreign capital, the evaluation of the share of the investor will be, in the currency of the Contracting Party in whose territory the investment is located, calculated at the market value on the basis of the amount of the initial investment, following International Accounting Standards.

5. Compensation will be considered as effective if it will have been paid in the same currency in which the investment was made by the foreign investor, in as much as such currency is — or remains — convertible, or, otherwise, in any other currency accepted by the investor.

6. Compensation will be considered as timely if it takes place without undue delay and, in any case, within one month.

7. Compensation shall include interests calculated at commercial lending rates from the date of nationalisation or expropriation to the date of payments.

8. A national or company of either Contracting Party that claims that all or part of his/its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Contracting Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation thereof, is legitimate, and to decide all other matters relating thereto.

9. In the absence of an agreement between the investor and the concerned Contracting Party, the amount of compensation will be established according to the procedures for disputes resolution provided for in Article 9 of this Agreement. Compensation payable in terms of this Article shall be freely transferable.Article 9 of this Agreement. Compensation payable in terms of this Article shall be freely transferable.

10. The provisions of paragraph 2. of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.paragraph 2. of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

11. If, after the dispossession, the investment concerned has not been utilised, wholly or partially, for that purpose, the

owner or his assignees are entitled to the repurchasing of the investment at the market price.

Article 6. Repatriation of Capital, Profits and Income

1. Subject to its laws each of the Contracting Parties shall guarantee that the investors of the other Contracting Party may transfer the following abroad, without undue delay, in any convertible currency:

a) Capital and additional capital, including reinvested income, used to maintain and increase investment;

b) Net income, dividends, royalties, payments for assistance and technical services, interests and other profits;

c) Income deriving from the total or partial sale or the total or partial liquidation of an investment;

d) Funds to repay loans connected to an investment and the payment of the related interests;

e) Remuneration and allowances paid to nationals of one of the Contracting Party for work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by the national laws and regulations in force.

2. Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, the same favourable treatment that is accorded to investments effected by investors of Third States, in case it is more favourable.

Article 7. Subrogation

In the event that one Contracting Party or an Institution thereof has provided a guarantee in respect of non-commercial risks for the investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the rights of the investor to the first-named Contracting-Party. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of this assignment, the provisions of Article 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

1. The transfers provided for in Article 4, 5, 6 and 7 shall be effected without undue delay after all fiscal obligations have been met, and shall be made in a convertible currency. All the transfers shall be made at the prevailing exchange rate applicable on the date of transfers as per international banking standards with the exception of the provisions under paragraph 3 of article 5 concerning the exchange rate applicable in case of nationalisation or expropriation.

2. The fiscal obligations under the previous paragraph 1 of this Article are deemed to be complied with when the investor has fulfilled the procedures provided for by the law of the Contracting Party on the territory of which the investment has been carried out.paragraph 1 of this Article are deemed to be complied with when the investor has fulfilled the procedures provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2. In case an Investor and one entity of one of the Contracting Parties have concluded an investment agreement, the procedure provided for in such an investment agreement shall apply.

3. In the event that such dispute cannot be settled amicably within six months of the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

a) The Contracting Party's Court having territorial jurisdiction;

b) An ad hoc Arbitration Tribunal, in compliance with the arbitration regulation of the UN Commission on the International Trade Law (UNCITRAL); and the host Contracting Party undertakes hereby to accept the reference to said arbitration.

c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18 March, 1965, on the settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it.

4. Once arbitration or judicial procedures have commenced, both Contracting Parties shall refrain from negotiating through diplomatic channels until such procedures have been concluded and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provisions which can be applied to the case.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six months of the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided for in this Article.

3. The Arbitration Tribunal shall be constituted on an ad hoc basis in the following manner: each Contracting Party shall within two months from the date on which the request for arbitration is received, appoint its member of the Tribunal. The two members shall nominate the President of the Tribunal who shall be a citizen of a third state. The President shall be appointed within three months from the date of appointment of the other two members.

4. If, within the period specified in paragraph 3 of this Article, the appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be final and binding on the Contracting Parties. Both Contracting Parties shall pay the costs of their own arbitrator and of their representative at the hearings. The President's costs and any other cost shall be divided equally between the Contracting Parties.

6. The Arbitration Tribunal shall reach its decisions on the basis of this Agreement, any treaty in force between the Contracting Parties and the 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.

The Arbitration Tribunal shall adopt its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article 12. Application of other Provisions

1. If a matter is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to the their investors.

2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws, regulations or other provisions or specific contract or investment authorisations or agreement, is more favourable than that provided under this agreement, the most favourable treatment shall apply.

3. In case the host Contracting Party has not applied such treatment, in conformity with this Article, and the investors suffer a damage as a consequence thereof, the investors shall be entitled to a compensation of such damages in conformity with Article 4.

4. Notwithstanding any amendments to or enactment of new domestic laws, regulations, and policies governing investment in the territory of a Contracting Party, the same treatment which applied to an investment made prior to the changes shall continue to apply subject to submission of a written request to a Contracting Party by an investor.

Article 13. Entry Into Force

Each Contracting Party shall notify the other in writing through diplomatic channels when their respective constitutional requirements for entry into force have been completed. The Agreement shall enter into force on the date of receipt of the later of these notifications.

Article 14. Duration and Expiry

1. This Agreement shall remain in force for an initial period of 10 years from the date of entry into force. Thereafter, it shall be automatically renewed for an indefinite period, unless either Contracting Party notifies the other twelve months before its expiry of its intention to terminate this Agreement.

2. In case of investments made in terms of this Agreement prior to its expiry, the provisions of Article 1 to 12 shall remain in force for a further period of five years thereafter.Article 1 to 12 shall remain in force for a further period of five years thereafter.

DONE AT Harare, this 16th day of April, one thousand nine hundred and nine, in two originals, in Italian and English, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

PROTOCOL

On signing the Agreement between the Government of the Republic of Zimbabwe and the Government of the Italian Republic on the Promotion and Protection of Investments, the Contracting Parties also agreed to the following clauses, which shall be deemed to form an integral part of the Agreement.

1. General Provisions

This Agreement and all provisions thereof referred to as "investments", provided they are made in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, apply as well to the following associated activities:

The organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of exchange for imports.

"Associated activities" also include, inter alia:

I) The granting of franchises or rights under licenses;

II) The receipt of registrations, licenses, permits and other approvals necessary for the conduct of commercial activity which shall in any event be issued expeditiously, as provided for in the legislation of the Contracting Parties;

III) Access to financial institutions, and to credit and currency markets;

IV) Access to funds held in financial institutions;

V) The importation and installation of equipment necessary for the normal conduct of business affairs, including, but not limited to, office equipment and automobiles, and the export of any equipment and automobiles so imported;

VI) The dissemination of commercial information;

VII) The conduct of market studies;

VIII) The appointment of commercial representatives, including agents, consultants and distributors, and their participation in trade fairs and other promotional events;

IX) The marketing of goods and services, including through internal distribution and marketing systems, as well as by advertising and direct contact with nationals and legal persons of the host Contracting Party;

X) Payment for goods and services in local currency;

XI) Leasing services .

2. With reference to Article 2

a) A Contracting Party (or its agencies or instrumentalities) may stipulate with investors of the other Contracting Party who carry out investment of national interest in the territory of that Contracting Party, an investment agreement, which will govern the specific legal relationship related to said investment.

b) Neither of the Contracting Parties will set any conditions for creation, expansion or continuation of investments, which may imply the taking over or the imposing of any limitation to the sale of the production on domestic or international markets, or which specifies that goods must be procured locally, or similar conditions.

c) Each Contracting Party will provide effective means of asserting claims and enforcing rights with respect to investments and investment agreements.

d) The nationals of either Contracting Party authorised to work in the territory of the other Contracting Party in connection with an investment as per this Agreement, shall have the right to adequate working conditions for the carrying out of their professional activities, in accordance with the legislation of the host Contracting Party.

e) According to its laws and regulations, each Contracting Party shall govern as favourably as possible the problems connected with the entry, stay, work and movement in its territory of nationals of the other Contracting Party, and members of their families, performing activities related to investments under this Agreement.

f) Legal persons constituted under the applicable laws or regulations of one Contracting Party and which are owned or controlled by investors of the other Contracting Party, shall be permitted to engage top managerial personnel of their choice, regardless of nationality, in accordance with the legislation of the host Contracting Party.

3. With reference to Article 3

All the activities relating to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any other kind of operation related to them and somehow linked to entrepreneurial activities under this Agreement shall be accorded, in the territory of each Contracting Party, treatment not less favourable than that accorded to similar activities and initiatives taken by investors of the host Contracting Party or investors of Third States.

4. With reference to Article 5

Any measure undertaken towards an investment effected by an investor of one of the Contracting Parties, which substracts financial resources or other assets from the investment or causes substantial prejudice to the value of the same investment as well as any other measure having equivalent effect, will be considered as one of the measures referred to in paragraph 1 of Article 5.

5. With reference to Article 9

Under Article 9 (3) (b), arbitration shall be conducted in accordance with the arbitration standards of the United Nations Commission on International Trade Law (UNCITRAL), as laid down in the UN General Assembly Resolution 31/98 of December 15, 1976 as well as pursuant to the following provisions:

a) The Arbitration Tribunal shall be composed of three arbitrators; if they are not nationals of either of the Contracting Parties, they shall be nationals of States having diplomatic relations with both Contracting Parties.

The appointment of arbitrators, when necessary pursuant to the UNCITRAL Rules, will be made by the President of the Arbitration Institute of the Stockholm Chamber, in his capacity of Appointing Authority. The arbitration will take place in Stockholm, unless the two parties in the arbitration have agreed otherwise.

b) When delivering its decision, the Arbitration Tribunal shall in any case apply also the provisions contained in this Agreement, as well as the principles of international law recognized by the two Contracting Parties.

The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislations, in compliance with the relevant international Conventions they are parties to.

In WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the

present Protocol.

DONE at Harare, this 16th day of April one thousand nine hundred and ninety nine in two originals, one in Italian and one in English, both texts being equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC