Agreement between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe

The Government of the Republic of South Africa and the Government of the Republic of Zimbabwe, (hereinafter jointly referred to as the "Parties", and separately as a "Party");

DESIRING to create favourable conditions for greater investment by investors of either Party in the territory of the other Party; and

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Parties;

HEREBY AGREE as follows:

Article 1. Definitions

In this Agreement, unless the context indicates otherwise -

"investment" means every kind of asset and in particular, though not exclusively, includes - a) Movable and immovable property as well as other rights such as mortgages, liens or pledges;

b) Shares, stock and debentures of a company and any other form of participation in a company;

c) Claims to money, or to any performance under contract having an economic value;

d) Intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill; and

e) Rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

and any change in the legal form in which assets are invested or reinvested shall not affect their character as investments under this Agreement. "investor" means in respect to either Party: a) The nationals of a Party, being those natural persons deriving their status as nationals of a Party from the domestic law in force in the territory of that Party; and

b) The "companies" of a Party, being any legal person, corporation, firm or association incorporated or constituted in accordance with the domestic law in force in the territory of that Party;

means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees; means - a) For the Republic of South Africa, the territory of that Party, including the territorial sea, air space and any maritime area situated beyond the territorial sea of that Party, which has been or might in the future be designated under the domestic law in force in the territory of the Party concerned, in accordance with international law, as an area within which the Party may exercise sovereign rights and jurisdiction;

b) For the Republic of Zimbabwe, the land and territory of the Republic of Zimbabwe and the airspace above it.

Article 2. Promotion of Investments

(1) Each Party shall, subject to its general policy in the field of foreign investment, encourage investments in its territory by investors of the other Party and, subject to its right to exercise powers conferred by the domestic law of its country, shall admit such investments.

(2) Each Party shall grant, in accordance with the domestic law of its country, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative

assistance.

(3) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Party, that Party shall - notwithstanding its own requirements for bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his or its national requirements or according to internationally accepted standards (such as International Accountancy Standards (IAS) drawn up by the International Accountancy Standards Committee (IASA)). The results of such accountancy and audit shall be freely transferable to the investor.

Article 3. Treatment of Investments

(1) Investments and returns that are reinvested of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party. Neither 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 Party.

(2) Each Party shall in its territory accord to investments and returns of investors of the other Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(3) Each Party shall in its territory accord to investors of the other Party treatment not less favourable than that which it accords to its own investors or to investors of any third State.

(4) The provisions of sub-Articles (2) and (3) shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from

(a) Any existing or future customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either Party is or may become a party; or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or

(c) Any domestic law or other measure the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination in its territory.

(5) If a Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Party.

Article 4. Compensation for Losses

(1) Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Party accords to its own investors or to investors of any third State.

(2) Without derogating from the provisions of sub-Article (1), investors of one Party who in any of the situations referred to in that sub-Article suffer losses in the territory of the other Party resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Party; or

(b) Destruction of their property by the forces or authorities of the latter Party, which was not caused in combat action or was not required by the necessity of the situation;

Shall be accorded restitution or adequate compensation.

Article 5. Compensation for Expropriation

(1) Investments of investors of either Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be at least equal 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 a normal commercial rate until the date of payment, shall be made without delay, and shall be effectively realisable.

(2) The investor affected by the expropriation shall have a right, under the domestic law of the country of the Party making the expropriation, to prompt review, by a court of law or other independent and impartial forum of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles referred to in sub-Article (1).

Article 6. Transfers of Investments and Returns

(1) Each Party shall allow investors of the other Party the free transfer of payments relating to their investments and returns, including compensation paid pursuant to Articles 4 and 5.

(2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Transfers shall be done in accordance with the domestic laws in force in the territory of the Party, who has admitted the investment. Such domestic laws shall not, however, regarding either the requirements or the application thereof, impair or derogate from the free and undelayed transfer allowed in terms of sub-Articles (1) and (2).

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

(1) Any legal dispute between an investor of one Party and the other Party relating to an investment of the former shall be settled amicably between the two parties concerned.

(2) If the dispute has not been settled within six (6) months from the date at which it was raised in writing, the dispute may at the choice of the investor, after notifying the Party concerned of its intention to do so in writing, be submitted -

(a) To the competent courts of the Party in whose territory the investment is made;

(b) To arbitration by the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and nationals of other States, opened for signature at Washington DC on 18 March 1965; or

(c) An ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) If the investor submits the dispute to the competent court of the host Party or to international arbitration mentioned in sub-Article (2), the choice shall be final.

(4) The decision in resolution of the dispute shall be derived by application of the domestic law, including the rules relating to conflicts of law, of the country of the Party involved in the dispute in whose territory the investment has been made, the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment as well as the principles of international law.

(5) The award made shall be final and binding on the parties to the dispute and shall be executed according to the applicable domestic law.

Article 8. Disputes between the Parties

(1) Any dispute between the Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiations between the Parties.

(2) If the dispute cannot thus be settled within a period of six months, following the date on which such negotiations were requested by either Party, it shall upon the request of either Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way:

a) Within three months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal.

b) Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed

Chairman of the tribunal.

c) The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in sub-Article (3) the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or is also prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall decide the dispute according to this Agreement and the principles of international law. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Each 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 cost shall be borne in equal parts by the Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties. The tribunal shall determine its own procedures, unless the Parties agree otherwise.

Article 9. Subrogation

If a Party or its designated Agency makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other Party, the latter Party shall recognise the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and shall recognise that the former Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 10. Application of other Rules

(1) If the provisions of the domestic law of the country of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain rules, whether general or specific, entitling investments and returns of investors of the other Party to treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

(2) Each Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Party.

Article 11. Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but shall not apply to any property right or interest compulsorily acquired by either Party in its own territory before the entry into force of this Agreement.

Article 12. Entry Into Force, Duration, Termination and Amendment

(1) The Parties shall notify each other when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty (30) days after receipt of the last notification.

(2) 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 Party shall have given written notice, through the diplomatic channel, of termination to the other.

(3) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of Articles 1 to 11 remain in force with respect to such investments for a further period of twenty years from that date.

(4) The terms of this Agreement may be amended by negotiated agreement between the Parties. The Parties shall notify each other through an Exchange of Notes through the diplomatic channel when their respective constitutional requirements for entry into force of such amendment have been fulfilled. Such amendment shall enter into force on the date of receipt of the last notification.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at Havare, on this 27th day of november 2009

Protocol to the Agreement betweenthe Government of the Republic of South Africa and the Government of the Republic of Zimbabwe for the Promotion and Reciprocal Protection of Investments

On the signing of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe for the Promotion and Reciprocal Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

1. With reference to Article 6 of the Agreement -
(a) with regards to the Republic of South Africa, the provisions relating to transfer under Article 6 of the Agreement do not apply to natural persons who are foreign nationals and who, after five years residence in South Africa, have applied for permanent residency connected with immigration to South Africa, and who are, after having completed the required exchange control formalities, accordingly deemed to be permanent residents of South Africa.
(b) the exemptions to Article 6 as contemplated in paragraph 1 of this Protocol shall terminate automatically in respect of each restriction, upon removal of the relevant restriction as part of the domestic law of South Africa.
(c) the Republic of South Africa shall make every effort to remove the said restrictions from their domestic law as soon as possible.
(d) with regards to the Republic of Zimbabwe, the provisions relating to the transfer under Article 6 of the Agreement, do not apply to natural persons who after having been granted resident status are deemed to be permanent residents of Zimbabwe for purposes of foreign exchange control.

2. Paragraph 1 a) and d) of this Protocol shall not apply to, or restrict the transfer of compensation payments made pursuant to Articles 4 and 5 of the Agreement.

3. This Protocol shall enter into force at the same time as the Agreement.

IN WITNESSWHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Protocol in two originals in the English language, both texts being equally authentic.

DONE at Havare on this 27th day of november 2009

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE GOVERNMENT THE REPUBLIC OF ZIMBABWE