AGREEMENT BETWEEN THE GOVERNMENT OF THE SULTANATE OF OMAN AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the Sultanate of Oman and the Government of the United Republic of Tanzania (hereinafter referred to as the "Contracting Parties");

DESIRING to intensify economic co-operation for the mutual benefit of both countries; and to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the promotion and reciprocal protection of such investments favour the economic prosperity of the two Contracting Parties and stimulate investment initiatives;

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) "Investment" shall mean any kind of asset owned or controlled, invested directly or indirectly by an investor of one Contracting Party in the territory of the state of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular though not exclusively:

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(a) movable and immovable property as well as any other property rights;

(b) shares, debentures, stocks and any other kind of participation in companies;

(c) title to money and claims to a legal performance under contract having an economic value;

(d) intellectual property rights including copyrights, industrial property rights, patents, industrial design, models, trade marks and trade names, trade secrets, technical processes, know-how and goodwill;

(e) any right conferred by law or contract or by virtue of licenses or permits including concessions to search for, develop, or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments provided that such alteration is not in conflict with the provisions of this Agreement and the legislation of the Contracting Party on the territory of which the investment is made.

(2) ‘investor" with regard to either Contracting Party, shall mean:

(a) any natural person who is a national of that Contracting Party pursuant to its legislation; and

(b) any legal person recognized in accordance with the laws and regulations of that Contracting Party.

(3) "returns"' shall mean the amounts yielded by an investment or reinvestment and in particular, though not exclusively include profit, interest, capital gains, dividends, royalties or fees.

(4) "territory" with respect to each Contracting Party the land, territorial waters, maritime area and air space under its sovereignty including the exclusive economic zone, the continental shelf and subsoil, over which the Contracting Party exercises sovereign rights and jurisdiction in accordance with its domestic law and the provisions of international law.

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Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments in accordance with its legislation.

(2) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(3) Each Contracting Party shall ensure fair and equitable treatment of investments by investors of the other Contracting Party, and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor acquisition of goods and services or the sale of their production through unreasonable or discriminatory measures.

(4) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impact by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidations of such investments.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to the investments and returns by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments and returns made by its own investors or by investors of third States, whichever is the more favourable to the investors.

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(2) Notwithstanding the provisions of paragraph (1) of this Article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a free-trade area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(3) The provisions of paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(4) In view of the inadequate experience and insufficient capacity of national entrepreneurs, the United Republic of Tanzania reserves the right to grant special incentives to its nationals and companies in order to stimulate their entrepreneurship. Such incentives shall be considered compatible with this Article provided they do not significantly affect the investments and activities of investors of the other Contracting Party.

(5) The provisions of paragraphs (2) and (3) of this Article shall not be considered so as to oblige one Contracting Party the benefits of any treatment, preference or privilege resulting from:

(a) any membership or affiliation to a Free Trade Area, a present or future Customs Union, Common Market or any form of regional economic cooperation.

(b) any agreements on the Avoidance of Double Taxation or any other form of agreements or matters related to taxation.

(6) The provisions of paragraph (1) of this Article shall not oblige either Contracting Party to accord investors of the other Contracting Party the same treatment that it accords to its own investors with regard to ownership of lands and real estate and obtaining grants and soft loans.

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Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:

(a) the measures are taken in the public interest and under due process of law;

(b) the measures are distinct and not discriminatory; and

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) (a) Such compensation shall amount to the fair market value of the investment

Expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "Valuation Date").

(b) Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the current LIBOR rate of interest applicable to the currency in which the investment was originally undertaken. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(4) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any

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Third State. Resulting payments shall be transferable without delay in a freely convertible currency.

(5) The provision of paragraph (4) of this Article shall apply to 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) Requisition of their property by the forces or authorities of the latter Contracting Party, or

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

Article 5. Transfers

(1) Each Contracting Party shall guarantee that all payments relating to investments in

Its territory of investors of the other Contracting Party be freely transferred into and

Out of its territory without delay in a freely convertible currency. Such transfers

Shall include, in particular, though not exclusively:-

(a) the initial capital and any additional capital, including reinvested returns, used to maintain or develop an investment;

(b) the returns;

(c) the proceeds from a total or partial sale or liquidation of an investment;

(d) funds in repayment of loans related to investments;

(e) payments of compensation under Article 4;

(f) payments arising out of the settlement of a dispute;

(g) earnings of individuals, not being nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

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(2) Transfer shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred.

In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

(3) A Contracting Party may require that, prior to the transfer of payments relating to an investment, tax obligations in relation to such an investment are fulfilled by the investors, provided that such obligations shall be non-discriminatory and shall not be used to defeat the purpose of paragraphs (1) and (2) of this Article.

(4) Notwithstanding paragraph (1) of this Article, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations relating to financial obligations in connection with insolvency; dealing in securities, futures, options or derivatives, criminal offences; law enforcement, adjudicatory proceedings and satisfaction of judgments, and social security, public retirement or compulsory savings schemes.

Article 6. Subrogation

If either Contracting Party makes payment under an indemnity, guarantee or insurance contract it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment of any right or claim from the party indemnified to the former Contracting Party or its designated Agency; and

(b) That the former Contracting Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party.

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Article 7. Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If any such dispute cannot be settled within three months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, the investor concerned may request to submit the dispute to:-

(a) The competent court of the Contracting Party in whose territory the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March, 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, or

(c) Should the ICSID not be available, an ad hoc tribunal shall be set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID.

If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the most appropriate method of settlement, the investor shall have the right to choose.

(3) If an investor concerned with the dispute decides to submit the case to one of the authorities mentioned in paragraph (2) of this Article, then he shall have no right to submit it to any other authority.

(4) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the

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Provisions of any such award and provide in its territory for the enforcement of such award.

(5) A Contracting Party which is a party to a dispute shall not at any stage of arbitration proceeding or enforcement of an arbitration award, raise the objection that the investor who is the other party to the dispute has received an indemnity to

cover all or part of its losses by virtue of an indemnity, guarantee or insurance contract.

Article 8. Settlement of Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations and consultations through diplomatic channels.

(2) If the dispute cannot be settled within three months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up for each individual case in the following ways:

(a) Each Contracting Party shall appoint one member.

(b) These two members shall then select a member from a third State, which

Maintains diplomatic relations with both Contracting Parties and who on

Approval by the two Contracting Parties, shall be appointed as Chairperson of the tribunal.

(c) The members shall be appointed within two months, and the chairperson

Within four months from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

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(4) If the time limit referred to in paragraph (3) of this Article have not been complied with either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in paragraph (4) of this Article or is a national of either Contracting Party:

(a) the Vice President shall be invited to make the necessary appointments.

(b) if the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties:

(a) Each Contracting Party shall bear the cost of its member and their representation in the arbitration proceedings.

(b) The cost of the chairperson as well as any other costs shall be borne in equal parts by the two Contracting Parties.

(c) The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties.

(d) In all other respects the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9. Application of the Agreement

(1) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

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(2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10. Application of other Rules

If the laws of either Contracting Party or their existing obligations under International Law 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 to the extent that they are more favourable may call for the amendment of the Agreement.

Article 11. Amendment of the Agreement

This Agreement or any part thereof may be amended by the mutual Agreement of the Contracting Parties through the Exchange of Letters or Protocols.

Article 12. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other when the legal procedures for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force for similar period on the expiration of twelve months unless either

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Contracting Party notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 10 shall remain in force for a further period of fifteen years from that date of termination of the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Muscat on this 29th day of DHul Qadah1433 H, corresponding to 16th day of October 2012 in the Arabic and English languages, all texts being equally authentic. In case of any divergence in interpretation the English text shall prevail.

Sultan Salim Said AL-Habsi

Secretary General of Supreme Council for Planning

FOR THE GOVERNMENT OF THE SULTANATE OF OMAN

Hon. Bernard Kamillius Membe (MP)

Minister for Foreign Affairs and International Cooperation

FOR THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

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