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

The Government of the Italian Republic and the Government of the Democratic Republic of Congo, hereinafter referred to as "the Contracting Parties";

Desiring to create favourable conditions for greater economic cooperation between the two countries, including capital investments by the investors of one Contracting Party in the territory of the other Contracting Party;

Convinced that the encouragement and reciprocal protection of such investment based on international agreements will stimulate economic relations likely to promote prosperity of both Contracting Parties;

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "investment" means any kind of asset invested, before and after the entry into force of this Agreement by a natural or legal person of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of that Party, regardless of the legal form chosen and the legal framework.

Without prejudice to the foregoing, the following shall be considered in particular, though not exclusively as investments, the following elements:

a) Movable and immovable property as well as any other rights in rem of property, including property rights guaranteed on a property of third parties, provided that they can be used for the purposes of the investment;

b) Stocks, bonds, shares and other debt securities, as well as government and public securities in general;

c) Financial credits related to an investment, as well as income from capital that is reinvested, income from capital and rights to any benefits with economic value related to an investment;

d) Copyrights, trademarks, patents, industrial designs and other intellectual property rights and industrielie, know-how, trade secrets, trade names and goodwill;

e) Any right of an economic nature granted by law or under contract and any licences and concessions in accordance with the law in force in respect of economic activities, including the rights of exploration, extraction and exploitation of natural resources;

f) Any increase in the value of the initial investment.

Any modification of the legal form for investments chosen shall not affect their classification as investment.

2. The term "investor" means any natural or legal person of one Contracting Party who makes an investment in the territory of the other Contracting Party, as well as the associated with foreign subsidiaries and branches, controlled by those natural or legal persons.

3. The term "natural person" means for each Contracting Party a natural person having the nationality of that State in accordance with its legislation.

4. The term "legal person" means for each Contracting Party, any entity having its seat in the territory of one of the Contracting Parties and recognized by it, such as public institutions, partnerships, capital, foundations and associations

regardless of whether or not with limited liability agencies.

5. The term "income" means all sums produced or to be produced by an investment, including, but not limited to, income or interest, dividends, royalties, fees for technical, support or other services, as well as any payment in kind.

6. The term "territory" indicates, in addition to the areas delimited by the land borders and their subsoil, the "maritime zones". These include maritime and submarine areas under the sovereignty of the Contracting Parties or over which they exercise sovereign or jurisdictional rights in accordance with international law.

7. The term "Investment Agreement" means an agreement that a Contracting Party may conclude with an investor of the other Contracting Party to govern their specific reports on investment.

8. The term "discriminatory" indicates a treatment not less favourable treatment than the best treatment between national treatment and the most favoured nation.

9. The term "right of access" means the right to be admitted to invest in the territory of the other Contracting Party, subject to the limits resulting from international agreements binding on both Contracting Parties.

10. The term "investment-related activities" means, inter alia, the organization, control, operation, maintenance and disposal of companies, subsidiaries, agencies, offices or other organizations for the management of business activities, access to financial markets, the application for loans, the purchase, sale and issue of shares and other securities and the purchase of foreign currency for imports necessary for the conduct of business activities, the flow of goods and services, the provision of financial services and the provision of financial services, the purchase, sale and issue of shares and other securities and the purchase of foreign currency for imports necessary for the conduct of business activities, the flow of goods and services, the procurement, sale and transportation of raw and processed materials, energy, fuel and means of production, as well as the provision of business information.

Article II. Promotion and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory.

2. Investors of both Contracting Parties shall have a right of access to investment activities in the territory of the other Contracting Party that is no less favourable than that provided for in Article III, paragraph 1.

3. Each of the Contracting Parties shall always accord fair and equitable treatment to the investments of investors of the other Contracting Party. The Contracting Parties shall ensure that the management, maintenance, employment, processing, use or disposal of investments made in their territory by investors of the other Contracting Party, as well as of the companies or enterprises in which such investments have been made, shall never be subject to unjustified or discriminatory measures.

4. Each Contracting Party shall establish and maintain in its territory a legal framework favourable to investors legal continuity of treatment, including the observance of good faith all commitments to the investor.

5. The Contracting Parties shall establish any condition for achieving the development or continuation of investments that could lead to the acceptance or the imposition of obligations relating to production for export and provide for the supply of goods or any similar requirement.

6. In accordance with its national laws and regulations, each Contracting Party shall accord to nationals of the other contracting party in its territory for an investment regulated by this Agreement, adequate working conditions to their professional activities. Each Contracting Party shall apply the most favourable treatment to issues relating to the entry, stay and work and travel within its territory of nationals of the other contracting party, as well as members of their families.

7. Companies incorporated in accordance with the laws and regulations of one Contracting Party and which are owned or controlled by investors of the other Contracting Party shall be permitted freely to engage senior managers, regardless of their nationality in accordance with the laws of the host Contracting Party.

Article III. National Treatment and Most-favoured-nation Clause

1. Each Contracting Party shall accord to investments made in its territory by the investor of the other Contracting Party and to income derived therefrom treatment no less favorable than that accorded to investments made by its own nationals or those of third countries and to income derived therefrom. The same treatment shall extend to activities relating to the investment.

2. If, on the basis of the legislation of one of the Contracting Parties or of international obligations in force or which may come into force in the future in one of the Contracting Parties, a legal situation should arise in which investors of the other Contracting Party enjoy a more favorable treatment than that provided for in this Agreement, the treatment accorded to the investors of the said other Party shall be applied to the investors of the conceived Contracting Party even in respect of relations already established.

3. The provisions of paragraphs 1 and 2 of this Article shall not extend to any advantages and privileges which a Contracting Party may grant to investors of a third State by virtue of their membership in a customs or economic union, a common market, a free trade area, a regional or subregional agreement, a multilateral international economic agreement or under agreements concluded for the avoidance of double taxation or the facilitation of cross-border trade.

Article IV. Compensation for Damages or Losses

If investors of either Contracting Party suffer loss or damage to their investments in the territory of the other Contracting Party owing to war or other armed conflict or civil strife, state of emergency or other similar events, the Contracting party that received investment, shall grant adequate compensation for losses or damages, regardless of whether they have been caused by government forces or by other subjects. The compensation shall be paid in a freely convertible currency and freely transferable without undue delay.

The Investor affected shall be entitled to the same treatment to nationals of the other Contracting Party and, in any event, no less favourable treatment than that accorded to investors of third States.

Article V. Nationalisation or Expropriation

1. Investments made under this Agreement shall not be subject to any measures which may limit, either permanently or temporarily, the right of ownership, possession, control or enjoyment of the investments, subject to applicable national or local legislation and to the provisions of the competent administrative and judicial authorities.

2. Investments and activities related to investments of investors of one of the Contracting Parties shall not be subject, de jure or de facto, directly or indirectly, to measures of nationalization, expropriation, requisition or any other similar measures, including measures affecting companies and property controlled by the investor in the territory of the other Contracting Party, except for reasons of public utility or national interest; in such case, immediate, full and effective payment of compensation shall be provided for, provided that such measures have been adopted on a non-discriminatory basis and in accordance with all legal provisions and procedures.

3. The appropriate amount of compensation shall be equivalent to the actual commercial value of the expropriated investment immediately prior to the time the decision to nationalize or expropriate was announced or made public.

4. In case of difficulty in establishing the actual commercial value, it shall be determined on the basis of internationally recognized valuation criteria.

5. The compensation shall be calculated in a convertible currency at the main exchange rate applicable on the date the decision to nationalize or expropriate was announced or made public and shall include interest calculated on the basis of the interbank rates from the date of nationalization or expropriation until the date of payment; it may be freely touched and transferred.

6. From the moment of its determination, the indemnity shall be paid without undue delay and in any case within one month.

7. If the object of expropriation is a joint venture company established in the territory of one of the two Contracting Parties, the compensation to be paid to the investor of a Contracting Party shall be calculated on the basis of the value of his participation in the joint venture company, in accordance with the relevant documents and on the basis of the same evaluation criteria provided for in paragraph 3 of this Article.

8. The nationals or companies of one of the two Contracting Parties who claim to have suffered expropriation of their investments or a part thereof shall be entitled to immediate examination by the competent judicial or administrative authorities of the other Contracting Party, with a view to ascertaining whether the expropriation has in fact taken place and whether the expropriation and any compensation therefor are in conformity with the principles of international law, and with a view to deciding on all related matters.

9. If after the expropriation the expropriated investment is not used in whole or in part for its intended purpose, the former owner and his partner(s) shall have the right to buy it back. The price of the expropriated investment shall be calculated

from the date of the repurchase on the basis of the same valuation criteria adopted at the time of calculation of the compensation referred to in paragraph 3 of this Article.

Article VI. Repatriation of Capital, Profits and Income

1. Each Contracting Party shall guarantee that all products of investment in its territory by an investor of the other Contracting Party may be freely transferred into and out of its territory and without undue delay after fulfillment of all tax obligations. Such transfers include in particular though not exclusively:

a) capital and additional capital, including reinvested earnings used for maintenance and expansion of the investment

b) net income, dividends, royalties, payments for technical assistance and services, interest and other profits;

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

d) The funds in repayment of loans secured for an investment and the payment of interest arising therefrom;

e) The remuneration and allowances to nationals of the other contracting party and to their work for services rendered in connection with an investment in the territory of the other Contracting Party, except to the extent and under the conditions laid down by the national laws and regulations in force;

f) Any payments as compensation referred to in Article IV.

2. The tax obligations referred to in paragraph 1 above shall be paid when the investor has complied with the procedures laid down by the legislation of the Contracting Party which has received the investment.

3. Without prejudice to the scope of Article III of this Agreement, the Contracting Parties undertake to apply to transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to the investments made by investors of third States.

4. Where, to cause serious problems associated with the balance of payments, a Contracting Party may temporarily be obliged to restrict the transfer of funds, such restrictions shall not be applied to investments related to this Agreement that on an equitable, non-discriminatory basis and in good faith.

Article VII. Subrogation

If a Contracting Party or any of its institutions have given a guarantee against non-commercial risks to an investment by one of its investors in the territory of the other Contracting Party and has made a payment to its investor on the basis of such a guarantee, the other Contracting Party shall recognize the assignment to the rights of the investor of the first Contracting Party. With regard to the transfer of payment to the Contracting Party or its agency by virtue of such assignment, the provisions of Articles IV, V and VI of this Agreement shall be applied.

Article VIII. Transfer Procedures

Compensation and the products of the investment referred to in Articles IV, V, VI and VII shall be effected without undue delay and in any case within a period of one month. All transfers relating thereto shall be made in a freely convertible currency, at the rate of exchange applicable on the date on which the investor requested the transfer, with the exception of the provisions referred to in paragraph 3 of Article V, at the rate of exchange applicable thereto, in case of nationalisation or expropriation.

Article IX. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation and application of this Agreement shall, if possible, be settled through consultation and negotiation.

2. If within six months from the date on which either of the Contracting Parties has submitted a request in writing, the dispute is not governed, it shall be submitted at the request of one of the Contracting Parties to an ad hoc arbitral tribunal in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted in the following manner: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If, within the time limits laid down in paragraph 3 of this Article, no designation has been made, in the absence of any other agreement, each of the Contracting Parties may request the President of the International Court of Justice to make the designation. If the President of the Court is a national of one of the Contracting Parties or if for any other reason he is unable to make the designation, the Vice President of the Court shall perform this function. If the Vice President of the Court is a national of one of the Contracting Parties or if for any other reason he cannot make the appointment, 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 Arbitral Tribunal shall take its decisions by majority vote and its decisions shall be binding. The two Contracting Parties shall share the costs of their arbitral proceedings and of their representatives at the hearings. The costs of the President and all other costs shall be shared equally between the Contracting Parties. The Arbitral Tribunal shall establish its own procedures.

Article X. Settlement of Disputes between an Investor and the Contracting Parties

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment, including a dispute concerning the amount of compensation shall be settled, as far as possible through consultation and negotiation.

2. If the investor and an organization of either Contracting Party have concluded an investment agreement, the procedure provided for in the investment agreement shall be applied.

3. If, as provided for under paragraph 1 of this Article, the dispute is not settled within six months from the date of the written request for this purpose, the investor concerned may submit the dispute to one of the following fora:

a) The competent court of the Contracting Party having territorial jurisdiction;

b) The ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); the host Contracting Party undertakes to submit to such arbitration;

c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitral proceedings under the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, on 18 March 1965, whether or when both parties have become Contracting Parties.

4. According to paragraph 3 (b) of this Article, the arbitration shall be conducted in accordance with the following provisions:

a) The Arbitral Tribunal shall consist of three arbitrators; if they are not nationals of one of the two Contracting Parties, they shall be nationals of States which maintain diplomatic relations with both Contracting Parties, appointed by the President of the Arbitration Institute of the Paris Chamber, as the appointing authority. The Arbitration shall take place in Paris, unless otherwise agreed by the Parties concerned. In rendering its decision, the Arbitral Tribunal shall apply the provisions of this Agreement, as well as the principles of international law recognized by both Contracting Parties. The arbitral decision in the territory of the Contracting Parties shall be executed in accordance with the respective national laws and international conventions on the subject to which they have acceded.

b) The Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to pending arbitration or court proceedings as long as such proceedings have not been concluded, as well as in the event that one of the Contracting Parties has not complied with the decision of the Arbitral Tribunal or of the Ordinary Tribunal within the time limit provided for in the decision or within a time limit to be established on the basis of the provisions of the international or domestic law applicable in such case.

Article XI. Relationship between Governments

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article XII. Implementation of the Agreement

This Agreement also covers, as far as its future application is concerned, investments made before its entry into force by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with its laws and regulations. However, this Agreement shall not apply to disputes that may arise before its entry into force.

Article XIII. 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 parties or by provisions of general international law, the Contracting Parties and their investors shall benefit from the application of the most favorable provisions.

2. If the treatment accorded by a Contracting Party to the investors of the other Contracting Party in accordance with its laws, regulations or other provisions, or under a specific contract or investment authorization or other agreement, is more favorable than that provided for in this Agreement, the more favorable treatment shall apply.

3. Subsequent to the date on which the investment was made, any significant change in the legislation of the Contracting Party directly or indirectly governing the investment shall not be applied retroactively and investments made under this Agreement shall be protected accordingly.

4. The provisions of this Agreement shall not limit the application of domestic provisions aimed at preventing tax evasion and asset misappropriation. The competent authorities of each Contracting Party undertake to supply, at the request of the other Contracting Party, any information that may be useful for this purpose.

Article XIV. Entry Into Force

This Agreement shall enter into force from the date of receipt of the latter of the two notifications with which the Contracting Parties will have notified each other to the fulfilment of its ratification procedures.

Article XV. Duration and Termination

1. This Agreement is concluded for a period of ten years and may be tacitly renewed for a further period of five years unless one of the Contracting Parties denounces it one year before its expiration.

2. In the case of an investment made prior to the date of termination as provided for in paragraph 1 of this Article, the provisions of Articles I to XIII shall continue to be effective for a further period of five years.

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

Done AT THE……. each in two originals in the Italian language in the English and French languages, both texts being equally authentic.

For the Government of the Democratic Republic of the Congo

For the Government of the Italian Republic