AGREEMENT BETWEEN THE GOVERNMENT OF MONGOLIA AND THE GOVERNMENT OF ROMANIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Mongolia and the Government of Romania herein referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its citizens;

(b) Legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have real economic activities in the territory of that Contracting Party.

(2) The term "investments" shall mean every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, and include particularly, but not exclusively:

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

(b) Shares, stocks or any other kinds of participation in companies;

(c) Claims to money or to any rights to any performance having an economic value;

(d) Intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, know-how and goodwill, as well as other similar rights recognized by the laws of the Contracting Parties;

(e) Business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(3) The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interests, capital gains, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

(4) The term "territory" means:

(a) With respect to Mongolia, the territory over which Mongolia has sovereignty or jurisdiction.

(b) With respect to Romania, the territory of Romania including the territorial sea and the economic exclusive zone over

which Romania exercises, in accordance with internal and international law, sovereignty, sovereign rights end jurisdiction.

Article 2. Promotion, Admission

(1) Each Contracting Party shall in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall, in its territory, in accordance with its laws and regulations, grant the necessary permits in connection with the investments, including authorizations for engaging top managerial and technical personnel of choice of investors regardless of nationality.

Article 3. Protection, Treatment

(1) Investments made by investors of one Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(2) This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors, of any third state, if this latter treatment is more favourable.

(3) The most favoured nation treatment shall not be construed so as to oblige a Contracting Party to extend to the investors and investments of the other Contracting Party the advantages resulting from any existing or future customs or economic union, a free trade area or regional economic organization, to which either of the Contracting Parties is or becomes a member. Nor shall such treatment relate to any advantage which either Contracting Party accords to investors of a third state by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters.

Article 4. Free Transfer

(1) Each Contracting Party shall guarantee to the investors of the other Contracting Party in respect of their investments the free transfer of the payments relating to these investments, particularly of:

(a) Returns according to Article 1, paragraph (3) of this Agreement;

(b) Amounts relating to loans incurred, or other obligations undertaken by contract, for the investment;

(c) Proceeds accruing form the total or partial sale, or liquidation of an investment.

(2) Notwithstanding the provisions of paragraph (1) of the present Article, either Contracting Party may, in exceptional financial or economic circumstances, impose such exchange restrictions in accordance with its laws and regulations (and in conformity with the Articles of Agreement of the International Monetary Fund).

(3) Unless otherwise agreed with the investor transfers shall be made, pursuant to the laws and regulations in force of the Contracting Party in whose territory the investment was made, at the rate of exchange applicable on the date of transfer.

Article 5. Expropriation, Compensation

(1) Investments made by investors of one Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedure and against compensation.

(2) Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge and shall include interest from the date of expropriation and be freely transferable. Compensation shall be effective, adequate and be paid without undue delay.

(3) Investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state of emergency or other similar events shall as regards compensation or other forms of settlement, be accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State. Any payment made under this Article shall be freely transferable.

Article 6. Application of the Agreement

The present Agreement shall apply to all investments made after its entry into force.

Article 7. Other Obligations

(1) If the legislation of either Contracting Party entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation 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 8. Principle of Subrogation

If either Contracting Party or its designated agency makes payment to one of its investors under any financial guarantee against non-commercial risks it has granted in regard of an investment in the territory of the other Contracting Party, the latter shall recognize, by virtue of the principle of subrogation, the assignment of any right or title of that investor to the first Contracting Party or its designated agency. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case, as far as possible, amicably.

(2) If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

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

(b) The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, opened for signature at Washington, on March 18, 1965; or

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

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

(4) The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the inccured damage or loss.

Article 10. Settlement of Disputes between Contracting Parties

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator. The appointed members shall then select a citizen of a third State, who on the approval of the two Contracting Parties, shall be appointed as the chairman of the tribunal.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months alter their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International

Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a citizen of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a citizen of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not citizen of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

(7) Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

(8) The decisions of the tribunal are final and binding for each Contracting Party.

Article 11. Final Provisions

(1) This Agreement shall enter into force thirty days after the date on which the Contracting Parties shall have notified each other that their legal requirements for the entry into force of this Agreement have been fulfilled It shall remain in force for an initial period of ten years. Unless official notice of denonciation in writing is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for further periods of ten years.

(2) In case of official notice as to the denonciation of the present Agreement, the provisions of the Articles 1 to 10 shall continue to be effective for a further period of ten years for investments made before official notice was given.

IN WITNESS THEREOF the Undersigned, being duly authorized by their respective Government, have signed this Agreement.

Done at Bucharest, on ..... 1995, in two originals in Mongolian, Romanian and English languages, each text being equally authentic In case of difference of interpretation, the English text shall prevail.

For the Government of Mongolia

For the Government of Romania