AGREEMENT BETWEEN THE GOVERNMENT OF MONGOLIA AND THE GOVERNMENT OF THE REPUBLIC OF CUBA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Mongolia and the Government of the Republic of Cuba (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for greater investment by natural and legal persons of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection of such investments through the conclusion of international agreements will contribute to the stimulation of business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) Investment means every kind of asset and in particular though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens and pledges;

(ii) shares in and stock and debentures of a company and any other form of participation in a legal entity;

(iii) claims to money, or to any performance under contract having a financial value;

(iv) intellectual property rights, goodwill, technical processes and know-how;

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested shall not affect their character as investments and the term "investment" includes all investments, both those made prior to the date of entry into force of this Agreement provided they are operating lawfully at that date, and those made thereafter;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "natural person" means:

(i) in respect of Mongolia: any natural person having the nationality of the Contracting Party in accordance with its law;

(ii) in respect of Cuba: natural persons who have the citizenship of that State in accordance with its laws and who reside permanently in the national territory;

(d) "legal person" means:

(i) in respect of Mongolia: any entity legally established in its territory and recognised by it, such as public entities, partnerships foundations and irrespective of whether or not their liability is limited, having permanent seat in the territory of the Contracting Party;

(ii) in respect of Cuba: any entity legally established its territory and recognized by it, such as public entities, partnerships, corporations, foundations and associations, irrespective of whether or not their liability is limited;

(e) "territory" means:

(i) in respect of Mongolia: as defined by its respective laws and over which the Mongolian State exercises in accordance with the international law, sovereignty, sovereign right or jurisdiction;

(ii) in respect of Cuba: in addition to the areas within the land boundaries, the maritime areas are also included. These include the marine and submarine areas over which the Cuban State has sovereignty or, in accordance with international law, exercises sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for natural and legal persons of the other Contracting Party to invest in its territory, and subject to its right to exercise powers conferred by its laws, shall admit such investments.

The Contracting Parties shall consult with each other upon the entry into force of this Agreement as to the most effective ways of encouraging and promoting investment their natural or legal persons in the territory of the other Party.

(2) Investments of natural or legal persons of each Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the International Law and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unjustified or discriminate measures the management, maintenance, use, enjoyment or disposal of investments in its territory of natural or legal persons of the other Contracting Party.

Article 3. National Treatment and Most-favoured Nation Provisions

(1) Neither Contracting Party shall in its territory subject investments or returns of natural or legal persons of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own natural or legal persons or to investments or returns of natural or legal persons of any third State.

(2) Neither Contracting Party shall in its territory subject natural or legal persons of the other Contracting Partyrasb regard their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own natural or legal persons or to natural or legal persons of any third State.

(3) For the avoidance of doubt it is confirmed that the investments or returns of natural or legal persons referred to in paragraphs (1) and (2) above are those governed by national legislation covering foreign investment and that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

Article 4. Compensation for Losses

(1) Natural or legal persons of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards indemnification, compensation or other restitution, settlement, no less favourable than that which the latter Contracting Party accords to its own natural or legal persons or to natural or legal persons of any third State.

Resulting payments shall be freely transferable in the currency agreed by the natural and legal persons and the Contracting Party concerned.

(2) Without prejudice to paragraph (1) of this Article, natural or legal persons 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) requisitioning of their property by its authorities; or

(b) destruction of their property by its forces authorities, which was not caused in combat action or was not required by the necessity of the situation shall be accorded restitution or adequate compensation.

Resulting payments shall be freely transferable in the currency agreed by the natural and legal persons and the Contracting Party concerned.

Article 5. Expropriation

(1) Investments of natural or legal persons of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent nationalization or expropriation (hereinafter referred to "expropriation") in the territory

of the Other Contracting Party except for a public purpose on a non-discriminatory basis and through prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or before the impending expropriation was publicly announced whichever is earlier, shall include interest at a normal commercial rate until the date of the payment, shall be made without delay, be effectively realizable and be freely transferable. Whenever there is no market, as a basis for determining the value investment, compensation shall be calculated on the basis of a fair evaluation of the value of the investment taking into account all relevant factors. The natural or legal person affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of the valuation of its investment, in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a natural or legal person which is incorporated or constituted under the law in force in any part of its own territory, and in which natural or legal persons of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such natural or legal persons of the other Contracting Party who are owners of those shares, in the currency agreed by the natural and legal persons and the Contracting Party concerned.

Article 6. Repatriation of Investment and Returns

Each Contracting Party shall in respect of investment guarantee to natural or legal persons of the other Contracting Party the right to unrestricted transfer of their investments and returns after the payment of any tax due in the territory of the first Contracting Party in respect of the investment.

Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the natural or legal persons and the Contracting Party concerned. Unless otherwise agreed by the natural or legal person transfers shall be made at the official rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the natural or legal persons of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the natural or legal persons of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union or similar international agreement to which either of the Contracting Party is or may become a party; or

(b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 8. Settlement of Disputes between a Natural or Legal Person and a Contracting Party

(1) Disputes between a natural or legal person Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to the courts of that Contracting Party or to international arbitration, if the natural or legal person concerned so wishes.

(2) Where the dispute is referred to international arbitration, the natural or legal person and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the Court of Arbitration of the International Chamber of Commerce; or

(b) an international arbitration or ad hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Law (UNCITRAL).

(3) Neither Contracting Party shall give diplomatic protection or bring an international claim, in respect of a dispute which one of its investors has consented to submit to arbitration unless the other Contracting Party which is a party to the dispute shall have failed to abide by and comply with the award rendered in such dispute by the arbitral tribunal. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute by the arbitral tribunal.

If after a period of three months from written notification of the claim there is no agreement to one of the above alternative

procedures, the dispute shall at the request in writing of the natural or legal person concerned be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade (UNCITRAL) as then in force. The Contracting Parties to the dispute may agree in writing to modify these Rules.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitrations, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting 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 Contracting Party or if he 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 Contracting Party or if he too is prevented from discharging the said function the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such y decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and or representation in the arbitral proceedings; the cost Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

(6) The Chairman shall be a national of a State having diplomatic relations with both States.

Article 10. Subrogation

(1) If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Contracting Party, ("the second Contracting Party), the second Contracting Party shall recognize:

(a) the assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) that the first Contracting Party is entitled to exercise such rights and enforce such claims by subrogation, to thy same extent as the party indemnified.

(2) The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

(a) the rights and claims acquired by it by virtue of the assignment; and

(b) any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement in respect the investment concerned and its related returns.

(3) Any payments received in non-convertible currency by the first Contracting Party in pursuance of the rights and claims acquired shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement contain rules, whether general or specific, entitling investments by natural or legal persons of the other Contracting Party to treatment more favourable than is

provided for by the present Agreement; such rules shall to the extent they are more favourable prevail over the present Agreement.

Article 12. Entry Into Force

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of two notifications.

Article 13. Duration and Termination

This Agreement shall remain in force for a period of twenty years. Thereafter it shall continue in force until the of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made while the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 10 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Ulaanbaator, this 26th day of 1999, in the Mongolian, Spanish and English languages, each text being equally authentic. In case of divergence the English text shall prevail.

FOR THE GOVERNMENT OF MONGOLIA

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA