Project Agreement

(Second Private Sector Development Project)

among

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

TRADE AND DEVELOPMENT BANK

and

ZOOS BANK

Dated September 8, 2005
AGREEMENT dated September 8, 2005, among the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and the TRADE AND DEVELOPMENT BANK (“TDB”) and the ZOOS BANK.

WHEREAS (A) by the Development Credit Agreement of even date herewith between Mongolia (the “Borrower”) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to six million nine hundred ninety one thousand Special Drawing Rights (SDR 6,991,000), on the terms and conditions set forth in the Development Credit Agreement, but only on conditions that each of the Trade and Development Bank and the Zoos Bank agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by Subsidiary Loan Agreements and Financing Agreements to be entered into between the Borrower and the Trade and Development Bank and the Zoos Bank, part of the proceeds of the credit provided for under the Development Credit Agreement and part of the proceeds under the Revolving Fund (as hereinafter defined) will be made available to the Trade and Development Bank and the Zoos Bank on the terms and conditions set forth in their respective Subsidiary Loan Agreements and Financing Agreements; and

WHEREAS the Trade and Development Bank and the Zoos Bank, in consideration of the Association’s entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.
ARTICLE II

Execution of the Project;
Management and Operations of
Trade and Development Bank and Zoos Bank

Section 2.01. (a) Each Trade and Development Bank and Zoos Bank declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out: (i) for the Trade and Development Bank, its respective activities under Parts A and B.1 of the Project; and (ii) for the Zoos Bank, its respective activities under Parts A and B.2 of the Project, and conduct its operations with due diligence and efficiency and in conformity with appropriate administrative, financial, commercial banking and managerial practices and social and environmental practices acceptable to the Association, with qualified management and staff in adequate numbers, and in accordance with their respective charters, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and each of the Trade and Development Bank and the Zoos Bank shall otherwise agree, each the Trade and Development Bank and the Zoos Bank shall carry out its respective activities under Parts A and B.1, and Parts A and B.2 of the Project, respectively, in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. (a) Each Trade and Development Bank and Zoos Bank undertakes that, unless the Association shall otherwise agree, Sub-loans shall be made in accordance with the procedures and on the terms and conditions set forth or referred to in Schedule 3 to this Agreement.

(b) Each Trade and Development Bank and Zoos Bank shall exercise its rights in relation to each Sub-project financed by it through a Sub-loan in such manner as to: (i) protect the interests of the Association and of the Trade and Development Bank, and the Zoos Bank; (ii) comply with its obligations under this Agreement and its respective Subsidiary Loan Agreement; (iii) accomplish the purposes of the Credit and achieve the objectives of Part A of the Project.

Section 2.03. (a) Except as the Association shall otherwise agree, (i) procurement of the goods, works and services required for the Sub-projects financed by a Sub-loan shall be governed by the provisions of paragraph 6(b) and 6(c) of Schedule 3 to this Agreement; and (ii) procurement of goods and consultants’ services required for Parts B.1 and B.2 of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.
Section 2.04. Each Trade and Development Bank and Zoos Bank shall duly perform all its obligations under its respective Subsidiary Loan Agreement and Financing Agreement. Except as the Association shall otherwise agree, Trade and Development Bank and Zoos Bank shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving its respective Subsidiary Loan Agreement or Financing Agreement or any provision thereof.

Section 2.05. (a) Each Trade and Development Bank and Zoos Bank shall, at the request of the Association, exchange views with the Association with regard to the progress of its respective activities under Parts A and B.1, and Parts A and B.2 of the Project, respectively, the performance of its obligations under this Agreement, its respective Subsidiary Loan Agreement and Financing Agreement, or any provision thereof, and on any other matters relating to the purposes of the Credit.

(b) Each Trade and Development Bank and Zoos Bank shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of its respective activities under Parts A and B.1, and Parts A and B.2 of the Project, respectively, the accomplishment of the purposes of the Credit, or the performance by the Trade and Development Bank and the Zoos Bank of their respective obligations under this Agreement and their respective Subsidiary Loan Agreements and Financing Agreements.

Section 2.06. (a) Each Trade and Development Bank and Zoos Bank shall exchange views with the Association on any proposal to modify their respective charters.

(b) From time to time, at the request of any party, each Trade and Development Bank and Zoos Bank shall exchange views with the Borrower and the Association on the interest rates to be charged by each the Trade and Development Bank and the Zoos Bank in its lending operations in light of its cost of funds and profitability and of movements in interest and inflation rates in Mongolia and internationally.

Section 2.07. If either Trade and Development Bank or Zoos Bank establishes or acquires any Subsidiary, the Trade and Development Bank or the Zoos Bank, as the case may be, shall cause any such Subsidiary, to which the Trade and Development Bank, or the Zoos Bank under this Agreement relate, to observe and perform such obligations as though such obligations were binding upon such Subsidiary.

Section 2.08. (a) Each Trade and Development Bank and Zoos Bank shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules,
records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and its respective activities under Parts A, B.1 and B.2 of the Project.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, each Trade and Development Bank and Zoos Bank shall:

(i) prepare, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Association and each of said Trade and Development Bank and Zoos Bank, a plan for the future operation of its activities under Parts A, B.1 and B.2 of the Project; and

(ii) afford the Association a reasonable opportunity to exchange views with each of said Trade and Development Bank and Zoos Bank on each said plan.

ARTICLE III

Financial Covenants

Section 3.01. (a) Each Trade and Development Bank and Zoos Bank shall maintain a financial management system, including records and accounts, and prepare financial statements, in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect: (i) its operations; (ii) the progress of its respective activities under Parts A and B.1, and Parts A and B.2 of the Project, respectively, and of each Sub-project (including the costs and benefits to be derived from it); and (iii) its financial condition, and to register separately the operations, resources and expenditures related to its respective activities under the Project and, each Sub-project.

(b) Each Trade and Development Bank and Zoos Bank shall:

(i) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year (or such other period agreed to by the Association): (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year (or such other period agreed to by the
Association), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and

(iii) furnish to the Association such other information concerning such records and accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

Section 3.02. Each Trade and Development Bank and Zoos Bank shall take such steps, satisfactory to the Association, as shall be necessary to protect itself against risk of loss resulting from changes in the rates of exchange between the various currencies (including the Togrog) used in its operations.

Section 3.03. Each Trade and Development Bank and Zoos Bank shall throughout the implementation of the Project, comply with the BOM prudential regulations and, if applicable, implement its respective Plan of Actions in a manner and substance satisfactory to the Association.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Association and of Trade and Development Bank and Zoos Bank thereunder shall terminate on the earlier of the following two dates:

(i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or

(ii) the date twenty (20) years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a)(ii) of this Section, the Association shall promptly notify the Trade and Development Bank and the Zoos Bank of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions or any suspension of either Trade and Development Bank and Zoos Bank to participate in carrying out its respective Parts A, B.1 and B.2 of the Project, pursuant to Section III, paragraph 2 of Schedule 5 to the Development Credit Agreement.
ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telex or facsimile to the party to which it is required or permitted to be given or made at such party’s address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address: INDEVAS
Telex: 248423 (MCI) or (202) 477-6391
Facsimile: 64145 (MCI)

For Trade and Development Bank:

Khudaldanya-7
Ulaanbaatar-11
Mongolia

Facsimile: 976-11-325449

For Zoos Bank:

Baga Toiruu
Chingeltei District
Ulaanbaatar – 44, P.O. Box 314
Mongolia

Facsimile: (976-11) 329537
Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement: (i) on behalf of the Trade and Development Bank, by its Chief Executive Officer or such other person or persons as the Chief Executive Officer shall designate in writing; and (ii) on behalf of the Zoos Bank, by its Chief Executive Officer, or such other person or persons that the Chief Executive Officer shall designate in writing, and each of the Trade Development Bank and the Zoos Bank shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the city of Ulaanbaatar, Mongolia, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Saha Dhevan Meyanathan
Authorized Representative

TRADE AND DEVELOPMENT BANK

By /s/ D. Openshaw
Authorized Representative

ZOOS BANK

By /s/ Sh. Chudanjii
Authorized Representative
SCHEDULE 1

Procurement

Section I. General

A. All goods and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the “Guidelines: Procurement under IBRD Loans and IDA Credits” dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants’ services shall be procured in accordance with Sections I and IV of the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods and Services (other than Consultants’ Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower.

B. Other Procurement Procedures

1. Shopping. Goods estimated to cost less than US$50,000 equivalent per contract may be procured under contracts awarded on the basis of Shopping.

2. Direct Contracting. Goods which the Association agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.
Section III. Particular Methods of Procurement of Consultants’ Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than US$100,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Selection Based on Consultants’ Qualifications. Services estimated to cost less than US$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

2. Single Source Selection. Services for tasks in circumstances which meet the requirement of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Association’s prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

3. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis, subject to prior approval of the Association.

Section IV. Review by the Association of Procurement Decisions

Except as the Association shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Association: (a) all contracts for goods and services (other than consultants’ services) procured on the basis of International Competitive Bidding, the first contract for goods procured under shopping procedures regardless of the its amount and all contracts for good procured under Direct Contracting; and (b) each contract for consultants’ services procured under Quality and Cost-based selection, Selection Based on Consultants’ Qualifications, Single Source Selection, and contracts for Consultants estimated to cost the equivalent of $20,000 or more. All other contracts shall be subject to Post Review by the Association.
SCHEDULE 2

Implementation Program

1. Until the completion of the Project, each of the Trade and Development Bank and the Zoos Bank shall maintain staff and other requisite resources for carrying out its respective activities under Parts A, B.1 and B.2 of the Project, as shall be satisfactory to the Association, and each shall take all measures necessary to enable said staff to undertake the overall day-to-day supervision and coordination of its respective activities under Parts A, B.1 and B.2 of the Project.

2. Each of the Trade and Development Bank and the Zoos Bank shall at all times carry out the training activities under Parts B.1 and B.2 of the Project, respectively, in accordance with semi-annual training programs to be furnished to the Association for prior approval through CWG.

3. Without limitation upon the provisions of Section 9.06 of the General Conditions, each of the Trade and Development Bank and the Zoos Bank shall:

   (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

   (b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about March 31 and September 30 of each year, commencing on March 31, 2006, a semi-annual reports integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

   (c) review with the Association, by April 30 and October 31 of each year, commencing on April 30, 2006, or such later date as the Association shall request, the report referred to in sub-paragraph (b) of this paragraph, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association views on the matter.
SCHEDULE 3

Procedures for and Terms and Conditions of Sub-loans

1. Sub-loans shall be made to an Investment Enterprise by a PFI on the following terms and conditions:

   (a) the principal amount of a Sub-loan shall be lent in Togrog or in Foreign Currency, shall be payable in the same currency as the principal was lent, and shall not exceed 80% of the total estimated cost of the Sub-Project for which said Sub-loan is made or US$600,000 equivalent, whichever is lower; provided, however, that the principal amount of a Sub-loan to a single Investment Enterprise when added to other Sub-loans made by all PFIs to such Investment Enterprise shall not exceed, in the aggregate, US$600,000 equivalent;

   (b) the principal amount of a Sub-Loan made in Togrog shall be repaid by the Investment Enterprise in Togrog. The principal amount of a Sub-loan made in Foreign Currency shall be repaid by the Investment Enterprise in the same Foreign Currency;

   (c) repayment of the principal amount of the Sub-loan, shall not be for less than twenty four (24) months nor exceed eighty four (84) months, including a grace period not to exceed: (i) one (1) year for loans with a maturity period of two (2) to three (3) years; and (ii) two (2) years for loans with a maturity period of four (4) to seven (7) years; provided, however, that no penalty for prepayment would be charged; and

   (d) interest on the principal amount withdrawn and outstanding of a Sub-loan shall be at a rate per annum to be determined by agreement between the PFI and the Investment Enterprise, taking into account, inter alia, prevailing market conditions.

2. Except as the Association shall otherwise agree, to qualify for a Sub-loan, an Investment Enterprise shall demonstrate:

   (a) that the Investment Enterprise meets the following eligibility criteria: (i) has been established and operating in Mongolia; (ii) is majority privately owned; (iii) has a debt service coverage ratio of 1.3:1 for the life of the Sub-loan; and (iv) is creditworthy as demonstrated by no previous loan or commercial defaults. For the purpose of this paragraph the term "debt" means any indebtedness of the Investment Enterprise maturing by its terms more than one (1) year after the date on which it is originally incurred;
(b) that the total estimated Sub-Project costs shall be covered by a minimum of twenty percent (20%) from the Investment Enterprises’ own resources, in cash or in kind;

(c) that the Sub-project is technically, commercially, financially viable; has been designed with due regard to health, safety, social and environmental standards acceptable to the Association, and has a financial rate of return of not less than thirteen percent (13%).

(d) for Sub-projects giving rise to the displacement of persons (whether physical or economical), that the Investment Enterprise has prepared, and agreed to implement, a resettlement action plan, satisfactory to the Association, to improve or at least restore the livelihood and standards of living of the displaced persons. For purposes of this sub-paragraph, the term "displaced persons" means persons who are affected by the taking of land and other assets as part of the implementation of a Sub-Project which directly results in the: (a) involuntary relocation or loss of shelter; (b) loss of productive assets or access to productive assets; and (c) loss of income sources or means of livelihood, whether or not the displaced persons must move to another location.

3. Sub-loans may finance the cost of equipment, incremental permanent working capital, civil works (except housing), technical assistance, services and leasing arrangements. Sub-loans shall not finance the acquisition of, or rights to use land, military equipment or activities, consumer loans, and refinancing of existing loans or takeover loans.

4. No expenditures for goods, civil works or services required for a Sub-Project shall be eligible for financing out of the proceeds of the Credit:

   (a) unless the Sub-loan shall have been approved by the Association and such expenditures shall have been made not earlier than ninety (90) days prior to the date on which the Association shall have received the application and information required under paragraph 5(a) of this Schedule in respect of such Sub-loan; or

   (b) unless the Sub-loan shall have been a Free-limit Sub-loan for which the Association has authorized withdrawals from the Credit Account and such expenditures shall have been made not earlier than ninety (90) days prior to the date on which the Association shall have received the request and information required under paragraph 5(b) below in respect of such Free-limit Sub-loan. For the purposes of this Agreement, a Free-limit Sub-loan shall be a Sub-loan which shall not exceed the sum of US$300,000 equivalent when added to any other outstanding amounts financed or proposed to be financed out of the proceeds of the Credit for such Sub-Project, or such other sum as shall be established by the Association, from time to time, by notice to the Borrower; provided,
however, that Sub-loans financing Sub-projects that will give rise to the displacement of persons (as the term is defined in paragraph 2(d) of this Schedule) and the first two (2) Sub-loans to be made by each PFI in each year, regardless of their individual or aggregated amounts, shall not be deemed to be a Free-limit Sub-loan and shall be subject to the provisions set forth in sub-paragraph (a) of this Section.

5. (a) When presenting a Sub-loan (other than a Free-limit Sub-loan) to the Association for approval, the Borrower shall furnish to the Association an application, in a form satisfactory to the Association, together with: (i) a description of the Sub-borrower and an appraisal of the Sub-project, including a description of the expenditures proposed to be financed out of the proceeds of the Credit; (ii) the proposed terms and conditions of the Sub-loan, including the schedule of amortization of the Sub-loan; and (iii) such other information as the Association shall reasonably request, including a copy of the relevant environmental impact assessment and action plan for displaced persons, when appropriate; provided, however, that the first five (5) Sub-loans proposed to be made by each of Trade and Development Bank and Zoos Bank, regardless of the amount thereof, shall not be eligible to be treated as free-limit Sub-loans and full documentation shall be furnished to the Association pursuant to this sub-paragraph for approval of such Sub-loans.

(b) Each request by the Borrower for authorization to make withdrawals from the Credit Account in respect of a Free-limit Sub-loan shall contain: (i) a summary description of the Sub-borrower and Sub-Project, including a description of the expenditures proposed to be financed out of the proceeds of the Credit; and (ii) the terms and conditions of the Sub-loan.

(c) Applications and requests made pursuant to the provisions of sub-paragraphs (a) and (b) of this paragraph shall be presented to the Association on or before October 1, 2009.

6. Sub-loans shall be made on terms whereby the PFI shall obtain, by written contract with the Investment Enterprise, or by other appropriate legal means, rights adequate to protect the interests of the Association, the Borrower and the PFI, including the right to:

(a) require the Investment Enterprise to carry out and operate the Sub-Project with due diligence and efficiency and in accordance with sound technical, financial, resettlement, environmental and managerial standards, including the implementation of the action plan for displaced persons (as the term is defined in paragraph 2(d) of this Schedule) and to maintain adequate records;
(b) goods, services and works shall be purchased at a reasonable price following the established commercial procedures, account being taken also of other relevant factors such as: (i) in the case of goods, timely delivery and efficiency and reliability of the goods and availability of maintenance facilities and spare parts therefor; (ii) in the case of services, of their quality and the competence of the parties rendering them; and (iii) in the case of works, the technical quality and the competitive cost therefor, and with respect to all such contracts the procedures set forth in paragraph 5 of Appendix 1 to the Guidelines shall apply;

(c) inspect, by itself or jointly with representatives of the Association, if the Association shall so request, such goods, works, plants and constructions and installations, as the case may be, included in the Sub-Project, the operation thereof, and any relevant records and documents;

(d) obtain all such information as the Association, the Borrower or the PFI shall reasonably request relating to the foregoing and to the administration, operations and financial conditions of the Investment Enterprise, and to the benefits to be derived from the Sub-Project; and

(e) suspend or terminate the right of the Investment Enterprise to the use of the proceeds of the Credit upon failure by such Investment Enterprise to perform its obligations under its contract with the PFI.