AGREEMENT between the Government of the Republic of Croatia and the Government of the Republic of Azerbaijan on the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Croatia and the Government of the Republic of Azerbaijan, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the State territory of the other Contracting Party,

Recognising that the promotion of international investment flows and the protection of investments of one Contracting Party in the State territory of the other Contracting Party on the basis of this Agreement shall be conducive to stimulation of business initiatives,

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment and the promotion of sustainable development,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "Investment" means every kind of asset established or acquired directly by an investor of one Contracting Party wholly or exclusively in the State territory of the other Contracting Party in accordance with the national legislation of the latter Contracting Party including, in particular, though not exclusively: a) Movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;

b) A company, or shares, stocks, or other form of participation in a company and bonds, debentures and other form of debt instruments in a company;

c) Money, claims to money or claims to performance under contract having a financial value;

d) Intellectual property rights, such as patents, copyrights, technical processes, trade marks, industrial designs, business names, know-how;

e) Goodwill; and

f) Concessions conferred by law, by administrative act or under a contract by competent authority, including concessions to search for, develop, extract or exploit natural resources.

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

For the avoidance of doubt, investment does not mean:

a) Bonds, debentures or other debt instruments to, or a debt security issued by, a Contracting Party or a state enterprise of a Contracting Party;

b) Bonds, debentures or other debt instruments where the original maturity is less than three (3) years;

c) Claims to money or claims to performance arising solely from a commercial contract for the sale or purchase of goods or services;

d) Any other claims to money that do not involve the kinds of interests defined in subparagraphs (a to f) above.

2. The term "Investor" means: a) Any natural person having the nationality of a Contracting Party in accordance with its national legislation. Subject to applicable provisions of international law, an investor does not mean a natural person having the nationality of the host Contracting Party; or

b) A company or other entity incorporated or duly constituted in accordance with applicable national legislation of one Contracting Party and having its seat and conducting substantial business activities within the State territory of that Contracting Party

Who makes an investment in the State territory of the other Contracting Party.

3. The term "Returns" means the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interest, royalties, capital gains, patents license fees and other fees or any payments in kind related to an investment.

Returns shall enjoy the same treatment as the original investment.

4. The term "without delay" means such period as is normally required for the completion of necessary formalities for the transfer of payments.

5. The term "freely convertible currency" means any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

6. The term "State territory" means in respect to: a) The Republic of Croatia: the territory of the Republic of Croatia as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the Republic of Croatia exercises, in accordance with international law, its sovereign rights and jurisdiction.

b) The Republic of Azerbaijan: means the territory of the Republic of Azerbaijan, including the Caspian Sea (Lake) Sector belonging to the Republic of Azerbaijan, the air space above the Republic of Azerbaijan within which the sovereign rights and jurisdiction of the Republic of Azerbaijan is implemented in respect to subsoil, sea bed and natural resources and any other area which has been or may hereinafter be determined, in accordance with international law and legislation of the Republic of Azerbaijan.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favorable conditions in its State territory for investments by investors of the other Contracting Party and in exercise of powers conferred by its national legislation shall admit such investments.

2. Each Contracting Party shall at all time accord in its State territory to investments and returns of investors of the other Contracting Party treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full and constant protection and security.

3. Each Contracting Party shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, acquisition or disposal of investments in its State territory of investors of the other Contracting Party.

4. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

5. Each Contracting Party shall, within the framework of its national legislation, consider in good faith all applications for necessary permits in connection with investments in its State territory, including authorizations for engaging executives, managers, specialists and technical personnel of the investor's choice.

Article 3. Access to Investor Information and Transparency

1. Host Contracting Party has the right to seek information from a potential investor or its home state about its corporate governance history and its practices as an investor, including in its home state. Host Contracting Party shall protect confidential business information they receive in this regard. Host Contracting Party may make the information provided available to the public in the community where the investment may be located, subject to the protection of confidential business information and to other applicable national legislation.

2. Each Contracting Party shall ensure that, to the extent possible, its laws, regulations, procedures, administrative rulings

and judicial decisions of general application, as well as international agreements after their entry into force, which may affect the investments of investors of the other Contracting Party in its State territory, are promptly published, or otherwise made publicly available.

Article 4. Treatment of Investments

1. Investments made by investors of one Contracting Party in the State territory of the other Contracting Party, or returns related thereto, shall be accorded treatment no less favorable than the host Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, in like circumstances, whichever is the most favorable to the investor.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favorable than the latter Contracting Party accords to its own investors or to investors of any third state, in like circumstances, whichever is the most favorable to the investor.

For greater certainty, the concept of "in like circumstances" requires an overall examination, on a case-by-case basis, of all the circumstances of an investment, including, inter alia: i. Its effects on third persons and the local community;

ii. Its effects upon the local, regional or national environment;

iii. The sector the investor is in;

iv. The aim of the measure of concern;

v He regulatory process generally applied in relation to a measure of concern; and

vi. Other factors directly relating to the investment or investor in relation to the measure of concern. The examination shall not be limited or biased towards any one factor.

3. For the avoidance of doubt, the present Article shall apply only in respect of the kinds of treatment offered in Articles 2 to 8 and Article 10 of this Agreement, and shall not apply in respect of an investor's rights to submit disputes arising under this Agreement to any dispute settlement procedure.

Article 5. Exceptions

1. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

a) Membership or association with any existing or future customs, economic or monetary union, common market or free trade area to which one of the Contracting Parties is or may become a party;

b) One Contracting Party's obligations as a member of customs, economic or monetary union, common market or free trade area, arising out of an international agreement or reciprocity arrangement entered into between such union common market or free trade area and any third state;

c) Any international agreement or arrangement relating wholly or mainly to taxation, or any national legislation relating to taxation;

d) Any multilateral convention or treaty relating to investments, of which one of the Contracting Parties is or may become a party.

2. The provisions of this Agreement, except Articles 6, and 9 to 17 inclusive, shall not apply to taxation measures. Nothing in this Agreement affects the rights and obligations of either Contracting Party under any applicable bilateral or multilateral tax treaty.

Article 6. Expropriation

1. Investments by investors of a Contracting Party in the State territory of the other Contracting Party shall not be expropriated, nationalized or subjected to any other measures having the effect, either directly or indirectly, equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under due process of law and against the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became public knowledge, whichever is earlier and shall be paid without undue delay.

3. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange applicable for that currency on the day of transfer. Compensation shall also include interest calculated on a LIBOR basis for the currency in question from the date of expropriation until the date of actual payment.

4. The investor, whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of the host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 7. Compensation for Losses

1. Investors of one Contracting Party who suffer losses relating to their investments in the State territory of the other Contracting Party due to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, treatment no less favourable than that which it accords to its own investors or to investors of any third state, whichever is more favourable.

2. Notwithstanding paragraph 1 of this Article, investors of one Contracting Party who suffer losses in the State territory of the other Contracting Party resulting from:

a) Requisitioning of their investments or part thereof by the latter's forces or authorities,

Or

b) Destruction of their investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 8. Free Transfer

1. In accordance with its national legislation, each Contracting Party shall in good faith ensure to investors of the other Contracting Party the free transfer, into and out of its State territory, of payments in connection with an investment. Such payments shall include in particular, though not exclusively:

a) The principal and additional amounts to maintain, develop or increase the investment;

b) Returns;

c) Proceeds obtained from the total or partial sale or disposal of an investment;

d) The amounts required for payment of expenses which arise from the operation of the investment, such as payment of royalties and license fees or other similar expenses;

e) Compensation payable pursuant to Article 6 and 7;

f) Payments in respect of management fees;

g) Payments arising out of the settlement of a dispute pursuant to Article 13;

h) Funds in repayment of loans directly related to the investment;

i) Net earnings and other remuneration of personnel engaged from abroad working in connection with an investment.

2. Transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay, in a freely convertible currency and at the applicable market rate of exchange with respect to spot transactions on the date of transfer in the currency to be transferred. If a market rate is unavailable the applicable rate of exchange shall 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 more favorable to the investor.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures ensuring investors' compliance with the host Contracting Party's national legislation relating to:

a) The payment of taxes and dues;

b) Bankruptcy or insolvency proceedings, or the protection of the rights of creditors;

c) Criminal or penal offences; and

d) Ensuring compliance with orders or judgments of the courts or tribunals of the host Contracting Party.

4. The provisions of paragraphs 1, 2 and 3 of this Article shall apply without prejudice to the measures adopted by the customs, economic or monetary union, a common market or a free trade area to which any Contracting Party is a member.

Article 9. Subrogation

Where a Contracting Party or its designated agency (guarantor) makes a payment under a guarantee it has accorded in respect of non-commercial risks of an investment in the State territory if the other Contracting Party, the host Contracting Party shall recognize the assignment to the guarantor of all the rights and claims resulting from such an investment, and shall recognize that the guarantor is entitled to exercise such rights and enforce such claims to the same extent as the original investor.

Article 10. Essential Security Interests

Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any action that it considers necessary for the protection of its essential security interests deriving from its membership in a customs, economic or monetary union, a common market or a free trade area.

Article 11. Consultations

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute arising between them in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement. Such consultation shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

Article 12. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement, including the right to commence or to continue dispute settlement proceedings, to an investor of the other Contracting Party and to the investments of that investor, if:

The investor is owned or controlled by persons having the nationality of a State that is not a Contracting Party or of the denying Party; or the investor conducts no substantial business activities in the State territory of the other Contracting Party.
2. For the avoidance of doubt, once exercised, such denial may apply to all or only specified investors or investments of investors, and whether existing or future investors or investments.

Article 13. Disputes between an Investor and the Host Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an alleged violation of one or more of the provisions of this Agreement in respect of an investment in the State territory of the latter Contracting Party shall, if possible, be settled amicably. Before an investor may submit a dispute to arbitration under this Article, the disputing parties shall, in good faith, hold negotiations. The place of the negotiations shall be the capital city of the Contracting Party to the dispute unless the disputing parties otherwise agree. An investor's right to submit a dispute to dispute settlement procedures set out in paragraph 2, below, shall not be frustrated or denied merely by the refusal of the Contracting Party to the dispute to participate in negotiations.

2. If a dispute referred to in paragraph 1, above, cannot be settled amicably within six (6) months from the date of request for amicable settlement, the investor concerned may submit the dispute to international arbitration. Unless any other mechanism is agreed for the resolution of the dispute, which shall prevail, the investor has the choice of submitting the case either to:

a) The competent courts of the Contracting Party in whose State territory the investment is made;

b) The International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre");

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

3. An investor who has already submitted a claim concerning the conduct or measure of the Contracting Party that is alleged to give rise to the dispute to the competent courts of the Contracting Party or to any other previously agreed dispute settlement procedures, shall not be entitled to submit the dispute to international arbitration as offered in paragraph 2 of this Article.

4. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

5. Dispute shall be resolved in accordance with law, applying the terms of this Agreement, the national legislation of the Contracting Party to the dispute, and principles of public international law.

6. Such award shall be final and binding for the parties to the dispute and shall be executed according to national legislation.

Article 14. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through negotiations.

2. If the dispute cannot thus be settled within six (6) 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 Arbitral Tribunal constituted in accordance with this Article.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months from the date of the receipt of the request for arbitration, 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 four (4) months from the date of appointment of the other two 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 is otherwise 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 or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall determine its own rules of procedure.

6. The Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with international law applicable between the Contracting Parties.

7. The Arbitral Tribunal shall rich its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as other common costs.

Article 15. Application of other Rules

If the provisions of national legislation of either Contracting Party or obligations between the Contracting Parties under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such provisions shall, to the extent that they are more favorable to the investor, prevail over this Agreement.

Article 16. Application of the Agreement

This Agreement shall apply to any investment made by an investor of one Contracting Party in the State territory of the other Contracting Party after the entry into force of this Agreement.

Article 17. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such a manner as may be agreed in writing between the Contracting Parties. Such amendments shall be made in a form of separate protocols and shall enter into force in accordance with the paragraph 1 of Article 18.

Article 18. Entry Into Force, Duration and Denunciation

1. This Agreement shall enter into force on the thirtieth day following the date of receipt of the last written notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force unless one Contracting Party notifies the other Contracting Party in writing of its intention to denounce it. The denunciation of this Agreement shall become effective one year after notice of denunciation has been received by the other Contracting Party.

3. In respect of investment made prior to the date of denunciation of this Agreement the provisions of Article 1 to 17 shall remain in force for a further period of eight (8) years from the date of denunciation of this Agreement.

Done at .... on .... in two originals in the Croatian, Azerbaijani and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Croatia

For the Government of the Republic of Azerbaijan