Agreement between the Government of the Republic of San Marino and the Government of the Republic of Azerbaijan on the Promotion and Reciprocal Protection of Investments

The Government of the Republic of San Marino 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 will 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 debentures;

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

d. intellectual property rights, (copyrights, related rights, rights to integrated topographies of integrated circuits and databases, rights to inventions, utility models, industrial designs, trademarks and geographical indications, business names), technical processes, know-how (commercial secrets) and rights to selection inventions (plant varieties);

e. concessions conferred by law, by administrative act or under a contract by a 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.

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

Returns shall enj oy the same treatment as the original investment.

3. The term "Investor" means:

a. any natural person having the nationality of a Contracting Party in accordance with its national legislation; or

b. a company or other legal 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.

4. The term "Territory" means in respect to:

a. the Republic of San Marino: the territory of the Republic of San Marino;

b. the Republic of Azerbaijan, the territory of the Republic of Azerbaijan, including the respective Caspian Sea sector, over which the Republic of Azerbaijan exercises, in accordance with its national legislation and international law, sovereign rights and jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable 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 treatment to investments of investors of the other Contracting Party in accordance with its national legislation, 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, 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 investors' 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 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 favourable than the Host Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the most favourable 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 favourable than the latter Contracting Party accords its own investors or to investors of any third State, whichever is the most favourable to the investor.

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 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. any existing or future free trade area, customs union, common market or regional labour market agreement to which one of the Contracting Parties is or may become a party;

b. any international agreement or arrangement relating wholly or partly to taxation; or

c. 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 16 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, Compensation

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 and state 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.

3. Taking into account paragraph 2 of this Article 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 at a commercial rate established on a market 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 State 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 whose investments in the state territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of emergency, revolt, insurrection in the state territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution,

Indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favourable to the investor. These payments shall be effectively realizable, freely convertible and immediately transferable.

2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the state territory of the other Contracting Party resulting from:

a. requisitioning of its investment or a part thereof by the latter's armed forces or authorities; or

b. destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of situation

Shall be accorded a prompt restitution, adequate and effective compensation for the loss sustained during the period of requisitioning as a result of destruction their property.

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 initial capital 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 Articles 6 and 7;

f. payments in respect of management fees;

g. payments arising out of the settlement of a dispute;

h. payments in connection with contracts, including loan agreements;

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 applicable 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 of exchange for conversion of currencies into Special Drawing Rights.

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.

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 of 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. 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 consultations 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 11. 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:

a. 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

b. 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 12. Settlement of 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 of this Article, 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 of this Article, cannot be settled amicably within six 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 State courts of the Contracting Party in whose state territory the investment is made; or

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"), in the event that both Parties have become a party to the Convention; or

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 State 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 13. Settlement of 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 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.

The Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with international law

applicable between the Contracting Parties.

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

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 14. 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 favourable than is provided for by this Agreement,

Such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

Article 15. Application of the Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party prior to as well as after the date of entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim, which was settled before entry into force of this Agreement.

Article 16. Additions and Amendments

Any additions and amendments may be made to this Agreement by mutual consent of the Contracting Parties. Such additions and amendments shall be made in a form of separate protocols being an integral part of this Agreement and shall enter into force in accordance with the procedure set forth in Article 17 of this Agreement.

Article 17. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the thirtieth (30 th) day following the date of receiving through diplomatic channels of the last written notifications on fulfillment by the Contracting Parties of the internal procedures necessary to this end.

2. This Agreement shall remain in force an initial period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve months from any date on which either Contracting Party shall have given written notice of termination, through diplomatic channels, the other Contracting Party.

3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 16 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done at New York on the 25 September 2015 in two originals in the Italian, Azerbaijani, and English languages, all texts being equally authentic. In case of any divergence of interpretation and application, the English text shall prevail.

For the Government of The Republic of San Marino

Pasquale Valentini

Minister of Foreign Affairs

For the Government of The Republic of Azerbaijan

Elmar Maharram Oglu Mammadyarov

Minister of Foreign Affairs