AGREEMENT

between the Government of the Islamic Republic of Afghanistan and the Government of the Republic of Azerbaijan on the Promotion and Reciprocal Protection of Investments

The Government of the Islamic Republic of Afghanistan 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 countries,

RECOGNISING that the promotion of international investment flows and the protection of investments of one Contracting Party in the territory of the State of the other Contracting Party on the basis of this Agreement will be conducive to stimulation of business initiatives, transfer of technology, job creation and human resources development arising from such investments,

ACKNOWLEDGING that each Contracting Party maintains the right to regulate foreign investment established in the territory of its State, and to take the necessary measures to ensure that investment activities are consistent with its national laws, policies and development strategies,

DESIRING to reciprocally promote and protect foreign investments consistently with the pursuance of the sustainable development goals, and the combating of climate change,

SECURING an overall balance of rights and obligations between host (accepting investments) and home (originating investments) countries as well as between investors and host countries,

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 territory of the State of the other Contracting Party in accordance with the national legislation of the latter Contracting Party, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, an expectation of gain or profit, or an assumption of risk and includes, in particular, though not exclusively:

a. movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar substantial laws;

b. a company, or shares, stocks or other form of participation in a company;

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

d. intellectual property rights - copyright, related rights, rights to topologies of integrated circuits and databases and industrial property rights to inventions, utility models, industrial designs, trademarks, geographical indications, technical processes, trade names, "know-how" and "business reputation", as well as other relevant rights recognized by the national legislations of both Contracting Parties,

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.

Investment does not include:

a. Claims to payment that are immediately due and result from the sale of goods or services;

b. Public debt operations.

A change in the form in which assets are invested does not affect their character as investments as long as they are covered by the definition of investment in this Article.

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

3. The term "Investor" means:

a. Any natural person having the nationality of a Contracting Party in accordance with its national legislation; in cases of double nationality, a person shall be considered to be a national exclusively of the State in which it has a dominant and effective nationality; dominant and effective nationality refers to the place in which the physical person pays its taxes, receives its social security, exercises its voting rights and/or can hold public office,

b. A legal entity incorporated or duly constituted for profit in accordance with applicable national legislation of one Contracting Party and having its seat and conducting substantial business activities within the territory of the State of that Contracting Party,

who makes an investment in the territory of the State of the other Contracting Party according to national legislation of that Contracting Party.

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

a. The Islamic Republic of Afghanistan: all land territory, internal waters and the airspace over them in which the Islamic Republic of Afghanistan has sovereignty in conformity with international law;

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 law and international law, sovereign rights and jurisdiction.

Article 2. Promotion and Protection of Investments

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

2. Each Contracting Party shall accord to investments of investors of the other Contracting Party in the territory of its State fair and equitable treatment and full physical protection and security in accordance with international law minimum standard of treatment of aliens. The concepts of "fair and equitable treatment" and "full physical protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.

3. Each Contracting Party shall abstain from treating investors and their investment in a manner that is manifestly arbitrary, discriminatory or abusive. Neither Contracting Party shall deny justice in any legal or administrative proceedings or otherwise flagrantly violate due process.

4. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of fair and equitable treatment.

5. The investor's conduct and accepted business risk in the territory of the host State shall be taken into account when determining a breach of the fair and equitable treatment standard.

6. Neither Contracting Party shall impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, disposal of investments in the territory of its State of investors of the other Contracting Party.

7. Neither Contracting Party shall 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 unless it is provided

for by the applicable national legislation of the Contracting Party.

8. 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 the territory of its State, 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 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 laws.

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 the territory of its State, are promptly published, or otherwise made publicly available.

Article 4. Treatment of Investments

1. Investments made by an investor of one Contracting Party in the territory of the State 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 investor or by investors of any third State, 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, whichever is the most favorable to the investor.

3. 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 right to submit a dispute arising under this Agreement to any dispute settlement procedure.

4. The obligation referred to in paragraph 1 of this Article above shall not apply to treatment accorded under all treaties, whether bilateral or multilateral, in force or signed prior to the date of entry into force of this Agreement.

5. Notwithstanding paragraphs 1 and 2 of this Article, the Contracting Parties reserve the right to adopt or maintain any measure that accords differential treatment to socially or economically disadvantaged rural populations and marginalized communities.

Article 5. General Exceptions

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

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

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

2. Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any action that is considered as necessary for the protection of national security, public order or public health, morality, or protection of environment, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustified discrimination.

Article 6. Expropriation

1. Investments by investors of a Contracting Party in the territory of the State 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.

5. The non-discriminatory regulatory actions or measures taken by a Contracting Party that are designed and applied to protect legitimate public welfare objectives, such as environment, public health, safety and labor rights, do not constitute an âindirect expropriationâ within the meaning of this Article.

Article 7. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the State of the other Contracting Party suffer losses owing to war or other armed conflict, a state of emergency, revolt, insurrection or a natural disaster in the territory of the State of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favorable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favorable to the investor.

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 territory of the State 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 adequate compensation in the light of the particular circumstances

Article 8. Free Transfer

1. In accordance with its national legislation, each Contracting Party shall in good faith ensure to investor of the other Contracting Party the free transfer, into and out of the territory of its State, of payments in connection with an investment after all taxes are paid and obligations are fulfilled according to the legislation of the Contracting Party in the territory of the State of which an investment is made. Such payments shall include in particular, though not exclusively:

a. the principal and additional amounts to maintain, develop or increase the investments:

b. returns;

c. proceeds obtained from the total or partial sale or disposal of an investment;

d. 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 of this Agreement;

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 investor's compliance with the Host Contracting Party's national legislation including 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 the recovery of the proceeds of crime;

d. ensuring compliance with an order or judgment of the court or tribunal of the Host Contracting Party;

e. issuing, trading, or dealing in securities, futures, options or derivatives;

f. financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

g. social security, public retirement, or compulsory saving schemes,

h. severance entitlements of employees, and

i. requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Contracting Party.

4. In case of a serious balance of payments difficulty or of a threat thereof, a Contracting Party may temporarily restrict transfers provided that such a Contracting Party implements measures or a program in accordance with international standards. These restrictions should be imposed on an equitable, non-discriminatory and in good faith basis.

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 territory of the State 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 State of a Contracting Party or of the denying Contracting Party or that has no diplomatic relations with the Contracting Party in the territory of the State of which the investment is made;

b. the investor is a physical person having the dominant and effective nationality of a State that is not a State of a Contracting Party or of the denying Contracting Party;

c. the investor conducts no substantial business activities in the territory of the State 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 Investorand the Host Contracting Party

1. Any disputes 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 territory of the State of the latter Contracting Party shall, tt 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 State 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 (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 state courts of the Contracting Party in the territory of the State of which 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. The Additional Facility of the Centre, if any one of the Contracting Parties is a signatory to the Convention set out in subparagraph (b) of this Article; or

d. an ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor and, where the claim is for loss or damage to an interest in an enterprise of the other Contracting Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise who have 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 State 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, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party.

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 dispute, and principles of public international law.

6. The arbitration award shall be final and binding for the parties to the dispute. Each Contracting Party shall provide for the enforcement of an award in the territory of its State.

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 the State 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 the State 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

6. 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

lf 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 15. Application of the Agreement

1. This Agreement shall not be interpreted in the sense of obliging a Contracting Party to protect investments made with capitals or assets of illicit origin.

2. 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, and shall be applicable from the date of its entry into force. but it shall not apply to any dispute concerning an investment which arose, or any claim, which was settled before entry into force of this Agreement.

3. The provisions of this Agreement shall not apply to: a. public procurement;

b. matters of taxation, except for Articles 6 (Expropriation) and 8 (Free transfer);

c. measures adopted in the financial sector for prudential reasons; d. subsidies or grants provided by a Contracting Party in the territory of the State of either Contracting Party.

4. This Agreement is without prejudice to any measures that may be adopted by a Contracting Party with respect to the financial sector for prudential reasons, including measures aimed at protecting investors, depositors, insurance takers or trustees, or to safeguard the integrity and stability of the financial system;

5. The competent authorities for the application of this Agreement are:

a. For the Government of the Islamic Republic of Afghanistan - the Ministry of Commerce and Industries.

b. For the Government of the Republic of Azerbaijan - the Ministry of Economy.

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 procedures 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 day following the date of receipt by the Contracting Parties of the last written notification through diplomatic channels confirming the completion of their respective internal procedures

required for the entry into force of this Agreement.

2. This Agreement is concluded for a period of ten (10) years and shall remain in force thereafter for similar periods unless at least one (1) year before the expiry of the initial or any subsequent period, either Contracting Party notifies through diplomatic channels the other Contracting Party in writing of its intention to terminate this Agreement.

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 duly authorized thereto, have signed this Agreement.

Done in Baku on 1st December, 2017, in two originals, each in the Dari/Pashto, Azerbaijani and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Islamic Republic of Afghanistan

Eklil Ahmad Hakimi

Minister of Finance

For the Government of the Republic of Azerbaijan

Shahin Mustafayev

Minister of Economy