# AGREEMENT

# BETWEEN

# BOSNIA AND HERZEGOVINA

# AND

# THE SLOVAK REPUBLIC

# FOR THE PROMOTION AND

# RECIPROCAL PROTECTION OF INVESTMENTS

Bosnia and Herzegovina and the Slovak Republic (hereinafter referred to as the "Contracting Parties"),

Desiring to extend and intensify economic cooperation to the mutual benefit of both countries,

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates business initiatives in this field.

Have agreed as follows:

## ARTICLE 1
## Definitions

For the purposes of this Agreement:

1. The term “investment” means every kind of assets or rights invested for the purpose of acquisition of economic benefit or other business purpose by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party and in particular, though not exclusively, includes:

a) movable and immovable property and any other property rights such as mortgages, liens, leases or pledges;
b) shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived there from;
c) claims to money or to any performance under contract having an economic value;
d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill; and
e) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any subsequent change of the form in which assets or rights are invested or reinvested shall not affect their character as an investment, provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term “return” means the amount yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

3. The term “investor” means for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party and provisions of this Agreement:

   a) In respect of Bosnia and Herzegovina:

      (i) natural persons deriving their status as Bosnia and Herzegovina citizens from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;
      (ii) legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.

   b) In respect of the Slovak Republic:

      (i) natural persons having the nationality of the Slovak Republic in accordance with its laws;
      (ii) legal persons or other entities, which are incorporated or constituted in accordance with the laws and regulations of the Slovak Republic and have their registered office, central administration or principal place of business in the territory of the Slovak Republic. However, should such a legal person have only its registered office in the territory of the Slovak Republic, its operations must possess a real and continuous link with the economy of the Slovak Republic.

4. The term “territory” means:

   a) As regards Bosnia and Herzegovina: all land territory of Bosnia and Herzegovina, its territorial sea, whole bed and subsoil and air space above

including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina, which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources.

b) As regards the Slovak Republic**:** the land territory, internal waters and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

5. "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

6. "Public purpose" means as established under the national legislation of each of the Contracting Parties.

## ARTICLE 2
## Promotion and Protection of the Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investors of the other Contracting Party to make investments in the territory of the State and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the State of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the acquisition, expansion, operation, management, maintenance, use, enjoyment or any other disposal of investments in its territory by investors of the other Contracting Party.

## ARTICLE 3
## National and Most-Favoured-Nation Treatment

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which in any case shall not be less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to the investors concerned.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their expansion, management, maintenance, use, enjoyment or disposal of their investments to treatment less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party or to the investments or returns of such investors, the benefit of any treatment, preference or privilege resulting from:

   a) any existing or future customs, economic or monetary union, or a common market or a free trade area or a regional economic organisation or similar international agreement to which the Contracting Party is or may become a party; or

   b) any obligation which is binding on that Contracting Party by virtue of its membership to the above mentioned customs, economic or monetary union or common market, or

   c) any international agreement on avoidance of double taxation or any other international arrangements on reciprocal basis regarding tax matters.

## ARTICLE 4
## Compensation for Losses or Damages

1. Investors of one Contracting Party whose investments suffer losses**,** including damages, owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses or damages in the territory of the other Contracting Party resulting from:

   – requisitioning of their property by forces or authorities of the other Contracting Party; or
   – destruction of their property by forces or authorities of the other Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

   shall be accorded restitution or adequate compensation in no less favourable than that, which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any other State.

## ARTICLE 5
## Expropriation

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect

equivalent to nationalization or expropriation (hereinafter referred to as „expropriation“) in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures.

Such compensation shall amount to the fair market value of the expropriated investments (determined on the basis of the latest available balance sheets or on the average market value for the same kind of investment) immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be effectively realizable. Compensation shall be made in a freely convertible currency.

2. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

3. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.

4. Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, the provisions of this Article shall be applied.

## ARTICLE 6
## Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after fulfillment of their financial obligations, the free transfer of payments, including principals, and returns related to their investments. Such transfers shall include, in particular, though not exclusively:

   a) initial capital;
   b) net profit, capital gains, dividends, interest, royalties, fees and any other current income accruing from investments;
   c) proceeds accruing from the sale or the total or partial liquidation of investments;
   d) payments arising out of the settlement of a dispute according to this Agreement;
   e) funds in repayment of loans related to investments;
   f) earnings of nationals or residents of the other Contracting Party who are allowed to work in connection with investments in its territory;
   g) additional funds necessary for the maintenance or development of the existing investments; and
   h) compensation pursuant to Articles 4 and 5.

2. All transfers under this Agreement shall be made without undue delay in a freely convertible currency at the prevailing market rate for current transaction applicable on the date of transfer.

3. The Contracting Parties undertake to accord to such transfers a treatment no less favourable than that accorded to transfers originated from investments made by investors of any third State.

4. When, in exceptional circumstances, capital movements from or to third countries cause or threaten to cause a serious disequilibrium to its balance of payments,

each Contracting Party may temporarily apply safeguard measures to the transfers, provided that these measures shall be strictly necessary, would be imposed in an equitable, non discriminatory and in good faith basis and shall not exceed in any case a six months period.

## ARTICLE 7
## Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or contract of insurance against non-commercial risks given in respect of investments in the territory of the other Contracting Party, the latter Contracting Party shall, notwithstanding its rights under the Article 9 of this Agreement**,** recognize:

   a) the assignment, whether under the law or pursuant to a legal transaction in that Contracting Party, of any rights or claims from investors to the former Contracting Party or its designated agency; and
   b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights of and enforce the claims of those investors.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

## ARTICLE 8
## Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. The local remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made shall be available for investors of the other Contracting Party on the MFN basis.

3. If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the investor of the Contracting Party:

   a) to local competent court of the Contracting Party which is a party the dispute, or

   b) to the International Center for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, or

   c) to an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

   Each Contracting Party gives its consent to the submission of disputes to international arbitration set out in subparagraph b) and c).

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

5. The Arbitral Tribunal shall give its ruling on the basis of the national law of the Contracting Party, which is a party to the dispute, in the territory of which the investment is situated, including the rules of conflict of laws, the provisions of the

present Agreement, the terms of particular agreements which may be concluded in respect of investment as well as the principles of international law.

6. The award shall be final and binding to the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

7. During the arbitral or execution proceedings Contracting Party shall not assert as a defence, objection, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received by investor who is contending party, pursuant to an insurance or guarantee contract against political risks.

## ARTICLE 9
## Settlement of Disputes between the Contracting Parties

1. The Contracting Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with this Agreement, or to discuss any matter relating to the interpretation or application of this Agreement. The Contracting Parties also agree to consult promptly whenever a Contracting Party believes that steps are necessary to assure compatibility between this Agreement and the Treaties Establishing the European Communities with a view to assuring compatibility.

2. If the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members

shall then select a national of a third State who, on approval of the two Contracting Parties, shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three 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, a request may be made by either Contracting Party to the President of the International Court of Justice to make the appointments. If the President is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

**ARTICLE 10**

**Application of Other Rules and Special Commitments**

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are signatories, nothing in this Agreement shall prevent either Contracting Party or of any of its investors, who own investments in the territory of the other Contracting Party, from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investments and to investors of the other Contracting Party, in accordance with its laws and

regulations or other specific provisions of contracts, is more favourable than that accorded by this Agreement, the more favourable shall be accorded.

## ARTICLE 11
## Applicability of this Agreement

This Agreement shall apply to investments made prior to its entry into force for the Contracting Parties concerned consistent with the legislation of the Contracting Party in whose territory it was made as well as investments made thereafter. This Agreement shall apply to investments existing at the time of entry into force as well as to those established or acquired thereafter. However, this Agreement shall not apply to the disputes arising before its entry into force.

## ARTICLE 12
## Entry into Force, Duration and Termination

1. This Agreement is subject to an approval in accordance with procedures required by law of both Contracting Parties for bringing this Agreement into force and it shall enter into force on the 90$^{th}$ day after the date of Contracting Parties' notification confirming that all constitutional formalities required by law for bringing this Agreement into force have been fulfilled.

2. This Agreement shall remain in force for an infinite period of time. Each Contracting Party may terminate this Agreement by giving a written notice with a twelve-month period.

3. In respect of investments made prior to the date of the termination of this Agreement the provisions of Articles 1 to 11 shall continue to be effective for a period of ten years from the date of its termination unless the Contracting Parties decide otherwise.

IN WITNESS WHEREOF, the undersigned duly authorised thereto, have signed this Agreement.

DONE in duplicate at _____ on the _____ day of _____ in the Bosnian/Croatian/Serbian, Slovak and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

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|---|---|
| **For**<br>**Bosnia and Herzegovina** | **For**<br>**the Slovak Republic** |
| _____ | _____ |
| **Nikola Špirić, Ph. D**<br>**Chairman of the Council of Ministers of Bosnia and Herzegovina** | **Robert Fico**<br>**Prime Minister of the Slovak Republic** |