A G R E E M E N T BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF MOLDOVA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Bosnia and Herzegovina and the Republic of Moldova, hereinafter referred to as "the Contracting Parties",

Desiring to extend and intensify the economic co-operation between the Contracting Parties on the basis of equality and mutual benefit;

Intending to create and maintain favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the promotion and reciprocal protection of such investments under this Agreement will be conducive to the stimulation of business initiative and will increase economic prosperity of the Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset invested for the purpose of acquisition of economic benefit or other business purpose by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively, shall include: a) Movable and immovable property as well as any other property rights such as mortgages and liens or other securities;

b) Shares in, stocks and any other form of participation in companies;

c) Claims to money or to any performance having an economic value;

d) Intellectual property rights such as copyright and neighbouring rights, patents, industrial designs, trademarks, trade names and know-how;

e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

Any subsequent change in the form in which assets are invested or reinvested shall not affect their character as investments 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 "investor" means: a) In respect of Bosnia and Herzegovina: (i) Physical 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 Republic of Moldova: (i) Physical persons deriving their status as the Republic of Moldova citizens from the law in force in the Republic of Moldova;

(ii) Legal persons incorporated, constituted or otherwise duly organized under the applicable law of the Republic of Moldova, as well as companies with the right of natural persons, having its seat and performing real business activity in the territory of the Republic of Moldova.

3. The term "returns" means an amount yielded by an investment in the certain period of time and in particular, though not exclusively, includes royalties or licence fees, profits, interest, dividends, capital gains, fees and other compensations.

4. The term "territory" means: a) With respect to 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) With respect to the Republic of Moldova: geographical area composed by the soil and subsoil, waters and air space over the soil and territorial waters, under which the Republic of Moldova exercises its sovereign rights and jurisdiction, in accordance with its legislation and international law.

Article 2. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favourable, stable and transparent conditions for investors of the other Contracting Party to invest capital in its territory and, within the framework of its laws and regulations, shall admit such investments.

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

Article 3. National Treatment 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 of the other Contracting Party.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards the 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 of the other Contracting Party.

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 the benefit of any treatment, preference or privilege resulting from:

a) The membership of or association with any existing or future free trade area, customs union, economic union, common market, or similar international agreement to which the Contracting Party is or may become a party;

b) Agreements on avoidance of double taxation or any other arrangements relating wholly or mainly to taxation issues.

Article 4. Nationalisation and Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to requisition or to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs and under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investments affected immediately before the expropriation or before the impending expropriation became public knowledge in such a way as to effect the value of the investment, whichever is the earlier. The compensation shall include interest at a normal commercial rate for current transactions from the date of expropriation until the date of payment. The compensation shall be paid in a freely convertible currency and made transferable without delay, to the country designated by the claimants concerned.

3. The affected investors of either Contracting Party shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, concerning the legality of the expropriation, its process and the valuation of the investment in accordance with the principles set out in paragraph 1 of this Article.

Article 5. Compensation for Losses

Investors of either Contracting Party who suffer losses including damages in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot 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 to investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the fulfilment of its fiscal obligations, the free transfer of payments relating to their investments in and out of its territory. Such transfers shall include in particular, though not exclusively:

a) Initial capital and additional amounts necessary for the maintenance and development of the investment;

b) Returns from the investment;

c) Funds in repayment of loans related to an investment;

d) Proceeds from the total or partial sale or liquidation of an investment;

e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;

f) Payments arising out of the settlement of the disputes;

g) Unspent earnings and other remuneration of nationals engaged from abroad in connection with the investment.

2. Transfers shall be effected without delay in a convertible currency at the rate of exchange applicable on the date of transfer.

3. Transfers shall be done in accordance with the procedures established by the exchange regulations of the Contracting Party in whose territory the investment was made, which shall not imply a rejection, suspension or denaturalisation of such transfer.

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

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a legal payment to any of its investors under a guarantee or a contract of insurance against non-commercial risks given in respect of an investment, the other Contracting Party shall recognise, notwithstanding its rights under the Article 10 of this Agreement, the validity of the subrogation in favour of the former Contracting Party or its agency to any right or title held by the investor.

2. The Contracting Party or its agency that is subrogated in the rights of an investor shall be, in all circumstances, entitled to the same rights and the same treatment as those of the indemnified investor, payments due pursuant to those rights.

3. In the case of subrogation as defined in paragraph 1 of this Article, the investor shall not sue or pursue a claim unless authorised to do so by the Contracting Party or its agency.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be settled amicably through consultations and negotiations.

2. If a dispute can not be settled in accordance with paragraph 1 of this Article within a period of three months from the date on which either party to the dispute requested amicable settlement, the investor concerned may submit the dispute either to:

a) The competent court or administrative tribunal of the Contracting Party in the territory of which the investment has been made; or

b) Ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

c) The International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre") through conciliation or arbitration established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington D.C. on 18 March 1965 (hereinafter referred to as "the Convention"), in the event both Contracting Parties shall have become a party to the Convention.

3. A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such dispute arises the majority of shares are owned by investors of the other Contracting Party, shall in accordance with Article 25 (2) (b) of the Convention be treated for the purpose of this Convention as the company of the other Contracting Party.

4. Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:

a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by the Centre, decides that the dispute is not within the jurisdiction of the Centre; or

b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

5. The arbitration award shall be based on:

- The provisions of this Agreement;

- The laws of the Contracting Party in whose territory the investment has been made including the rules relative to conflict of laws; and

- The rules and universally accepted principles of international law.

6. The arbitration award shall be final and binding on both parties to the dispute and shall be executed according to the law of the Contracting Party concerned.

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. Consultations and Exchange of Information

1. Upon the request by either Contracting Party, the other Contracting Party shall, without undue delay, begin consultations concerning interpretation and application of this Agreement.

2. Upon the request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

Article 10. Settlement of Disputes between Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by consultations and negotiations through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled in accordance with paragraph 1 of this Article within six months from the date of request for settlement, the dispute shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Such arbitral tribunal shall be constituted for each individual case in the following way. Within two months from the date of 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 two 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 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 if he is otherwise prevented from discharging the said function, the

Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too 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 necessary appointments.

5. The tribunal shall determine its own procedure.

6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

7. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article 8 and is still before the court. This will not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

Article 11. Application of other Rules

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

Article 12. Application of the Agreement

This Agreement shall apply to investments made or acquired after the time of its entry into force.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall be subject to ratification and shall enter into force on the date on which the Contracting Parties have exchanged the ratification documents.

2. This Agreement shall remain in force for a period of ten years after the date of its entry into force and shall continue in force unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may, by giving one year in advance written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all other Articles of this Agreement shall continue to be effective for a further period of ten years from such date of termination.

5. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement.

6. This Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

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

DONE at ..... this ..... day of ..... 200... in two originals in the Bosnian/Croatian/Serbian, Moldavian and English languages. Every original text is equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR BOSNIA AND HERZEGOVINA FOR THE REPUBLIC OF MOLDOVA