AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF UKRAINE CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of Ukraine (hereinafter referred to as "Contracting Parties");

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by nationals of one Contracting Party on the basis of sovereign equality and mutual benefit; and

Recognizing that the Agreement on the Promotion and Protection of such Investments will be conducive to the stimulation of investment activities in both countries;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investments" shall mean any kind of asset invested by nationals of one Contracting Party in the territory of the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:

a. Movable and immovable property as well as other rights such as mortgages, privileges, and guarantees and any other similar rights;

b. Rights derived from shares, bonds or any other form of interest in companies or joint venture in the territory of the other Contracting Party;

c. Claims to money or to any performance having a financial value;

d. Intellectual property rights, technical processes, goodwill and know-how;

e. Business concessions conferred by law or under contract related to investment including concessions to search for or exploit natural resources.

2. The term "nationals" shall comprise with regard to either Contracting Party:

(i) Natural persons having the nationality of that Contracting Party;

(ii) Legal persons constituted under the law of that Contracting Party;

3. The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international financial practices.

4. "Territory":

a. In respect of the Republic of Indonesia: The territory of the Republic of Indonesia means the territory as defined in its laws.

b. In respect of Ukraine: The territory of Ukraine means the territory as defined in its laws.

Article II. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favourable conditions for nationals of the other Contracting Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

2. Investments of nationals of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

Article III. Most-favoured-nation Provisions

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investment adequate physical security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded to investments of nationals of any third State.

3. If a Contracting Party has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions of institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

Article IV. Expropriation

Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of a national of the other Contracting Party except under the following conditions:

(a) The measures are taken for a lawful purpose or public purpose and under process of law;

(b) The measures are non discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value without delay before the measure of dispossession became public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in freely usable currencies from the Contracting Party. The compensation shall include interest calculated on the commercially reasonable rate basis from the date of before the moment of expropriation to the date of payment.

Article V. Compensation for Losses

1. Nationals of one Contracting Party, whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitutions, indemnification, compensation or other settlement.

2. The treatment shall not be less favourable than that which the latter Contracting Party accords to its own nationals or nationals of any third State, whichever is more favourable to the nationals concerned.

Article VI. Transfer

1. Either Contracting Party shall guarantee within the scope of its laws and regulations in respect to investments by nationals of the other Contracting Party grant to those nationals without delay, the transfer of:

a. Profits, interests, dividends and other current income;

b. Funds necessary (i) For the acquisition of raw or auxiliary materials, semi fabricated or finished products, or

(ii) To replace capital assets in order to safeguard the continuity of an investment;

c. Additional funds necessary for the development of an investment;

d. Funds in repayment of loans;

e. Royalties or fees;

f. Earnings of natural persons;

g. The proceeds of sale or liquidation of the investment;

h. Compensation for losses;

i. Compensation for expropriation.

2. Such transfer shall be made at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transferred.

Article VII. Subrogation

If the investments of a national of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said national pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided, however, that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the national would have been entitled to exercise.

Article VIII. Settlement of Disputes between Nationals and the Contracting Parties

1. Any dispute between a Contracting Party and a national of the other Contracting Party, concerning an investment of the latter in the territory of the former, be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of six months from the date of a written notification either party requested amicable settlement, the dispute shall, at the request of the national concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.

3. Each Contracting Party hereby consents to submit any dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Center for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C., on 18 March 1965.

Article IX. Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement

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

2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three 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 two moths 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 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 is too is prevented from discharging the from the said function, the members 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 arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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. The tribunal shall determine its own procedure.

Article X. Applicability of this Agreement

This Agreement shall apply to investments by nationals of Ukraine in the territory of the Republic of Indonesia which have been granted admission in accordance with the Law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to investments by nationals of the Republic of Indonesia in the territory of Ukraine which have been previously granted admission in accordance with the law concerning foreign investment and any law amending or replacing it.

Article XI. Application of other Provisions

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 a regulation, whether general or specific, entitling investments by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article XII. Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent.

Article XIII. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force three months after the date of the latest notification by any Contracting Party of the accomplishment of its internal procedures of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

2. In respect of investments made prior to the date of termination of this Agreement becomes effective, the provisions of Article I to XII shall remain in force for a further period of ten years from the date of termination of the present Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Jakarta on 11th of April 1996, in Indonesian, Ukrainian and English languages.

All texts are equally authentic. If there is any divergence concerning the interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

FOR THE GOVERNMENT OF UKRAINE