

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

DESIRING to promote greater economic co-operation between them with respect to investments made by investors of one Contracting Party in the territory of the state of the other Contracting Party;

RECOGNIZING that the promotion and reciprocal protection of such investments will be conducive to the stimulation of mutually-beneficial business activities and to the increase of prosperity in both Contracting Parties

RECOGNIZING that a stable framework for investment will maximize effective utilization of economic resources and improving living standards in both Contracting Parties;

REAFFIRMING their commitment to ensure the development of investment in such a way as to contribute to sustainable development in both Contracting Parties;

HAVE AGREED as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term investment means every kind of asset which is owned directly or indirectly and invested by investors of a Contracting Party in the territory of the state of the other Contracting Party in accordance with its laws and regulations, including in particular:

- a. movable and immovable property as well as any other rights, such as mortgages, pledges, usufructs and similar rights;
- b. a company, shares, stocks, and other forms of participation in a company;
- c. debentures, bonds, loans and other forms of debt, including loans from state enterprise to state enterprise;
- d. intellectual and industrial property rights, which are related to the investment;
- e. claims to money or any other assets or performance having an economical value; and
- f. rights conferred by law or contract such as concessions, licenses, authorization, or permits.

Claims to money involving the kind of interest set out in subparagraphs (a) to (f) above shall not include:

- i. commercial contracts for the sale of goods or services by a national or a company of a Contracting Party to a national or a company in the territory of the other Contracting Party; or
- ii. the extension of credit in connection with commercial transaction such as trade financing.

In order to qualify as an investment for the purposes of this Agreement, an asset must have the characteristics of an investment, including certain duration, commitment of capital or other resources, the expectations of gain or profit, and the assumption of risk

The arbitration award or any order or judgment rendered with regard to the investment shall not be considered as

investment for the purposes of this Agreement.

2. The term "investor" of a Contracting Party means:

- a. any natural person who is a national of that Contracting party in accordance with its legislation;
- b. any legal person constituted or organized in accordance with the legislation of that Contracting Party and engaged in substantive business operations in the territory of the state of that Contracting Party.

3. The term "territory" shall mean:

- a. in respect of the Republic of Indonesia: the land territories, territorial sea, archipelagic waters, internal waters, including sea-bed and subsoil thereof, and airspace over such territories, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction, as defined in its laws, and in accordance with the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.
- b. in respect of the United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in accordance with international law and the law of United Arab Emirates sovereign rights; including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in its water, seabed and subsoil in connection with the exploration for or the exploitation of the natural resources by virtue of its law and international law.

## **Article 2. Scope**

1. This Agreement shall apply to measures adopted or maintained by a Contracting Party without any discrimination relating to:

- a. investors of the other Contracting Party;
- b. investments of investors of the other Contracting Party.

2. This Agreement shall only apply to investments by nationals or by legal persons of a Contracting Party in the territory of the other Contracting Party which has been granted admission in accordance with the respective laws and regulations of the host Contracting Party. For greater certainty, this Agreement shall apply to investments made in the territory of the state of a Contracting Party in accordance with its laws and regulations by investors of the other Contracting Party before or after the entry into force of this Agreement, but shall not apply to any dispute that exists or has been settled before its entry into force.

3. Notwithstanding paragraph 2:

- a. in the case of Indonesia, natural resources shall not be covered by this Agreement, unless otherwise specifically decided by decree of the Government of Indonesia.
- b. Any rights whether conferred by law or an administrative act by a competent State authority, or by contract, excluding concessions to search for, explore, extract or exploit natural resources. In the case of the United Arab Emirates, natural resources shall not be covered by this Agreement.

4. Notwithstanding paragraph 1 of this Article, the provisions of Articles 3 (Compliance with Domestic Law), 4 (Corporate Social Responsibility) and 14 (Right to Regulate) shall apply to investors of a Contracting Party and their investments in the territory of the other Contracting Party.

5. For greater certainty, this Agreement shall only apply to measures by a Contracting Party that take place or exist after the date of entry into force of this Agreement for that Contracting Party.

6. This Agreement shall not apply to:

- a. government procurement;
- b. services supplied in the exercise of governmental authority by the relevant body or authority of a Contracting Party;
- c. subsidies or grants provided by authorities of a Contracting Party, including government-supported loans, guarantees, and insurance;
- d. taxation measures.

### **Article 3. Compliance with Domestic Laws and Regulations**

Without prejudice to this Agreement, an investor of a Contracting Party and its investment shall comply with all laws and regulations of the other Contracting Party, where the investment is located, concerning the establishment, acquisition, expansion, management, operation, and sale or other disposition of such investment.

### **Article 4. Corporate Social Responsibility**

Each Contracting Party shall encourage enterprises operating within its territory to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Contracting Party.

### **Article 5. Promotion of Investments**

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its state territory investments by investors of the other Contracting Party.
2. Each Contracting Party shall ensure that its obligation arising out of this Agreement shall be implemented.

### **Article 6. Treatment of Investments**

1. Each Contracting Party shall accord fair and equitable treatment and full protection and security to investors of the other Contracting Party and their covered investment in its territory in accordance with paragraphs 2 to 4.
2. A Contracting Party breaches the obligation of fair and equitable treatment as referred to in paragraph 1 where a measure or series of measures constitutes:
  - a. denial of justice in criminal, civil or administrative adjudicative proceedings;
  - b. fundamental breach of due process in judicial and administrative proceedings;
  - c. targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
  - d. abusive treatment, such as coercion, abuse of power or similar bad faith conduct; or
  - e. a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article.
3. For greater certainty, "full protection and security" refers to the Contracting Party's obligations to act as may be reasonably necessary to protect physical security of investors and covered investments that do not create additional obligations other than those which it offers to its own national and other aliens.
4. A determination that there has been a breach of another provision of this Agreement or of a separate international agreement does not itself establish that there has been a breach of this Article.

### **Article 7. Most-Favoured-Nation Treatment**

1. Each Contracting Party Shall Accord to Investors of the other Contracting Party and to their investments treatment no less favourable than that it accords in like circumstances, to investors of any third state and their investments, in relation to the management, conduct, operation and disposal of investments.
2. For greater certainty, treatment referred to in paragraph 1 shall not encompass dispute resolution mechanisms, or any procedural or judicial matters.
3. For greater certainty, substantive obligations in other international investment treaties as referred to in paragraph 1, do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article.
4. The provisions of this Agreement shall not be construed so as to oblige a Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
  - a. membership of any existing or future regional economic integration agreement or organization or customs union of which one of the Contracting Parties is or may become a party; or

b. any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation

## **Article 8. National Treatment**

1. Subject to its laws and regulations, each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments, in relation to the management, conduct, operation and disposal of investments. For greater certainty, "subject to its laws and regulations" shall include "existing" and future laws and regulations, including their continuation and amendment.

2. For greater certainty, the treatment to be accorded by a Contracting Party under paragraph 1 means, with respect to regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Contracting Party of which it forms a part.

## **Article 9. Expropriation**

1. Neither Contracting Party may nationalize or expropriate an investment of an investor of the other Contracting Party either directly or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter "expropriate"), except:

- a. for public purposes;
- b. in a non-discriminatory basis;
- c. on payment of prompt, adequate and effective compensation in accordance with paragraphs 2 and 3; and
- d. in accordance with due process of law.

2. The compensation under paragraph 1 (c) of this Article shall be equivalent to the market value of the expropriated investment immediately before the expropriation occurs or the intended expropriation becomes public knowledge, whichever is earlier. The valuation of the fair market value of the expropriated investment shall exclude any speculative or windfall profits claimed by the investor. The compensation shall be effectively realizable, freely transferable and shall be made without undue delay.

3. Notwithstanding paragraphs 1 and 2, any measure of direct expropriation relating to land shall be:

- a. for a purpose in accordance with the applicable domestic legislation of the Contracting Party where the expropriated investment is located; and
- b. upon payment in accordance with the domestic legislation.

4. Where the fair market value cannot be ascertained, the compensation shall be determined in equitable manner taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement, and book value.

5. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case by a judicial authority or other competent and independent authority of the latter Contracting Party.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the domestic laws of the host country, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the domestic laws of the host country.

## **Article 10. Compensation for Losses**

1. Investors of either Contracting Party who suffer losses of their investments in the territory of the state of the other Contracting Party due to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection or riot shall be accorded with respect to restitution, indemnification, compensation or other settlement, treatment no less favourable than that accorded 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 a Contracting Party who in any of the events referred to in that paragraph suffer a loss in the territory of the state of the other Contracting Party resulting from the destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded restitution or compensation.

## **Article 11. Transfers**

1. Each Contracting Party shall permit all transfers relating to an investment to be made freely and without delay into and out of its territory. Such transfers include:

- a. initial capital and additional amounts for the maintenance or increase of an investment;
- b. returns;
- c. proceeds from the sale of all or any part of the investment or from partial or complete liquidation of the investment;
- d. payments made under a contract, including a loan agreement;
- e. earnings of personnel engaged from abroad in connection to an investment in its territory, and
- f. payments made pursuant to Articles 9 (Expropriation) and 10 (Compensation for Losses) of this Agreement;

2. Each Contracting Party shall permit transfers relating to an investment to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. Each Contracting Party shall permit returns in kind relating to an investment as required or specified in a written agreement between the Contracting Party and an investment or an investor of the other Contracting Party.

4. Notwithstanding paragraphs 1, 2 and 3, a Contracting Party may prevent or delay or suspend a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

- a. bankruptcy, insolvency, or the protection of the rights of creditors,
- b. Issuing, trading, or dealing in securities,
- c. criminal or penal offenses and the recovery of proceeds of crime;
- d. financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- e. ensuring compliance with orders or judgments in judicial or administrative proceedings;
- f. social security, public retirement, or compulsory savings schemes;
- g. Severance entitlements of employees; or
- h. the requirement to register and satisfy other formalities imposed by the central bank and other relevant authorities of a Contracting Party.

5. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties as members of the IMF under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF.

## **Article 12. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a legal person of such other Contracting Party and to investments of that investor if persons of a non-Contracting Party own or control the legal person and the denying Contracting Party does not maintain diplomatic relations with the non-Contracting Party.

2. A Contracting Party may deny the benefits of this Agreement to an investor which is a legal person of the other Contracting Party and to investments of that investor if that legal person has no substantial business operations in the territory of the State of the other Contracting Party and persons of a non-Contracting Party, or of the denying Contracting Party, own or control the legal person.

3. A Contracting Party may deny the benefits of this Agreement to an investor which is a natural person of the other Contracting Party and to investments of that investor if that natural person acquired his or her nationality mainly for the purpose to obtain the benefits of this Agreement that would not otherwise be available to such investor.
4. A Contracting Party may deny the benefits of this Agreement to an investor which is a natural person of the other Contracting Party and to investments of that investor if that natural person is also a national of the former Contracting Party.
5. A Contracting Party may deny the benefits of this Agreement to an Investor of the other Contracting Party that is a legal person of that other Contracting Party and to investments of that investor if persons of a non-Contracting Party own or control the legal person and the denying Contracting Party adopts or maintains measures with respect to the non-Contracting Party or a person of the non-Contracting Party that prohibit transactions with the legal person or that would be violated or circumvented if the benefits of this Agreement were accorded to the legal person or to its investments.

### **Article 13. Prohibition of Performance Requirements**

1. Neither Contracting Party may impose or enforce on investors of the other Contracting Party any performance requirement in connection with the management, conduct or operation of their investments in the territory of that Contracting Party
2. Neither Contracting Party may impose or enforce the following requirements, or enforce a commitment or undertaking, in connection with the management, conduct or operation of a investment of investors of the other Contracting Party in its territory:
  - a. to export a given level or percentage of goods;
  - b. to achieve a given level or percentage of domestic content;
  - c. to purchase, use or accord a preference to a good produced provided in its territory; or to purchase goods or services from a person in its territory;
  - d. to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;
3. Paragraph 1 and 2 of this Article shall not prejudice to the applicable laws and regulations of the host Contracting Party
4. This article shall not apply to investor to state dispute settlement under Article 17 (Settlements of Investment Disputes between an Investor of a Contracting Party and the other Contracting Party) of this Agreement.
5. With respect to this Article arbitrary or discriminatory measures cannot be applied by either Contracting Party.

### **Article 14. Right to Regulate**

1. Nothing in this Agreement Shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measures otherwise consistent with this Agreement that it considers appropriate to:
  - a. Secure compliance with laws and regulations of the Contracting Party that are not inconsistent with this Agreement;
  - b. Protect environment or human, or plant life or health;
  - c. Regulate the conservation of living or non-living exhaustible natural resources; or
  - d. Ensure the maintenance or restoration of international peace or security, or the protection of its own essential security interests.
2. The adoption, maintenance or enforcement of such measures is subject to the requirement that they are not applied in an arbitrary or unjustifiable manner or do not constitute a disguised restriction on investments of the other Contracting Party.

### **Article 15. Transparency**

1. Each Contracting Party shall endeavor to make publicly available its laws and regulations as well as international agreements to which the Contracting Party is a party, with respect to any matter covered by this Agreement.

2. Each Contracting Party shall endeavor to, upon the request by the other Contracting Party, within a reasonable period of time, provide information to the other Contracting Party with respect to matters referred to in paragraph 1.

3. When introducing or changing its laws and regulations that significantly affect the implementation and operation of this Agreement, each Contracting Party shall endeavor to take appropriate measures to enable interested persons to become acquainted with such introduction or change.

## **Article 16. Subrogation**

1. If a Contracting Party or an agency of a Contracting Party makes a payment to an investor of that Contracting Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, the other Contracting Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor. This, however, does not necessarily imply recognition of the latter Contracting Party of the merits of any case or the amount of any claims arising therefrom.

2. Where a Contracting Party or an agency of a Contracting Party has made a payment to an investor of that Contracting Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Contracting Party or the agency making the payment, pursue those rights and claims against the other Contracting Party.

3. Subrogation shall take place after the prior consent of the host Contracting Party in whose territory the investment is made, if such consent is required by that host Contracting Party.

## **Article 17. Settlements of Investment Disputes between an Investor of a Contracting Party and the other Contracting Party**

1. This Article applies to legal disputes between an investor of a Contracting Party and the other Contracting Party arising out of the investment of the former in the territory of the state of the latter Contracting Party. Such dispute shall concern an alleged breach of an obligation of the Contracting Party under this Agreement which caused loss or damages to the investor of the other Contracting Party.

2. To start consultations, the investor shall deliver to the Contracting Party a written notice. The notice shall specify details of the dispute such as:

- a. the name and address of the disputing investor;
- b. the provisions of this Agreement alleged to have been breached; and
- c. the factual and legal basis for the claim.

3. If the dispute cannot be settled amicably within six months from the date of receipt of the written notice, the disputing investor shall submit the dispute to an ad hoc joint committee co-chaired by senior officials from both Contracting Parties (hereinafter referred to as the Joint Committee) with the presence of the disputing investor or its designee, to settle the dispute with a view to achieve mutually agreed solution. The decision of the Joint Committee shall be final and binding and shall exclude the investors' right to submit the dispute in any other forums. In the event that the Joint Committee fails to issue the decision within six months from the date of the process, the disputing investor may submit the dispute to one of the following forums:

- a. by a competent court of the Contracting Party in whose territory the investment is made; or
- b. by arbitration under the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March 1965 provided that both Contracting Parties are party to the said Convention; or
- c. by arbitration under the Additional Facility of ICSID, if only one of the Contracting Parties is a signatory to the Washington Convention; or
- d. by arbitration before a tribunal of three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended in 2010.

4. The award shall be final and binding. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws and regulations, the norms and principles of international law.

5. Disputes arising out of any contract concluded between the investor and any designated entity of a Contracting Party or its local government concerning the investment of those investors shall be settled according to the dispute settlement procedure stipulated therein.

6. In the event that an investment dispute has been submitted for resolution under one of the forums provided for in paragraph 3 of this Article, the same investment dispute shall not be submitted for resolution under any other available forums as provided for in paragraph 3 of this Article.

7. No investment dispute may be submitted for resolution by arbitration under paragraph 3 of this Article if more than three years have elapsed from the date on which the investor first acquired or should have acquired knowledge of the alleged breach and loss or damage that the latter has allegedly incurred.

## **Article 18. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through consultations and/or other diplomatic channels.

2. If the Contracting Parties cannot reach an agreement within six months following the date on which the consultations were requested and/or other diplomatic channels were initiated by either Contracting Party, the dispute shall, upon the request of the Contracting Party, be submitted to an arbitral tribunal. In the absence of an agreement by the Contracting Parties to the contrary, arbitration proceedings shall be conducted in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, except as modified by the Contracting Parties or this Agreement.

3. Unless the Parties otherwise agree, the dispute shall be resolved by a three member arbitration tribunal. Each Contracting Party shall appoint one arbitrator within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration. The two arbitrators thus selected shall together within a further two months period, select a third arbitrator who is a national of a third State. The third arbitrator once approved by the two Contracting Parties, shall act as Chairman of the arbitral tribunal.

4. If any member of the arbitral tribunal is not selected within the time frames defined in paragraph 3 of this Article, the Secretary-General of the Permanent Court of Arbitration, upon the request of either Contracting Party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The place of the arbitration proceedings shall be The Hague, The Netherlands.

6. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and binding upon each Contracting Party.

7. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be borne equally by the Parties. The arbitral tribunal may, however, in its discretion, decide that a higher proportion of costs shall be paid by one of the Contracting Parties.

## **Article 19. Balance of Payments Measures**

1. A Contracting Party may, in a non-discriminatory manner adopt or maintain restrictions on payments or transfers related to investments in like situations:

- a. in the event of a serious balance of payments and external financial difficulties or threat thereof; or
- b. in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. The restrictions referred to in paragraph 1 shall:

- a. be consistent with the Articles of Agreement of the IMF;
- b. avoid unnecessary damage to the commercial, economic, and financial interests of the other Contracting Party;
- c. not exceed those necessary to deal with the circumstances described in paragraph 1;
- d. be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
- e. not treat the other Contracting Party less favourably than a non-Contracting Party in like situations;



3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Contracting Party.

## **Article 26. Prudential Measures**

1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures, in a non-discriminatory manner, relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Contracting Party pursuant to paragraph 1 do not conform with this Agreement, they shall not be used as a means of avoiding the commitments or obligations of the Contracting Party under this Agreement.

Nothing in this Agreement shall be construed to require a Contracting Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

## **Article 21. Amendments**

As agreed between the Contracting Parties, the amendments and additions may be made to this Agreement, which shall be concluded in the form of a protocol to this Agreement and shall enter into force according to the paragraph 1 of Article 22 of this Agreement. This protocol shall constitute an integral part of this Agreement.

## **Article 22. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty days after the date of the exchange of instruments of ratification by the Contracting Parties.

2. This Agreement shall remain in force for a period of ten years and shall continue to be in force thereafter unless terminated in accordance with paragraph 3.

3. Either Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by sending to the other Contracting Party a one year prior written notice through the diplomatic channels.

**IN WITNESS WHEREOF**, the undersigned, duly authorized to that effect, have signed this Agreement.

**DONE** at Bogor, Indonesia as of the Twenty-Fourth day of July in the year Two Thousand and Nineteen in duplicate each in the Indonesian, Arabic, and English languages. All texts are equally authentic. In case of divergence in interpretations of provisions of this Agreement by the Contracting Parties, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

RETNO L.P. MARSUD

MINISTER FOR FOREIGN AFFAIRS

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

SULTAN BIN AHMED ALJABER

MINISTER OF STATE

## **PROTOCOL**

At the time of signing of the Agreement between the Government of the Republic of Indonesia and the United Arab Emirates for the Promotion and Protection of Investment (hereinafter referred to as "the Agreement"), both Governments have agreed upon the following provisions which shall form an integral part of the Agreement.

1. With reference to paragraph 1 of Article 1 (Definitions) and paragraph 2 of Article 2 (Scope) of the Agreement:

For greater certainty, it is understood that investments made by investors of a Contracting Party in the territory of the other Contracting Party, "laws and regulations" shall refer to the Investment Law of that Contracting Party.

2. With reference to paragraph 1 of Article 1 (Definitions) of the Agreement:

For greater certainty, it is understood that for the purposes of the Agreement, goodwill, market share or other similar intangible rights shall not be considered as an investment.

3. With reference to paragraph 1(1)(b) of Article 1 (Definitions) of the Agreement:

For greater certainty, it is understood that for the purposes of the Agreement, the term company shall be limited to a company of an investor established under the laws of the host State and located in the territory of the host State.

4. With reference to paragraph 2(a) of Article 1 (Definitions) of the Agreement:

In the case of Indonesia, it is understood that if a natural person possesses dual nationality, she or he shall be deemed to be exclusively a national of the country where she or he ordinarily resides. And in addition, if a natural person is a national of both Contracting Parties, she or he will be deemed to be the national of the Contracting Party where her or his investment is located.

5. With reference to paragraph 6 (a) of Article 2 (Scope) of the Agreement:

For greater certainty, it is understood that "government procurement" means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale.

6. With reference to paragraph 6 (b) of Article 2 (Scope) of the Agreement:

For greater certainty, it is understood that a "service supplied in the exercise of governmental authority" means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

7. With reference to paragraph 6 (d) of Article 2 (Scope) of the Agreement:

For greater certainty, it is understood that the Agreement shall not affect the rights and obligations of any Contracting Party under any tax convention.

8. With reference to Article 5 (Promotion of investment) of the Agreement:

For greater certainty, it is understood that a breach of a contract shall not be considered as a breach of this Agreement.

9. With reference to Article 7 (Most-Favoured-Nation Treatment) and Article 8 (National Treatment) of the Agreement:

For greater certainty, it is understood that whether treatment is accorded in "like circumstances" under Articles 7 (Most Favoured Nation) and 8 (National Treatment) of the Agreement depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

10. With reference to paragraph 1 (Chapeau) of Article 9 (Expropriation) of the Agreement:

For greater certainty, it is understood as follows: .

a. An action or a series of actions by a Contracting Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or in an investment.

b. Article 9 (Expropriation) of the Agreement addresses two situations. The first is direct expropriation, in which an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

c. The second situation addressed by Article 9 (Expropriation) of the Agreement is indirect expropriation, in which an action or series of actions by a Contracting Party is carried out without formal transfer of title or outright seizure.

(1) The determination of whether an action or series of actions by a Contracting Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

a. the economic impact of the government action, although the fact that an action or series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

b. the extent to which the government action interferes with distinct, reasonable investment backed expectations arising out of the Contracting Party's prior binding written commitment to the investor; and

c. the character of the government action.

11. With reference to paragraph 1(c) of Article 9 (Expropriation):

For greater certainty, it is understood that where there is a dispute about whether a government conduct amounts to indirect expropriation within the meaning of Article 9 (Expropriation) of the Agreement, the fact that compensation has not been paid while that dispute remains unresolved does not render that conduct inherently unlawful if it is subsequently found to constitute indirect expropriation within the meaning of that Article.

12. With reference to paragraph 6 of Article 9 (Expropriation) of the Agreement:

For greater certainty, it is understood that the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

13. With reference to subparagraphs (g) and (h) of paragraph 4 of Article 11 (Transfers) of the Agreement:

For greater certainty, it is understood that situations under subparagraphs (g) and (h) refers to, or derives from, a situation where an investment is terminated by investor and the investors fails to fulfil its obligation in relation to those subparagraphs.

**IN WITNESS WHEREOF** the undersigned, being duly authorized thereto by the respective Governments, have signed this Protocol.

**DONE IN** Bogor, Indonesia on the Twenty-fourth day of July in the year Two Thousand and Nineteen in duplicate in the English, Indonesia and Arabic languages, both texts being equally authentic. In case of any divergence of interpretation of this Protocol, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

RETNO L.P. MARSUD

MINISTER FOR FOREIGN AFFAIRS

FOR THE GOVERNMENT IOF THE UNITED ARAB EMIRATES

SULTAN BIN AHMED ALJABER

MINISTER OF STATE