AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia;

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of asset and in particular, though not exclusively, includes: (i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares, stock and debentures of companies wherever incorporated or interests in the property of such companies;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees;

(c) "nationals" means: (i) In respect of the United Kingdom: persons who are citizens of the United Kingdom and Colonies, British subjects by virtue of sections 2, 13 or 16 of the British Nationality Act 1948 or the provisions of the British Nationality Act 1965 and British protected persons;

(ii) In respect of the Republic of Indonesia: persons who according to the laws of the Republic of Indonesia are Indonesian nationals;

(d) "companies" means: (i) In respect of the United Kingdom: corporations, firms or associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 10;

(ii) In respect of the Republic of Indonesia: any company with a limited liability incorporated in the territory of the Republic of Indonesia, or any juridical person constituted in accordance with its legislation;

(e) "territory" means: (i) In respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 10;

(ii) In respect of the Republic of Indonesia: the territory over which the Republic of Indonesia has sovereignty or jurisdiction.

Article 2. Scope of the Agreement

(1) This Agreement shall only apply to investments by nationals or companies of the United Kingdom in the territory of the Republic of Indonesia which have been granted admission in accordance with the Foreign Capital Investment Law No. 1 of 1967 or any law amending or replacing it.

(2) In the event of the law of the United Kingdom making provisions regarding the admission of foreign investment, investments by nationals or companies of the Republic of Indonesia in the territory of the United Kingdom made after the coming into force of such provisions shall only enjoy protection under this Agreement if they have been admitted in accordance with such provisions.

(3) The rights and obligations of both Contracting Parties with respect to investments made before 10 January 1967 shall be in no way affected by the provisions of this Agreement.

Article 3. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

(2) Investments of nationals or companies of either 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. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party is not in any way impaired by unreasonable or discriminatory measures. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 4. Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to nationals or companies of any third State.

(3) Nationals or companies 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 restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

Article 5. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected 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 of the expropriating Party and against compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without undue delay, shall be effectively realizable and shall be freely transferable. Appropriate provision shall be made for the determination and payment of such compensation. The legality of any expropriation and the amount and method of payment of compensation shall be subject to review by due process of law.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee the compensation provided for in that paragraph to the owners of these shares.

Article 6. Repatriation of Investment

Each Contracting Party shall in respect of investments grant to nationals or companies of the other Contracting Party the right of free transfer of their capital and of the returns from it, subject to the right of each Contracting Party in exceptional financial or economic circumstances to exercise equitably and in good faith powers conferred by its laws existing when this Agreement enters into force.

Article 7. Reference to International Centre for Settlement of Investment Disputes

(1) The Contracting Party in the territory of which a national or company of the other Contracting Party makes or intends to make an investment shall assent to any request on the part of such national or company to submit, for conciliation or arbitration, to the Centre established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 19650((1)) any dispute that may arise in connection with the investment.

(2) A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which immediately before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

Article 8. Disputes between the Contracting Parties

(1) Disputes concerning the interpretation or implementation of this Agreement shall if possible be settled through diplomatic negotiation between the Governments of the Contracting Parties.

(2) If the Contracting Parties are unable to reach an agreement, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a third arbitrator as Chairman who shall be a national of a third State.

(3) If either Contracting Party has not appointed its arbitrator within two months of the receipt of the request for arbitration, that arbitrator shall be appointed, upon the request of the other Contracting Party, by the President of the International Court of Justice.

(4) If the two arbitrators are unable to reach an agreement on the choice of the third arbitrator within two months after the appointment of the second, the third shall be appointed, upon the request of either Contracting Party, by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Member of the Court next in seniority who is not a national of either Contracting Party.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) The tribunal shall reach its decision by a majority of votes and such decision shall be final and binding on the Contracting Parties.

(8) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 9. Subrogation

(1) If either Contracting Party makes payment under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognise (a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified 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 and enforce the claims of such a party.

The former Contracting Party (or its designated Agency) shall accordingly if it so desires be entitled to assert any such right or claim to the same extent as its predecessor in title either before a court or tribunal in the territory of the latter Contracting Party or in any other circumstances.

(2) If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of nationals or companies of the latter Contracting Party or of any third State deriving from investment activities similar to those in which the party indemnified was engaged. Such amounts and credits shall be freely available to the former Contracting Party concerned for the purpose of meeting its expenditure in the territory of the other Contracting Party.

Article 10. Territorial Extension

At the time this Agreement comes into force or at any time thereafter, its provisions may be extended to such territories, for whose international relations the Government of the United Kingdom are responsible, as may be agreed upon by the Contracting Parties in an Exchange of Notes.

Article 11. Entry Into Force and Termination

(1) This Agreement shall come into force on the day the Government of the Republic of Indonesia notifies the Government of the United Kingdom by diplomatic Note that its constitutional requirements for the coming into force of this Agreement have been fulfilled, and shall remain in force for a period of ten years from the date of such notification.((2))

(2) This Agreement may be terminated by either Contracting Party by giving written notice of termination at any time during the six months immediately preceding the expiry of the initial ten year period. If no such notice is given, the Agreement shall continue in force for further periods of five years subject to the right of each Contracting Party to give notice of termination during the six months immediately preceding the expiry of any five year period.

(3) In the event of termination of this Agreement, its provisions shall continue in effect with respect to investments made whilst it is in force for the approved period of validity of such investments admitted by the relevant Contracting Party or, where there are no provisions regarding admission, for a period of twenty years from the date of such termination.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 27th day of April 1976.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

GORONWY-ROBERTS OF CAERNARVON & OGWEN

For the Government of the Republic of Indonesia

R. SUBONO