

CONFORMED COPY

LOAN NUMBER 3761 IND

Project Agreement
(Sumatera and Kalimantan Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

PERUSAHAAN UMUM LISTRIK NEGARA

Dated July 25, 1994

LOAN NUMBER 3761 IND

PROJECT AGREEMENT

AGREEMENT, dated July 25, 1994, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and PERUSAHAAN UMUM LISTRIK NEGARA (PLN).

WHEREAS (A) by the Loan Agreement of even date herewith between Republic of Indonesia (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to two hundred sixty million five hundred thousand dollars (\$260,500,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that PLN agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and PLN, a portion of the proceeds of the loan provided for under the Loan Agreement will be relented to PLN on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS PLN, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth and the following terms have the following meanings:

(a) "Environmental Action Plans" means collectively the plans specified in the Environmental Impact Assessments of Besai and Banjarmasin, both dated April 1994 and prepared by PLN, for undertaking measures to mitigate, preserve, protect and monitor the environment during execution of Part A and Part B of the Project respectively, as such plans may be amended from time to time by agreement between the Bank and PLN.

(b) "Project Affected Persons" means the persons whose right, title or interest in any property is acquired or is intended to be acquired or whose property is otherwise possessed or intended to be possessed and who as a result thereof has been or would be displaced or dispossessed from their habitat or land or precluded from carrying out their business, occupation or work on account of the execution of Parts A and B of the Project.

(c) "Resettlement Action Plans" means collectively the Besai Resettlement and Rehabilitation Plan and the Banjarmasin Resettlement and Rehabilitation Plan in respect of Part A and Part B of the Project respectively, both dated May 1994 and prepared by PLN, for carrying out resettlement and rehabilitation of Project Affected Persons and monitoring the socio-economic impact and effectiveness of each resettlement and rehabilitation, as such plans may be amended from time to time by agreement between the Bank and PLN.

ARTICLE II

Execution of the Project

Section 2.01. (a) PLN declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and environmental practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for said Parts of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and PLN shall otherwise agree, PLN shall carry out Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. PLN shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the Project.

Section 2.04. PLN shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, PLN

shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) PLN shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) PLN shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the Project, the accomplishment of the purposes of the Loan, or the performance by PLN of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of PLN

Section 3.01. PLN shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and engineering, managerial, public utility and environmental practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. (a) PLN shall maintain its existence and right to carry on its operations and shall take all steps necessary to acquire, maintain and renew all interest in land and other properties and all rights, powers, privileges and franchises which are necessary or useful in carrying out Parts A, B, C, D.1(b), D.5, D.6, and D.7 of the Project or in the conduct of its business.

(b) PLN shall at all times operate and maintain its plants, facilities, equipment and other property, and promptly as required, make all necessary repairs and renewals thereof, in accordance with sound engineering and public utility practices.

(c) Except as the Bank shall otherwise agree, PLN shall not sell, lease, transfer or otherwise dispose of any of its property or assets which shall be required for the efficient operation of its business and undertaking.

Section 3.03. PLN shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) PLN shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) PLN shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors of such scope and in such detail

as the Bank shall have reasonably requested; and

- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02. PLN shall: (a) by December 31 every year commencing in 1994 review its long run marginal costs with a view to formulating its tariff structure; (b) discuss the results of such review with the Borrower and the Bank; and (c) thereafter, take appropriate steps to revise the tariff structure taking into account the views, if any, thereon of the Borrower and the Bank.

Section 4.03. Except as the Bank shall otherwise agree, PLN shall not incur any debt unless a reasonable forecast of the revenues and expenditures of PLN shows that the projected net revenues of PLN for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times the projected debt service requirement of PLN in such year on all debt of PLN including the debt to be incurred. For the purposes of this Section:

(a) The term "debt" means any indebtedness of PLN maturing by its terms more than one year after the date on which it is originally incurred.

(b) Debt shall be deemed to be incurred: (i) under a loan contract or agreement or other instrument providing for such debt or further modification of its terms of payment, on the date of such contract, agreement or instrument; and (ii) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(c) The term "net revenues of PLN" means gross revenues of PLN from all sources, adjusted to take account of the PLN's tariffs in effect at the time of the incurrence of debt even though they were not in effect during the twelve-month period to which such revenues relate, less all operating expenses of PLN, including expenses accountable to administration, maintenance and taxes (or payments in lieu of taxes), but before provision for depreciation of assets and interest and other charges on debt.

(d) The term "debt service requirement" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.

(e) The term "reasonable forecast" means a forecast prepared by PLN in the fiscal year in which the debt in question is to be incurred, which both the Bank and PLN accept as reasonable and as to which the Bank has notified PLN of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of PLN.

(f) Whenever for the purposes of this Section it shall be necessary to value, in terms of currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, with absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.04. PLN shall, as part of its on-going annual planning procedures: (i) prepare a ten-year financial forecast based on its proposed development plans; (ii) test each proposed development plan for financial feasibility; (iii) develop a financing plan covering the first five years of the forecast period which will specify the quantum of external funding and the appropriate mix of equity and debt and, to the extent possible, identify potential financial sources; and (iv) ensure that its recommended development plans and associated financial forecasts and financing plan are jointly reviewed with the Borrower and the Bank prior to their adoption by its Board.

Section 4.05. (a) Except as the Bank shall otherwise agree: PLN shall, from time to time, take all such measures, satisfactory to the Bank, as shall be required to realize for all its operations, for its fiscal year

1994/95 and in each of its fiscal years thereafter, an annual rate of return of not less than eight percent (8%) of the average current value of PLN's net fixed assets in operation.

(b) PLN shall, on the basis of forecasts prepared by PLN and satisfactory to the Bank, review on a periodic basis, as agreed with the Bank, whether its tariffs are adequate to meet the requirements set forth in paragraph (a) of this Section for the next fiscal year, and shall furnish to the Bank such review upon its completion.

(c) For the purposes of this Section:

- (i) the required annual return shall be calculated by dividing PLN's net operating income for all its operations for the fiscal year in question by one-half of the sum of the current value of PLN's net fixed assets in operation for all its operations at the beginning and the end of that fiscal year;
- (ii) the term "net operating income" means the revenues from all sources related to PLN's operations less all expenditures incurred on account of such operations, including expenses of administration, adequate maintenance and taxes or any payments in lieu of taxes, and provision for depreciation calculated on revaluated assets pursuant to Section 4.03 of this Agreement. Interest and other charges on debt shall not be deducted from gross revenues;
- (iii) the term "value of PLN's net fixed assets in operations" means the gross value of PLN's fixed assets in operation less the amount of accumulated depreciation and consumers' contributions, all as valued from time to time in accordance with the methods of valuation or revaluation referred to in Section 4.06 of this Agreement;
- (iv) the term "total operating expenses" means all expenses related to PLN's operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation calculated on revaluated assets pursuant to Section 4.03 of this Agreement, but excluding interest and other charges on debt;
- (v) the term "debt service requirements" relating to PLN's operations means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt; and
- (vi) whenever, for the purposes of this Section, it shall be necessary to value, in terms of the currency of the Borrower debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.06. For the purposes of the calculations referred to in Section 4.05 (a) of this Agreement, PLN shall for its fiscal year 1994/95 and for each fiscal year thereafter, revalue its fixed assets (including work in progress and consumers' contributions), and accumulated depreciation, in a manner satisfactory to the Bank.

Section 4.07. The provisions of: (i) Section 4.06 (a) of the Project Agreement (Power Transmission Project), dated August 8, 1991, between the Bank and PLN (Loan 3349-IND); (ii) Section 4.05 (a) of the Project Agreement (Suralaya Thermal Power Project), dated August 26, 1992, between the Bank and PLN (Loan 3501-IND); (iii) Section 4.06 (a) of the Project Agreement (Paiton Thermal Power Project), dated July 21, 1989, between the Bank and PLN (Loan 3098-IND); (iv) Section 4.06 (a) of the Project Agreement (Power

Sector Efficiency Project), dated July 21, 1989, between the Bank and PLN (Loan 3097-IND); (v) Section 4.06 (a) of the Project Agreement (Rural Electrification Project), dated April 30, 1990, between the Bank and PLN (Loan 3180-IND); and (vi) Section 4.05 (a) of the Project Agreement (Cirata Hydroelectric Phase II Project) dated June 25, 1993 entered into between the Bank and PLN (Loan 3602-IND), are hereby superseded by the provisions of Section 4.05 (a) of this Agreement.

Section 4.08. Except as the Bank and PLN shall otherwise agree, PLN shall:

(a) review annually with the Bank and the Borrower, PLN's proposed investment plan for the next five fiscal years, including the priorities assigned to the investments included under such plans and the balance between the generation, transmission and distribution of electric power likely to result from such investments; and

(b) by December 31 every year commencing in 1994 review with the Borrower and the Bank, PLN's development plan and associated financial forecasts and financing plan provided for in Section 4.04 of this Agreement.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of PLN thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify PLN thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA),
82987 (FTCC),
64145 (WUI) or
197688 (TRT)

For PLN:

Perusahaan Umum Listrik Negara
Jalan Trunojoyo 135

Kebayoran Baru
Jakarta 12160
Indonesia

Cable address:

PLNPST
Jakarta

Telex:

47156 PLNPST IA
47248 PLNPST IA

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of PLN may be taken or executed by its President Director or such other person or persons as the President Director shall designate in writing, and PLN shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Marianne Haug

Acting Regional Vice President
East Asia and Pacific

PERUSAHAAN UMUM LISTRIK NEGARA

By /s/ Arifin M. Siregar

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

(a) For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when contract award is delayed beyond the original bid validity period, the successful bidder's bid price will be increased for each week of delay by two predisclosed correction factors acceptable to the Bank, one to be applied to all foreign currency components and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

(b) In the procurement of goods and works in accordance with this Part A, PLN shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, PLN shall use bidding

documents based on other internationally recognized standard forms agreed with the Bank.

2. Bidders for civil works shall be prequalified as provided in paragraph 2.10 of the Guidelines.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in Indonesia may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, PLN may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Review by the Bank of Procurement Decisions

1. Review of prequalification:

With respect to the prequalification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of Appendix 1 to the Guidelines shall apply.

2. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for goods and works estimated to cost the equivalent of \$1,000,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, said procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

3. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist PLN in carrying out Parts A, B, C, D.1(b), D.5, D.6, and D.7, PLN shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, PLN shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, PLN shall use other standard forms agreed with the Bank.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to: (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each; or (b) contracts for the employment of individuals estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Bank review shall not apply to: (a) the terms of reference for such contracts; (b) single-source selection of consulting firms; (c) assignments of a critical nature, as reasonably determined by the Bank; (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above; or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 2

Implementation Program

1. PLN shall, by December 31, 1994, designate a manager in PLN, satisfactory to the Bank, for the purpose of coordinating the various activities under Parts A, B, C, D.1(b), D.5, D.6 and D.7 of the Project.

2. PLN shall operate the Besai hydroelectric and Banjarmasin thermal power plants constructed under Parts A.1 and B.1 of the Project in accordance with the Bank's Environmental Guidelines (September 1988) and in compliance with the Borrower's national environmental standards.

3. PLN shall: (a) make adequate arrangements, satisfactory to the Bank, for the inspection and safety of Besai Dam constructed under Part A.1 of the Project including the appointment of independent engineering experts, satisfactory to the Bank, to carry out periodic inspection of Besai Dam with a view to determining its safety in accordance with appropriate engineering practices; (b) undertake, promptly after each such inspection, all necessary measures including repairs, if any, of Besai Dam recommended by the said engineering experts; and (c) furnish, or cause to be furnished, regularly to the Bank a report regarding the said inspection and measures including repairs.

4. PLN shall jointly with the Borrower: (a) take the necessary measures required to reorganize PLN into a limited liability company (Persero); (b) by December 31, 1994, furnish to the Bank a progress report concerning the reorganization of PLN together with a draft time bound corporate reorganization and restructuring action plan for PLN to operate according to best utility practices; (c) discuss the said progress report and draft action plan with the Bank; and (d) immediately thereafter, finalize the said action plan taking into account the comments, if any, thereon by the Bank.

5. PLN shall carry out the Environmental Action Plans in a manner satisfactory to the Bank.

6. PLN shall carry out the Resettlement Action Plans in a manner satisfactory to the Bank.

