

CONFORMED COPY

LOAN NUMBER 4106 IND

Project Agreement

(Railway Efficiency Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

PERUSAHAAN UMUM KERETA API

Dated January 15, 1997

LOAN NUMBER 4106 IND

PROJECT AGREEMENT

AGREEMENT, dated January 15, 1997, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and PERUSAHAAN UMUM KERETA API (PERUMKA).

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 one hundred five million Dollars (\$105,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that PERUMKA agree to undertake such obligations toward the Bank as are set forth in this Agreement; and

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

WHEREAS PERUMKA, 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.

ARTICLE II

Execution of the Project

Section 2.01. (a) PERUMKA 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 B, C, D and E (1), (2) and (3) of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and railway practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts B, C, D and E (1), (2) and (3) of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and PERUMKA shall otherwise agree, PERUMKA shall carry out Parts B, C, D and E (1), (2) and (3) 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 B, C, D and E (1), (2) and (3) 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. (a) PERUMKA 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 B, C, D and E (1), (2) and (3) of the Project.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto, PERUMKA shall:

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Bank and PERUMKA, a plan for the future operation of Parts B, C, D, and E (1), (2) and (3) of the Project; and
- (ii) afford the Bank a reasonable opportunity to exchange views with PERUMKA on said plan.

Section 2.04. PERUMKA shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, PERUMKA 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) PERUMKA shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Parts B, C, D and E (1), (2) and (3) 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) PERUMKA shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Parts B, C, D and E (1), (2) and (3) of the Project, the accomplishment of the purposes of the Loan, or the performance by PERUMKA of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of PERUMKA

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

Section 3.02. PERUMKA shall at all times operate and maintain its

plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and railway practices.

Section 3.03. PERUMKA 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) PERUMKA shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) PERUMKA shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each Financial Year, including separate records in respect of Parts B, C, D and E (1), (2) and (3) of the Project, 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 (6) 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. (a) Except as the Bank shall otherwise agree, PERUMKA shall produce, for each of its Financial Years after its Financial Year ending on December 31, 1996, funds from internal sources equivalent to not less than 20% of the annual average of PERUMKA's capital expenditures incurred, or expected to be incurred, for that year, the previous year and the following year and, for each of its Financial Years after its Financial Year ending on December 31, 2000, funds from internal sources equivalent to not less than 25% of the annual average of PERUMKA's capital expenditures incurred, or expected to be incurred, for that year, the previous year and the following year.

(b) Before September 30 in each of its Financial Years, PERUMKA shall, on the basis of forecasts prepared by PERUMKA and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following Financial Year and shall furnish to the Bank a copy of such review upon its completion.

(c) If any such review shows that PERUMKA would not meet the requirements set forth in paragraph (a) for PERUMKA's Financial Years covered by such review, PERUMKA shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its tariffs for commercial services, controlling costs, improving productivity and developing new services or discontinuing unprofitable services) in order to meet such requirements.

Section 4.03. Except as the Bank shall otherwise agree, PERUMKA shall not incur any debt, unless the net revenues of PERUMKA for the Financial Year immediately preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such

incurrence, whichever is the greater, shall be at least 1.5 times the estimated maximum debt service requirements of PERUMKA for any Financial Year ending after December 31, 1996.

Section 4.04. PERUMKA shall prepare and furnish to the Bank not later than September 30, 1997, a proposal for the revaluation of PERUMKA's assets in accordance with international accounting standards and, not later than December 31, 1997, carry out such revaluation taking into account the Bank's comments thereon.

Section 4.05. For the purposes of Sections 4.02, 4.03 and 4.05 of this Agreement:

(a) The term "funds from internal sources" means the difference between:

- (i) the sum of revenues from all sources related to transport operations, Public Service Obligations compensation payments, track maintenance payments and net non-operating income; and
- (ii) the sum of all expenses related to railway transport operations, including administration, adequate maintenance, track access charges and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), and debt service requirements.

(b) The term "net non-operating income" means the difference between:

- (i) revenues from all sources other than those related to operations; and
- (ii) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (i) above.

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

(d) The term "capital expenditures" means all expenditures incurred on account of PERUMKA's fixed assets, including rolling stock and replacement of capital equipment related to railway operations.

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

(f) Debt shall be deemed to be incurred: (i) under a loan contract or agreement or other instrument providing for such debt or for the 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.

(g) The term "net revenues" means the difference between:

- (i) the sum of revenues from all sources related to operations adjusted to take account of PERUMKA's rates 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 and net non-operating income; and
- (ii) the sum of all expenses related to operations including administration, adequate maintenance, track access charges, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

(h) Whenever for the purposes of Sections 4.02 or 4.03 of this Agreement 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.

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 PERUMKA thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify PERUMKA 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:	Telex:
INTBAFRAD	248423 (MCI)
Washington, D.C.	64145 (MCI)

For PERUMKA:

Perusahaan Umum Kereta Api
Jalan Perintis Kemerdekaan No. 1
Bandung 40117
Indonesia

Cable address:	Telex:
Q DIRUTKA	28263 DIRUTKA BD

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 PERUMKA, or by PERUMKA on behalf of the Borrower under the Loan Agreement, may be taken or executed by the President Director or such other person or persons as the President Director shall designate in writing, and PERUMKA 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 KERETA API

By /s/ Arifin M. Siregar
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January 1996 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

(b) Preference for domestically manufactured goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

Part C: Other Procurement Procedures

1. National Competitive Bidding

Works estimated to cost less than \$3,000,000 equivalent per contract, up to an aggregate amount not to exceed \$3,000,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. Direct Contracting

Goods which must be purchased from the original supplier to be compatible with existing equipment or are of a proprietary nature, and costing \$100,000 equivalent or less, in the aggregate, may with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for works, and each contract for goods estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions 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, such contracts shall be based on 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, other standard forms acceptable to the Bank shall be used.

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.

Implementation Program

1. PERUMKA shall maintain throughout the period of Project implementation, with terms of reference, membership, staffing and other resources acceptable to the Bank:

(a) a Project Management Unit (PMUP) to manage the technical implementation of Parts B, C, D and E (1), (2) and (3) of the Project; and

(b) three Project Implementation Units (PIUs), each to carry out one of the following activities under the Project:

- (i) Jakarta-Bandung corridor development (Part B of the Project) and track upgrading and maintenance modernization (Part C of the Project);
- (ii) locomotive maintenance modernization (Part D of the Project); and
- (iii) institutional strengthening (Part E (1), (2) and (3) of the Project).

2. PERUMKA shall:

(a) prepare, and furnish to the Borrower and the Bank for review and comment, not later than September 30 in each year commencing September 30, 1997, its draft annual corporate plan and associated annual core investment plan, prepared taking into account its financial situation, updated traffic and revenue forecasts, operational efficiency, available rolling stock and other pertinent factors; and

(b) thereafter, finalize and carry out said plan, taking into account the comments of the Bank thereon.

3. For purposes of carrying out the resettlement and rehabilitation of Affected Persons under Part B of the Project, PERUMKA shall:

(a) implement the Resettlement Plan in a manner satisfactory to the Bank; and

(b) prepare and furnish to the Borrower and the Bank an evaluation report promptly upon completion of the resettlement and rehabilitation of Affected Persons as described in the Resettlement Plan.

4. PERUMKA shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Bank, the carrying out of Parts B, C, D and E (1), (2) and (3) of the Project and the achievement of the objectives thereof and PERUMKA's progress in attaining performance goals acceptable to the Bank, which indicators and goals shall be initially those set forth in the Annex to this Schedule 2;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank not later than September 30 in each year, commencing September 30, 1997, a report integrating the results of the monitoring and evaluation activities performed pursuant to subparagraph (a) above, on the progress achieved in the carrying out of Parts B, C, D and E (1), (2) and (3) of the Project during the twelve month period immediately preceding the date of such report and in attaining the agreed performance goals for such period, and setting forth: (i) the measures recommended to ensure the efficient carrying out of Parts B, C, D and E (1), (2) and (3) of the Project and the achievement of the objectives thereof during the twelve months immediately following such date and (ii) if necessary, based on PERUMKA's progress in attaining said agreed performance goals, proposed revisions to such goals for the two consecutive twelve month periods immediately following such date; and

(c) review with the Bank, within thirty days following the submission of the report referred to in sub-paragraph (b) above, or at such later date as the Bank shall request, said report, and, thereafter, take all measures required to ensure the efficient completion of Parts B, C, D and E (1), (2) and (3) of the Project and the achievement of the objectives thereof and the revised performance goals set forth therein, based on the conclusions and recommendations of said report and the Bank's views on the matter.

5. PERUMKA shall:

(a) maintain its quality assurance unit throughout the period of Project implementation with terms of reference, membership, staffing and other resources acceptable to the Bank; and

(b) strengthen and expand the capabilities of the quality assurance unit in the environmental, occupational health and safety areas in accordance with a training and development program satisfactory to the Bank.

6. PERUMKA shall:

(a) carry out the Environmental Management Program in a manner satisfactory to the Bank and shall furnish to the Bank for prior approval any modification thereof; and

(b) ensure that contracts procured for the delivery of civil works under Part B of the Project incorporate appropriate environmental mitigation measures in accordance with the Environmental Management Program.

7. PERUMKA shall prepare and furnish to the Borrower and the Bank not later than June 30 in each year, commencing June 30, 1998:

(a) a report on the functioning of and the forecast and actual compensation received during the preceding Financial Year pursuant to the Public Service Obligations compensation mechanism established by the Borrower in accordance with paragraph B. 2 (a) of Schedule 5 to the Loan Agreement;

(b) a report on the functioning of and the forecast and actual compensation received during the preceding Financial Year pursuant to the rail infrastructure maintenance and operation compensation mechanism established by the Borrower in accordance with paragraph B. 3 (a) of Schedule 5 to the Loan Agreement; and

(c) a report on the functioning of and the forecast and actual payments made during the preceding Financial Year pursuant to the track access charges system established by the Borrower in accordance with paragraph B. 4 (a) of Schedule 5 to the Loan Agreement.

