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LOAN NUMBER 3015-INO

PROJECT AGREEMENT  
(Strengthening West Kalimantan Power Grid Project)

between

ASIAN DEVELOPMENT BANK

and

PT (PERSERO) PERUSAHAAN LISTRIK NEGARA

DATED 20 October 2013

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INO 41074

## PROJECT AGREEMENT

PROJECT AGREEMENT dated 20 October 2013 between ASIAN DEVELOPMENT BANK ("ADB") and PT (PERSERO) PERUSAHAAN LISTRIK NEGARA ("PLN").

### WHEREAS

(A) by a Loan Agreement dated 17 October 2013 between the Republic of Indonesia ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of forty nine million five hundred thousand Dollars (\$49,500,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the Loan be made available to PLN and that PLN agrees to undertake certain obligations towards ADB as hereinafter set forth; and

(B) PLN, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Definitions

Section 1.01. (a) Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## ARTICLE II

### Particular Covenants

Section 2.01. (a) PLN shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and power transmission management practices.

(b) In the carrying out of the Project and operation of the Project facilities, PLN shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to PLN and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. PLN shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, PLN shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. PLN shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. PLN shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) PLN shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, PLN undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. PLN shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works and consulting services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and PLN shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) PLN shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and PLN shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, PLN and the Loan.

Section 2.08. (a) PLN shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Goods, Works and consulting services and other items of

expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of PLN; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, PLN shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter, and a summary financial account, including Project expenditures during the reporting period, year-to-date, and total expenditures to date.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, PLN shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by PLN of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) PLN shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement and this Project Agreement) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, PLN shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) PLN shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and PLN and its financial affairs where they relate to the Project with the auditors appointed by PLN pursuant to subsections (a)(iii) and (c) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of PLN, unless PLN shall otherwise agree.

Section 2.10. PLN shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of the PLN and any relevant records and documents.

Section 2.11. (a) PLN shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) PLN shall at all times conduct its business in accordance with sound administrative, financial, environmental and power transmission management practices, and under the supervision of competent and experienced management and personnel.

(c) PLN shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, power transmission management, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, PLN shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, PLN shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, PLN shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. PLN shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Articles of Association that may affect the implementation of the Project and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

**ARTICLE III****Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify PLN of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

**ARTICLE IV****Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project 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, facsimile or radiogram to the party to which it is required or permitted to be given or made at its 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 ADB

Asian Development Bank  
6 ADB Avenue, Mandaluyong City  
1550 Metro Manila, Philippines

## Facsimile Numbers:

(63 2) 636-2444  
(63 2) 636-2336.

For PLN

PT (Persero) Perusahaan Listrik Negara  
Jl. Trunojoyo Blok M 1/135  
Kebayoran Baru  
Jakarta 12160, Indonesia

## Facsimile Number:

(62 21) 722-1330.

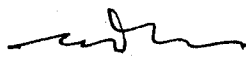
Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of PLN may be taken or executed by its President Director or any of the directors or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) PLN shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.


Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
EDIMON GINTING  
Authorized Representative

PT (PERSERO) PERUSAHAAN  
LISTRIK NEGARA

By   
\_\_\_\_\_  
NUR PAMUDJI  
Authorized Representative

## SCHEDULE

### Execution of Project; Financial Matters

#### Counterpart Funds

1. PLN shall ensure that throughout the implementation of the Project, adequate budgetary allocation of the required counterpart funds are approved and released in a timely manner to ensure proper implementation of the Project.

#### Environment

2. PLN shall ensure that:

- (a) that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report; and
- (b) the IEE and EMP are updated, as necessary, during the course of Project implementation, and submitted to ADB for review and clearance on timely basis.

#### Involuntary Resettlement

3. PLN shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

4. PLN shall ensure that (a) the RP is updated upon completion of detailed designs and detailed measurement survey, in consultation with the affected people; and (b) the updated RP is endorsed and disclosed to the public and submitted to ADB for approval.

5. PLN shall ensure that Works activities in a given construction site shall only commence after (a) the updated RP has been approved by ADB; (b) the required land has been acquired; and (iii) the affected households have been compensated in accordance with the approved RP.



Human and Financial Resources to Implement Safeguards Requirements

6. PLN shall make available necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

7. PLN shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures; and
- (c) provide the Borrower and PLN with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, and the RP.

Safeguards Monitoring and Reporting

8. PLN shall do the following:

- (a) submit Safeguards Monitoring Reports to ADB on semiannual basis during construction period and annually during the first 2 years of the operation period and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, and the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

Financial Sustainability

9. PLN shall furnish for review to the ADB, no later than each April 30 throughout Project Implementation, a five-year financial plan comprising forecast balance sheets, income statements, and cash flow statements for the ongoing fiscal year and the following four fiscal years (the "financial projections"). The financial projections will take into account the application of the Borrower's general accepted accounting principles.

10. PLN shall perform all actions necessary to ensure that, beginning 1 January 2013, it shall achieve a self-financing ratio of at least 15 percent. Except as ADB shall otherwise agree, PLN shall produce, for each of its fiscal years after fiscal year ending 31 December 2012, cash from internal sources equivalent to not less than 15 percent of the annual average of PLN's capital expenditures incurred, or expected to be incurred, for that year and the succeeding fiscal years. For the purposes of this paragraph:

- (a) the term "cash from internal sources" means the difference between:
  - (i) the sum of cash flows from all sources related to operations, plus cash generated from consumer deposits and consumer advances of any kind, sale of assets, cash yield of interest on investments, and net non-operating income; and
  - (ii) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends paid and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures;
- (b) the term "net non-operating income" means the difference between:
  - (i) revenues from all sources other than those related to operations, after making adequate provisions for uncollectible debts; and
  - (ii) expenses, including taxes and payments in lieu of taxes incurred in the generation of revenues in (i) above;
- (c) the term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year;
- (d) the term "current assets excluding cash" means all other assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expense within the next fiscal year;
- (e) the term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements taxes and payments in lieu of taxes, and dividends;
- (f) 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, excluding interest charged to construction and financed from loans;

- (g) the term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations;
- (h) the terms "operations" or "operating" refer to all operations of PLN; and
- (i) whenever for the purposes of this paragraph 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 ADB.

11. Except as ADB shall otherwise agree, PLN shall perform all actions necessary to ensure that it shall not incur any debt, unless its net revenues for the twelve months prior to the date of such incurrence shall be at least 1.35 times for the period beginning 1 January 2013 to 31 December 2014 and shall be at least 1.5 times for the period beginning 1 January 2015, of its estimated maximum debt service requirements for any succeeding fiscal year on all its debt, including the debt to be incurred. For the purposes of this paragraph:

- (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 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;
- (c) the term "net revenues" means the difference between:
  - (i) the sum of revenues from all sources related to operations, after making adequate provisions for uncollectible debts, adjusted to take account of PLN'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, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt;
- (d) 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;
- (e) 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. Interest charges which are incurred in financing capital expenditures during development should be excluded, if such charges are capitalized. However, if PLN's policy is to meet the cost from operating income; such interest charges should be included in "debt service requirements". Lease payments under finance leases should also be included;
- (f) the terms "operations" or "operating" refer to all the operations of PLN; and
- (g) whenever for the purposes of this paragraph 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 ADB.

12. Except as ADB shall otherwise agree, PLN shall not incur any debt, if after the incurrence of such debt the ratio of debt to equity shall be greater than 75 to 25.

13. Prior to 30 June of each fiscal year and on the basis of a forecast satisfactory to ADB, PLN shall review whether it would meet the requirements set forth in paragraphs 10 to 12 above in respect of such year and the next following fiscal year, and shall furnish to ADB the result of such review upon its completion.

#### Reporting

14. Notwithstanding the generality of Section 2.09 of this Agreement, PLN shall ensure that:

- (a) the annual financial statements shall (i) consist of an income statement, balance sheet, statement of cash flows and related notes to financial statement; and (ii) be consolidated for all of PLN's operations;
- (b) the accounts shall be prepared using international financial reporting standards and the audit shall be carried out using international standards of auditing;
- (c) the auditors shall be required to provide an opinion on PLN's compliance with the financial covenants in this Project Agreement and

indicate the details of the actual calculations for all ratios, in conformity with the definitions contained in this Project Agreement;

- (d) except as otherwise agreed by ADB, PLN shall continue its practice of retaining external auditors satisfactory to ADB to audits its annual financial statements and annual project accounts and that the management letter shall be attached to the respective reports;
- (e) for future contracts or contract revisions with external auditors, the terms of reference of the external auditors shall be provided by ADB; and
- (f) ADB is furnished further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

#### Gender

15. PLN shall ensure that the Goods and Works contracts under the Project include provisions to require the contractors (a) to comply with applicable core labor standards, labor laws and incorporate applicable workplace occupational safety norms; (b) to disseminate, or engage appropriate service providers to disseminate information on the risks of sexually transmittable infections, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project facilities, particularly to females; (c) do not differentiate payment between men and women for work of equal value; (d) do not employ child labor; (e) to eliminate any form of discrimination in respect of employment; and (f) to the extent possible, maximize employment of women, local poor and disadvantaged persons for construction purposes, provided that the requirements for efficiency are adequately met.

16. PLN shall implement the Project in accordance with ADB's Policy on Gender and Development (1998) and ensure that women shall have equal access to Project information and benefits, including the opportunities to participate in Project planning and implementation.

#### Provisions of Information

17. PLN shall publicly disclose on its website information on how the Loan proceeds are being used. Insofar as they relate to the procurement contract, PLN shall disclose: (a) the list of the short-listed bidders; (b) the name of the winning bidder; (c) the basic details on bidding procedures adopted; (d) the amount of the contract awarded; and (e) the list of Goods and services purchased.

#### Operational Cost

18. PLN shall (a) continue their cost reduction initiatives by changing generation mix and improvement of energy efficiency; and (b) have gradual (i) increase on the amount of its cost of operation that can be recovered from its customers; and (ii) gradual decrease on its reliance on the subsidies from the Borrower.

Power Exchange Agreement

19. PLN shall perform and observe in all material respects its covenants and obligations contained in the Power Exchange Agreement, including the financial and technical covenants.

Governance and Anticorruption

20. PLN shall (i) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

21. PLN shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.