

**Financing No: AIPRD-L002**



**Australia Indonesia Partnership**  
**Kemitraan Australia Indonesia**



# **Project Loan Agreement**

**(Eastern Indonesia National Road Improvement Project)**

Parties

**Commonwealth of Australia**

**Republic of Indonesia**

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**An Agreement for Concessional Loan Financing of  
National Road and Bridge Improvement Works under  
the Eastern Indonesia National Road Improvement Project**

**Parties**            **Commonwealth of Australia**, as represented by the Australian Agency for International Development  
("Commonwealth")

**Republic of Indonesia**, acting by and through its Ministry of Finance, duly represented by the Directorate General of Debt Management  
("Republic of Indonesia")

**Introduction**

- A.**     On 7 December 2005, and in accordance with Part D of the Introduction to the AIPRD Partnership Loan Agreement, AIPRD Joint Commission Ministers agreed to provide AIPRD funding to finance the Eastern Indonesia National Road Improvement Project ("EINRIP"), which will support the Republic of Indonesia's regional economic and social development in Eastern Indonesia by improving the condition of the national road network through:
- (i)    improving national roads in Eastern Indonesia to standards acceptable to the Commonwealth and suitable to their status as national roads; and
- (ii)   supplying superstructures for the replacement of selected bridges in Eastern and Western Indonesia..
- B.**     The Commonwealth will provide an amount of up to three hundred million Australian Dollars (AUD 300,000,000) for the EINRIP.
- C.**     The Republic of Indonesia will finance, or cause to be financed, the cost of Republic of Indonesia staff, office, administrative, training and associated costs, and the cost of land acquisition and any required compensation for resettlement or other impacts.
- D.**     The Republic of Indonesia will finance the applicable taxes under the Project. For such purpose, and without limitation to the provisions of Section 4.03 of the General Conditions, the Republic of Indonesia will provide an amount of AU\$ 30,000,000 (or equivalent in IDR) for the EINRIP as adjusted from time to time to reflect any changes to applicable tax laws in the Republic of Indonesia.

**It is agreed:**

**1. AIPRD Partnership Loan Agreement; AIPRD General Conditions; Definitions**

- 1.1 This Agreement constitutes a Project Loan Agreement for the purposes of the AIPRD Partnership Loan Agreement (as defined in the Appendix to this Agreement).
- 1.2 The AIPRD General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.3 Unless the context requires otherwise, the capitalized terms used in this Project Loan Agreement have the meanings ascribed to them in the AIPRD Partnership Loan Agreement or in the Appendix to this Agreement.

**2. The Project Loan**

- 2.1 The Commonwealth agrees to extend to the Republic of Indonesia, on the terms and conditions set forth or referred to in this Agreement, a loan in an amount up to three hundred million Australian Dollars (AUD 300,000,000) ("Project Loan") to assist in financing the project described in Schedule 1 to this Agreement ("Project").
- 2.2 The Republic of Indonesia may withdraw the proceeds of the Project Loan in accordance with Section IV of Schedule 2 to this Agreement.
- 2.3 The Repayment Dates are 1 March and 1 September in each year.
- 2.4 The principal amount of the Project Loan shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.

**3. The Project**

- 3.1 The Republic of Indonesia declares its commitment to the objectives of the Project. To this end, the Republic of Indonesia shall carry out the Project through its MPW in accordance with the provisions of Article IV of the AIPRD General Conditions.
- 3.2 Without limitation upon the provisions of clause 3.1 of this Agreement, and except as the Republic of Indonesia and the Commonwealth shall otherwise agree, the Republic of Indonesia shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.
- 3.3 The Republic of Indonesia shall finance, or cause to be financed:
  - i. the cost of Republic of Indonesia staff, and office and other administrative recurrent costs necessary for the efficient implementation of the EINRIP;
  - ii. training in Project management (including environmental and social impact

mitigation and monitoring) and administration to support the efficient implementation of the EINRIP; and

- iii. cost of land acquisition for right of way and cost of any required resettlement or other impact.

3.4 The Republic of Indonesia shall finance the applicable taxes under the Project. For such purpose, and without limitation to the provisions of Section 4.03 of the General Conditions, the Republic of Indonesia shall provide an amount of AU\$ 30,000,000 (or equivalent in IDR) for the Project. The Republic of Indonesia acknowledges that this amount is based on an assessment of taxes under applicable tax laws of the Republic of Indonesia, as those laws stand as at the date of this Agreement. The above amount shall, subject to the prior agreement of the Commonwealth, be adjusted from time to time by the Republic of Indonesia to reflect any changes to applicable tax laws over the course of the Project.

3.5 The Republic of Indonesia shall implement the Project in a manner consistent with the Project Management Manual.

#### **4. Effectiveness**

4.1 The Additional Conditions of Effectiveness consist of the following:

- (1) the Steering Committee has been established pursuant to Part A of Section I of Schedule 2 to this Agreement;
- (2) the PMU has been established and the executive head and all of the required staff have been appointed pursuant to Part A of Section I of Schedule 2 to this Agreement;
- (3) the Project Management Manual, in form and substance satisfactory to the Commonwealth, has been duly adopted by the Republic of Indonesia, pursuant to Part B of Section I of Schedule 2 to this Agreement;
- (4) the Tax Letter, in form and substance satisfactory to the Commonwealth, has been issued by the Republic of Indonesia;
- (5) the Procurement Committees for the procurement of the PAS, PMSC and RSC have been appointed, and expressions of interest for these consultant services has been advertised;
- (6) guidelines consistent with the Anti Corruption Action Plan and Indonesian Law, setting out the sanctions that shall be applied to consultants and contractors found to be involved in corrupt conduct associated with the Project, have been adopted, such guidelines to include that:
  - (a) where evidence of fraud, collusion or corruption is found, MPW shall immediately terminate the contract and may impose additional sanctions such as claiming forfeiture of the performance security, and blacklisting

of the company; and

- (b) in cases where evidence of corruption is found and sanctions are imposed such cases shall be publicized on the EINRIP website; and
- (7) guidelines, consistent with the Anti Corruption Action Plan and Indonesian Law setting out the sanctions that shall be applied to public officials found to be involved in corrupt conduct associated with the Project, have been adopted, such sanctions to include relieving the officer of his or her duties on the Project during the investigation period.

4.2 The Additional Legal Matters consist of the following:

- (1) the Environmental and Social Safeguards have been adopted by the Republic of Indonesia and are legally binding upon the Republic of Indonesia; and
- (2) the Anti-Corruption Action Plan has been adopted by the Republic of Indonesia and is legally binding upon the Republic of Indonesia.

4.3 The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement, or such later date as the Commonwealth may specify in writing to the Republic of Indonesia.

4.4 In accordance with Section 5.01 of the AIPRD General Conditions, and subject to the exception specified in that Section 5.01, the Republic of Indonesia may cancel any amount of the Unwithdrawn Project Loan Balance.

## **5. Representative; Addresses**

5.1 The Republic of Indonesia's Representative is the Minister for Finance.

5.2 The Republic of Indonesia's Address is:

Directorate General of Debt Management  
Ministry of Finance of the Republic of Indonesia  
Jl. Lapangan Banteng Timur No. 2 – 4  
Jakarta 10710, Indonesia  
P.O. Box 1139

Facsimile Number:  
(62-21) 381-2859

5.3 The Commonwealth's Address is:

Senior Representative  
AusAID  
Australian Embassy Jakarta  
Jl H.R. Rasuna Said Kav. C15-16  
Jakarta Selatan 12940

Indonesia


Facsimile Number:  
(62-21) 2550 5582

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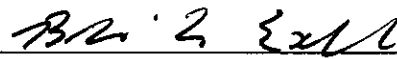
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Done at JAKARTA on 7/9/07 in at least two duplicates in the English language, each of which shall be an original.

Signed for and on behalf of the  
**Commonwealth of Australia** in the  
presence of:

  
Signature of witness

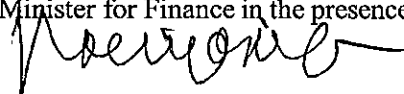
T.D. VISTARINI  
Name of witness

  
Signature

Blair Exell  
Name

Minister-Counsellor  
Title

Signed for and on behalf of the **Republic  
of Indonesia** acting by and through its  
Minister for Finance in the presence of:

  
Signature of witness

Roestam Sjarief  
Name of witness

  
Signature

Rahmat Waluyanto  
Name

Director General.  
Title



## Schedule 1

### Project Description

The objective of the Project is to assist the Republic of Indonesia in its regional economic and social development in Eastern Indonesia by improving the condition of the national road network.

The Project consists of the following parts:

**Part 1: Civil Works**

Carrying out, in selected Provinces, improvements to national roads, including:

- (i) betterment treatments, including minor widening of selected national roads in Eastern Indonesia;
- (ii) bridge replacement or major bridge repair in Eastern Indonesia as required for bridges on links for which betterment treatments have been identified;
- (iii) selected capacity expansion in Eastern Indonesia; and
- (iv) acquisition of pre-fabricated steel bridge material and replacement of selected deteriorated bridges by steel truss bridges and associated works in Eastern and Western Indonesia.

**Part 2: Implementation Support**

Provision of implementation support to ensure efficiency in implementation and overall quality of the civil works, through:

- (i) provision of technical assistance to the DGH and the PMU in the management of the Project through the provision of Project Management Support Consultants;
- (ii) provision of technical assistance to the DGH through the provision of Regional Supervision Consultants responsible for supervision of civil works;
- (iii) provision of technical assistance to the DGH, Project Managers and Procurement Committees through the provision of Procurement Advisory Services;
- (iv) provision of communications and office equipment for the PMU for Project management;
- (v) funding of Incremental Operating Costs of the PMU and of Central and Provincial level units carrying out Project activities; and
- (vi) provision of (i) training in Project management and Project administration, including procurement and financial management, to relevant Project staff, and (ii) Project environmental and social impact mitigation, management and monitoring workshops for Provincial works agencies, supervising consultants and contractors.

## Schedule 2

### Project Execution

#### Section I. Institutional and Implementation Arrangements

##### A. Institutional Arrangements

1. The Republic of Indonesia shall maintain until completion of the Project:
  - (a) The Executing Agency as the Directorate General of Highways (DGH)
  - (b) the inter-agency Steering Committee chaired by the Deputy Minister for Infrastructure of Bappenas and members or representatives from the Ministry of Finance and the Ministry of Public Works, and responsible for facilitation of coordination among the Ministries for purposes of Project implementation;
  - (c) the Secretariat to support the Steering Committee, chaired by the Director of Transportation in BAPPENAS will include working groups as required;
  - (d) separate working group(s) for each project (such as EINRIP) and ad-hoc working group(s) for separate issues (such as road safety). This is not a structural organisation but shall be established by Letter from the Deputy Minister for Infrastructure of Bappenas;
  - (e) the PMU, located within DGH, chaired by the Director of Planning in DGH and responsible for coordination of the Project activities; and
  - (f) the five regional implementation agencies of national inter-urban roads in Eastern Indonesia under the DGH: (i) *Balai Besar Pelaksanaan Jalan Nasional* in Banjarmasin; (ii) *Balai Besar Pelaksanaan Jalan Nasional* in Makassar; (iii) *Balai Pelaksanaan Jalan Nasional* in Denpasar; (iv) *Balai Pelaksanaan Jalan Nasional* in Ambon; and (v) *Balai Pelaksanaan Jalan Nasional* in Jayapura .
2. The Republic of Indonesia shall ensure that the PMU is at all times provided with:
  - (a) an executive head who shall be a government official at an appropriate senior level with sufficient project experience to provide for the efficient functioning of the PMU; and
  - (b) adequate funds and other resources, and staffed by qualified and experienced personnel in adequate numbers, as shall be necessary to accomplish its functions, responsibilities and objectives, including an assistant for planning and procurement, an assistant for implementation and supervision, an assistant for financial reporting and an assistant for environmental management and monitoring.


## **B. The Project Management Manual**

1. The Republic of Indonesia shall adopt, and, thereafter, cause each participating agency to apply, a Project Management Manual, in manner and substance acceptable to the Commonwealth, which shall, *inter alia*, set out:
  - (a) the Project management information and reporting systems and procedures, including the financial management information system;
  - (b) the financial management plan, including budgeting, disbursements, accounting and reporting requirements of Project finances, and audit procedures;
  - (c) the procurement regulations, procedures and requirements as well as standard procurement documentation, the Procurement Plan, and requirements for routine reporting about procurement status;
  - (d) the provisions of the Environmental and Social Safeguards, including the requirements and procedures for environmental and social impact prevention, mitigation and compliance monitoring;
  - (e) the provisions of the Anti-Corruption Action Plan;
  - (f) training programs and workshops; and
  - (g) the arrangements for monitoring and evaluation.
2. Except as the Commonwealth may otherwise agree in writing, the Republic of Indonesia shall not amend, suspend, abrogate or waive the Project Management Manual or any part thereof.

## **C. Miscellaneous**

1. Except as the Commonwealth may otherwise agree in writing, the Republic of Indonesia shall not amend, suspend, abrogate or waive the Anti-Corruption Plan or any part thereof.
2. Except as the Commonwealth may otherwise agree in writing, the Republic of Indonesia shall not amend, suspend, abrogate or waive the Environmental and Social Safeguards or any part thereof.
3. Without limitation to the provisions of Section 4.10 of the General Conditions, the Republic of Indonesia shall, through MPW and the Ministry of Finance, meet with the Commonwealth, through AUSAID, every six months during Project implementation, to review measures taken in response to key audit report findings, and the adequacy of the Republic of Indonesia funds and the need for any adjustment of those funds as set out in Clause 3.4 of this Agreement, the first such meeting to be held on or about 31 March 2008 or such other date as the Commonwealth may agree.
4. Without limitation to the provisions of Section 4.10 of the General Conditions, the Republic of Indonesia shall meet with the Commonwealth, represented by the Senior AusAID Representative, at least once a year to monitor and discuss overall Project progress, the first such meeting to be held on or about 30 September 2008.

5. In carrying out Part 1 of the Project, the Republic of Indonesia shall select Sub-Projects to be included in each of the Annual Work Programs that have an economic internal rate of return of at least fifteen percent (15%), calculated in a manner acceptable to the Commonwealth. Proposed Sub-Projects with an economic internal rate of return of less than 15% shall only be included if it can be demonstrated that each such Sub-Project has a significant potential development impact.
6. In carrying out Part 1 of the Project, the Republic of Indonesia shall, prior to furnishing a proposed Sub-project to the Commonwealth for its approval:
  - (a) ensure that such Sub-Project shall comply with the requirements of the Environmental and Social Safeguards established for purposes of the Project, including the determination of (i) the extent of any environmental impacts generated by the Sub-Project, the level of additional environmental studies required to identify appropriate mitigation measures, and the management and monitoring procedures necessary; (ii) the extent of any social impacts generated by the Sub-Project, and whether a full or a simplified land acquisition and resettlement action plan is to be prepared. The outputs shall be integrated into the detailed design, the contract document and the construction supervision of such Sub-Project; and
  - (b) ensure that, prior to tendering of a Sub-Project, the engineering designs to construction readiness standards and the bidding documents have been completed.
7. In carrying out Part 1 of the Project, the Republic of Indonesia shall:
  - (a) furnish each proposed Sub-project to the Commonwealth for its no-objection, including: (i) the detailed results of the feasibility study; (ii) the results of the environmental and social impact analyses of the proposed works; (iii) cost estimates; (iv) time-based implementation schedules; (v) the financing plan; (vi) budget arrangements; and (vii) the procurement plan;
  - (b) ensure that appropriate engineering, social and environmental standards and practices that would minimize any acquisition of land and avoid involuntary resettlement of Project Affected Persons have been applied in the design of the proposed works and activities of such Sub-Project and such works and activities will meet the requirements of the Environmental and Social Safeguards;
  - (c) for each Sub-Project involving the loss of assets and/or involuntary resettlement of Project Affected Persons, ensure that: (i) a Land Acquisition and Resettlement Action Plan, or a Simplified Land Acquisition and Resettlement Action Plan is prepared in consultation with the Project Affected Persons in accordance with the LARF included in the Environmental and Social Safeguards; and (ii) no contract for the carrying out of works or activities for the proposed Sub-Project is entered into until all land acquisition and resettlement requirements are completed, in full compliance with the provisions of the LARF; and
  - (d) screening is conducted to identify potential Isolated Vulnerable Peoples in the area to be covered by the proposed Sub-Project and, in the event that any such Isolated Vulnerable Peoples are identified in the area affected by any such proposed Sub-Project, a Social Impact Assessment is carried out, and where required, an Isolated Vulnerable Peoples Development Plan is

prepared and carried out in consultation with the relevant Provincial Social Department.

8. The Republic of Indonesia shall take all steps necessary to ensure that the Procurement Agent, the Financial Audit Consultant, the Technical Audit Consultant, and the Monitoring and Evaluation Consultants, as defined in the Appendix to this Agreement, are permitted to provide their services in accordance with their contractual terms of reference.
9. The Republic of Indonesia shall:
  - (a) employ Procurement Advisory Services in accordance with Section II of this Schedule to assist the Republic of Indonesia's Project Managers and Procurement Committees under the Project in the procurement of civil works contractors in accordance with the provisions of Section II of this Schedule; and
  - (b) except as the Commonwealth shall otherwise agree (i) retain the Procurement Advisory Services until the completion of the procurement activities for civil works under the Project, (ii) ensure that the Services shall at all times during Project implementation provide reports directly to the Directorate of Planning of DGH and provide a copy directly to the Inspectorate General in MPW and the Commonwealth, and (iii) take all steps necessary to ensure that the Procurement Advisory Services are permitted to provide their services in accordance with their contractual terms of reference
10. The Republic of Indonesia shall:
  - (a) employ Project Management Support Consultants, in accordance with Section II of this Schedule, to provide administrative, managerial and technical support to the PMU, including (i) preparation of progress and financial monitoring and reporting; (ii) independent quality assurance of the construction supervision process; (iii) implementation and monitoring of the provisions of the Anti-Corruption Action Plan; and (iv) general Project management support and reporting; and
  - (b) except as the Commonwealth shall otherwise agree (i) retain the services of the Project Management Support Consultants until the completion of the Project, and (ii) take all steps necessary to ensure that the Project Management Support Consultants are permitted to provide their services in accordance with their contractual terms of reference.
11. The Republic of Indonesia shall:
  - (a) employ Regional Supervision Consultants in accordance with Section II of this Schedule to provide support to DGH's regional implementation agency in Makassar and provide high-quality construction supervision for all civil works under the Project; and
  - (b) except as the Commonwealth shall otherwise agree (i) retain the services of the Regional Supervision Consultants until the completion of the works under the Project, and (ii) take all steps necessary to ensure that the Regional Supervision Consultants are permitted to provide their services in accordance with their contractual terms of reference.

12. In carrying out Part 2 (vi) of the Project, the Republic of Indonesia shall ensure that the following training is carried out at least annually: (a) Project procurement for all procurement committees at the Provincial and Central levels before procurement exercises under the Project commence; (b) DGH training for Provincial Project units managers and treasurers; (c) the application of the Project Management Manual, including the provisions of the Anti-Corruption Action Plan and the Environmental and Social Safeguards for senior staff of Provincial agencies, administrative staff and technical staff; (d) Project financial management reporting for staff of Project units, staff of Provincial finance agencies and technical staff; and (e) Project environmental and social impact mitigation and monitoring planning, delivery and reporting workshops for Provincial works agencies, supervising consultants and contractors.

## **Section II. Procurement**

### **A. Overview**

#### **1. Procurement Procedures**

(a) Procurement procedures under the Project shall be based on the procurement procedures of the World Bank. These procedures shall be operationalised in the PMM. The PMM shall include, where consistent with World Bank procurement procedures and this Agreement, the application of the provisions of Presidential Decree No.80/2003, (as amended with Perpres 8/2006) to each procurement.

(b) International competitive bidding shall be used for the procurement of (i) works and (ii) goods valued at A\$300,000 or more.

(c) National competitive bidding may be used for the procurement of goods valued at less than A\$300,000.

(d) Consultants' services shall be procured under contracts awarded on the basis of quality- and cost-based selection.

(e) All documents relating to procurement under the Project shall be subject to the Commonwealth's prior review in accordance with the provisions of Appendix 1 of the World Bank Procurement Guidelines and Appendix 1 of the World Bank Consultant Guidelines.

(f) Bidding documents shall include the requirement that bidders shall show separately any estimated applicable taxes which are included in the proposed contract price.

(f) The provisions of Section II of Schedule 2 apply without limitation on the provisions of the Anti-Corruption Action Plan.

#### **2. Goods and Works**

All goods and works required for the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with the World Bank's "Guidelines for Procurement under IBRD Loans and IDA Credits, dated May 2004 and as revised as of October 1, 2006" (the Procurement Guidelines) and with the provisions of this Section of Schedule 2.

#### **3. Consultants' Services**

All consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with the World Bank's "Guidelines for Selection and Employment of Consultants by World Bank Borrowers, dated May 2004 and as revised as of October 1, 2006" (the Consultant Guidelines) and with the provisions of this Section of Schedule 2.

4. Definitions

The capitalized terms used in this Section II to describe particular procurement methods or methods of review by the Commonwealth of particular contracts refer to the corresponding method described in the Procurement Guidelines or Consultant Guidelines, as the case may be.

**B. Goods and Works**

I. International Competitive Bidding

1. Except as otherwise provided in paragraph B.II below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding, provided that such bidding shall be restricted to: (i) entities carrying on business in Australia or New Zealand; (ii) entities carrying on business in The Republic of Indonesia, established in accordance with Indonesian laws and regulations, which, in the case of an incorporated company, has majority Indonesian local ownership or shareholding; and (iii) entities that the Republic of Indonesia and the Commonwealth have agreed in writing are constituted in a way that reflects a spirit of partnership between Australia, The Republic of Indonesia and New Zealand.
2. Without limitation on the other provisions of this Section of Schedule 2 and of the Procurement Guidelines, the following provisions shall apply in respect of goods and works to be procured under the Project:
  - (a) The Republic of Indonesia shall make publicly available on the official website of MPW (www.pu.go.id or any other website agreed with the Commonwealth) each Annual Procurement Plan, including all updates thereto, promptly after their finalization.
  - (b) The Republic of Indonesia shall disclose a summary of the evaluation of all bids and proposals for specific contracts to all bidders and parties submitting proposals therefore, promptly after the notification of award to the successful bidder. Information in such summaries shall be limited to a list of bidders, all bid prices and financial proposals as read out at public openings for bids and financial proposals, all bids and proposals declared non-responsive (together with the reasons for such an assessment), the name of the winning bidder and the contract price. Such summaries shall be made available to any member of the public promptly upon request.
  - (c) The Republic of Indonesia shall make publicly available and publish widely (including on the EINRIP website) contract award information for all contracts for goods and works and shall make the contract award information available to any member of the public upon request, promptly after such award.

- (d) The Republic of Indonesia shall ensure that the official responsible for approving the recommendation of a Procurement Committee shall not be a member of such Procurement Committee.
- (e) Each member of the procurement committee for a Sub-Project and each Echelon I-IV official of MPW ("Official"), who is involved in the procurement process for a Sub-Project, shall disclose to the head of the procurement committee for that Sub-Project and to the Procurement Advisory Services consultant, if they or any of their immediate family members are related or otherwise connected to any of the members of the boards of directors or commissioners of the bidders and/or consultants participating in any of the procurement packages for any Sub-Project under the Project ("Interested Member"). Any Interested Member shall recuse himself or herself from further participation in the evaluation process for that Sub-Project; and any Interested Member who is an Official shall recuse himself or herself from any decisions relating to the evaluation process or contract award for that Sub-Project.

## II. National Competitive Bidding

1. Goods estimated to cost less than A\$300,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding. The Procurement Plan shall specify the circumstances under which such methods may be used.
2. Subject to the provisions of this Section of Schedule 2, the procedures to be followed for national competitive bidding shall, to the extent applicable, be those set forth in Presidential Decree No.80/2003 as amended with Perpres 85/2006 of the Republic of Indonesia (a) with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines and (b) provided that such bidding shall be restricted to: (i) entities carrying on business in Australia or New Zealand; (ii) entities carrying on business in The Republic of Indonesia, established in accordance with Indonesian laws and regulations, which, in the case of an incorporated company, has majority Indonesian local ownership or shareholding; and (iii) entities that the Republic of Indonesia and the Commonwealth have agreed in writing are constituted in a way that reflects a spirit of partnership between Australia, the Republic of Indonesia and New Zealand.
3. Registration and Possible Eligibility Restrictions
  - (a) Bidding shall not be restricted to pre-registered firms and registration shall not be a condition for participation in the bidding process.
  - (b) If Bidders are not registered to practice in Indonesia, prior to award of contract, bidders (i) shall be allowed a reasonable time to complete the registration process, and (ii) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.
4. Pre-qualification

Pre-qualification shall not be undertaken.



5. Post-qualification

Post-qualification procedures shall be applied based on criteria agreed between the Republic of Indonesia and the Commonwealth before procurement commences.

6. Joint Ventures

A bidder declared the lowest evaluated responsive bidder shall not be required to form a joint venture or to sub-contract part of the supply of goods as a condition of award of the contract.

7. Preferences

- (a) No preference of any kind shall be given to national bidders.
- (b) Regulations issued by a sectoral ministry, Provincial regulations and local regulations which restrict national competitive bidding procedures to a class of contractors or a class of suppliers shall not be applicable to procurement procedures under this Agreement.

8. Advertising

- (a) Invitations to bid shall be advertised in at least one widely circulated national daily newspaper allowing a minimum of 30 days for the preparation and submission of bids and allowing potential bidders to purchase bidding documents up to 24 hours prior the deadline for the submission of bids.
- (b) All tender notifications shall be advertised in national newspapers, on the MPW Semi E-Procurement system and on the EINRIP website.
- (c) Bid documents shall be made available free of charge on the MPW Semi E-Procurement system and on the EINRIP website. Bid documents shall also be made available, by mail or in person, to all who are willing to pay the required fee, which shall be a reasonable fee.
- (d) Bidders domiciled outside the area/district/province of the unit responsible for procurement shall be allowed to participate regardless of the estimated value of the contract.
- (e) Foreign bidders complying with the AIPRD eligibility criteria shall not be precluded from bidding. If a registration process is required, a foreign firm declared the lowest evaluated bidder shall be given a reasonable opportunity for registering.

9. Bid Security

Bid security shall be, at the bidder's option, in the form of a letter of credit or bank guarantee from a reputable bank. If the financial institution is located outside the Republic of Indonesia such financial institution shall have a correspondent financial institution located in the Republic of Indonesia.

10. Bid Opening and Bid Evaluation

- (a) Bids shall be opened in public, immediately after the deadline for submission of bids. Bids shall be invited in one envelope (technical and price).

- (b) Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated bidder.
- (c) The method of evaluation of bids shall be the pass/fail method of evaluation.
- (c) Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.
- (d) No bidder shall be rejected merely on the basis of a comparison with the owner's estimate and budget ceiling without the Commonwealth's prior concurrence.
- (e) The qualifications and experience of members of the procurement committee shall be fully documented, retained on file to serve as evidence of their suitability to serve as members of the committee and available for subsequent review by the Commonwealth and other interested parties.
- (f) There shall be no pre-bid conference without the Commonwealth's prior written concurrence.
- (g) If an appeal against the reply to an objection is lodged, the process of selection of a provider of goods shall be postponed while awaiting the result of the appeal, unless the Commonwealth provides express written advice to the contrary.
- (h) There shall be no limit to the period during which objections to an award may be lodged.

11. Rejection of Bids

- (a) Bids shall not be rejected and new bids solicited without the Commonwealth's prior concurrence.
- (b) When the number of responsive bids is less than three, re-bidding shall not be carried out without the Commonwealth's prior concurrence.
- (c) If a Procurement Committee declares a tender to have failed, the Procurement Committee shall not conduct re-bidding but shall instead inform the Republic of Indonesia and the Commonwealth of the circumstances and shall recommend a course of action.

12. Performance Guarantee

The value of any required performance guarantee at the time of the signing of a contract, shall be 10% of the value of the contract, subject to any increase in consideration of Article 13 (3) of Presidential Decree No.80/2003.

**C. Consultants' Services**

**I. Quality and Cost-Based Selection**

- 1. Consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. Short lists shall comprise not less than four (4) but

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no more than six (6) firms with no restrictions as to the geographical spread of country of origin.

2. Without limitation on the other provisions of this Section of Schedule 2, of the Consultant Guidelines and of the Anti-Corruption Action Plan, the following provisions shall apply in respect of consultants to be procured under the Project:
  - (a) The Republic of Indonesia shall make available to any member of the public promptly upon request, all shortlists of consultants under the Project.
  - (b) The Republic of Indonesia shall disclose a summary of the evaluation of all bids and proposals for specific contracts to all bidders and parties submitting proposals therefore, promptly after the notification of award to the successful consultant. Information in such summaries shall be limited to a list of consultants, all bid prices and financial proposals as read out at public openings for bids and financial proposals, all bids and proposals declared non-responsive (together with the reasons for such an assessment), the technical scores of all responsive consultants, the name of the winning consultant and the contract price. Such summaries shall be made available to any member of the public promptly upon request.
  - (c) The Republic of Indonesia shall make publicly available and publish widely (including on the EINRIP website) contract award information for all consultants' services, and shall make the contract award information available to any member of the public upon request, promptly after such award.
  - (d) The Republic of Indonesia shall ensure that the official responsible for approving the recommendation of a Procurement Committee shall not be a member of such Procurement Committee.
  - (e) The Republic of Indonesia shall ensure that:
    - (i) the evaluation of the technical proposals shall be completed within four weeks of the deadline for receipt of proposals, and the proposal for the award of contract shall be completed, along with the draft contract, within four weeks of the Commonwealth's no-objection to the technical evaluation report, unless otherwise agreed by the Commonwealth; and
    - (ii) the qualifications and experience of members of the procurement committee for the selection of consultants shall be fully documented, retained on file to serve as evidence of their suitability to serve as members of the committee, and readily available for subsequent review by the Commonwealth.
  - (f) The Republic of Indonesia shall, in the preparation of the owner's estimates for consultant contracts, take into account the minimum staffing salaries as agreed with the Commonwealth.

### **Section III. Project Monitoring and Reporting**

#### **A. Project Reports**

1. (a) The Republic of Indonesia shall monitor and evaluate the progress of the Project and prepare Project Progress Reports in accordance with the provisions of Section 4.08 of the AIPRD General Conditions. Each Project Progress Report shall cover the period of one month, and shall be furnished to the Commonwealth not later than one month after the end of the period covered by such report, commencing two months from the Effective Date of this Agreement.
- (b) Without limitation to the generality of sub-paragraph (a) above, each Project Progress Report shall include: (i) the progress with pre-contract preparation, including environmental and social impact assessment, land acquisition and resettlement; (ii) procurement under the Project and expenditures by contract; (iii) physical progress in Project implementation; (iv) overall progress against the planned implementation schedule; and (v) the extent and quality of compliance with the implementation procedures set out in the Project Management Manual, including the Anti-Corruption Action Plan.
2. (a) The Republic of Indonesia shall monitor and evaluate the progress of the Project and prepare Financial Monitoring Reports in accordance with the provisions of Section 4.08 of the AIPRD General Conditions. Each Financial Monitoring Report shall cover the period of three months, and shall be furnished to the Commonwealth not later than one month after the end of the period covered by such report, commencing four months from the Effective Date of this Agreement.
- (b) Without limitation to the generality of sub-paragraph (a) above, each Financial Monitoring Report shall include: (i) the expenditures under each Project contract; and (ii) financial monitoring reporting including projected sources and applications of funds for the six month period following the reporting period.
3. (a) The Republic of Indonesia shall prepare Annual Progress Reports, in accordance with the agreed format set out in the Project Management Manual, on the progress achieved in Project implementation in the preceding year, and setting out the measures proposed for achieving the Project objectives and implementation targets during the following year. Annual Progress Reports shall be furnished to the Commonwealth on the 31<sup>st</sup> of January of each year, commencing 31<sup>st</sup> of January 2008.
- (b) The Republic of Indonesia shall, when preparing the Annual Progress Reports: (i) take into account the results of the Project monitoring and evaluation for such year, carried out by the Monitoring and Evaluation Consultants, and (ii) prepare the Annual Progress Reports on the basis of the performance indicators set forth in sub-paragraph (c) below.
- (c) The performance indicators referred to in sub-paragraph (b) above shall, except as otherwise agreed by the Commonwealth, consist of the following:

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(i) traffic growth; (ii) road condition as measured by International Roughness Index (IRI); (iii) average speeds; (iv) accident rates; and (v) vehicle operating costs.

**B. Financial Management, Financial Statements and Audits**

1. The Republic of Indonesia shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the AIPRD General Conditions.
2. Without limitation on the provisions of Part A of this Section, the Republic of Indonesia shall prepare and furnish to the Commonwealth a Financial Monitoring Report including interim un-audited financial reports for the Project covering the calendar quarter, in form and substance satisfactory to the Commonwealth.
3. The Republic of Indonesia shall have its Financial Statements audited in accordance with the provisions of Section 4.09(b) of the AIPRD General Conditions by independent auditors acceptable to the Commonwealth. Each audit of the Financial Statements shall cover the period of one Fiscal Year, provided, however, that the first audit shall cover the period between the Effective Date of this Agreement and 31 December 2007. The audited Financial Statements for each such period shall be furnished to the Commonwealth not later than six months after the end of such period.

**Section IV. Withdrawal of the Proceeds of the Project Loan**

**A. General**

1. The Republic of Indonesia may withdraw the proceeds of the Project Loan in accordance with the provisions of Article II of the AIPRD General Conditions and this Section, and such additional instructions as the Commonwealth may specify in the Disbursement Letter to the Republic of Indonesia as set forth in paragraph 2 below, to finance Eligible Expenses
2. The Republic of Indonesia's AU\$30 million contribution (or equivalent in IDR) to the Project will be applied to meet Project expenses in accordance with Clause 3.4 of this Agreement and as specified in the Disbursement Letter.
3. The following table specifies the categories of Eligible Expenses that may be financed out of the proceeds of the Project Loan ("Loan Category") and the allocations of the amounts of the Project Loan to each Loan Category. Whilst it is possible that Eligible Expenses may include payment of costs associated with applicable taxes related to the Project, the Parties agree that any such costs are to be offset by the Republic of Indonesia's financial contribution to the Project as set out in clause 3.4 of this Agreement.

4.

Loan Category	Amount of the Project Loan Allocated (in AUD)
(1) Civil works under Part 1 of the Project	229,700,000
(2) Goods:	
(i) under Part 1 (iv) of the Project	9,900,000
(ii) under Part 2 (iv) of the Project	300,000
(3) Incremental Operating Costs under Part 2 (v) of the Project	700,000
(4) Consultants' services:	
(i) under Part 2 (i) of the Project	6,300,000
(ii) under Part 2 (ii) of the Project	17,000,000
(iii) under Part 2 (iii) of the Project	1,200,000
(5) Unallocated	34,900,000
<b>TOTAL</b>	<b>300,000,000</b>

**B. Withdrawal Conditions; Withdrawal Period**

1. Notwithstanding the provisions of Part A of this Section no withdrawal shall be made for payments made for expenses incurred prior to the Effective Date of this Agreement.
2. The Closing Date is 1 June 2011.
3. Funds transferred to the designated account of the Republic of Indonesia prior to the Closing Date may continue to be utilised in accordance with this Agreement until 31 December 2012.


### Schedule 3

#### Repayment Schedule

Date Payment Due	Amount of the Withdrawn Project Loan Balance repayable (expressed as a percentage)*
On each 1 March and 1 September:	
commencing 1 September 2017 to and including 1 March 2027	1%
commencing 1 September 2027 to and including 1 March 2047	2%

\* The percentages represent the percentage of the Withdrawn Project Loan Balance to be repaid, except as the Commonwealth may otherwise specify pursuant to Section 3.03 of the AIPRD General Conditions.

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## Appendix

### Section I. Definitions

1. "AIPRD" means the Australia Indonesia Partnership for Reconstruction and Development.
2. "AIPRD General Conditions" means the *AIPRD General Conditions for Project Loans*, dated 21 June 2006, with the modifications set forth in Section II of this Appendix.
3. "AIPRD Partnership Loan Agreement" means the *AIPRD Partnership Loan Agreement*, dated 27 June 2006, with the amendments set forth in Section III of this Appendix.
4. "Annual Progress Report" means the report prepared in accordance with paragraph 3 of Section III of Schedule 2 to this Agreement
5. "Annual Work Program" means each Annual Work Program, acceptable to the Commonwealth, setting out the activities to be conducted under the Project during the time period of such Annual Work Program, such time period to be approximately 18 to 24 months for each Annual Work Program, and "Annual Work Programs" means the three Annual Work Programs to be established for purposes of carrying out the activities under the Project.
6. "Anti-Corruption Action Plan" and "ACAP" mean the anti-corruption action plan adopted on 29 June 2007, pursuant to Letter No. HL.02.01-SJ/416 from the Secretary General of the Ministry of Public Works, that specifies the measures and actions to be taken during implementation of the Project with respect to information disclosure, oversight and monitoring, mitigation of fraud and collusion risks, complaint handling, and sanctions and remedies, as such Anti-Corruption Action Plan may be amended from time to time with the written agreement of the Commonwealth.
7. "AusAID" means the Australian Agency for International Development.
8. "BAPPENAS" means *Badan Perencanaan Pembangunan Nasional*, the Republic of Indonesia's National Development Planning Agency and any successor thereto.
9. "Central" means relating to the Government Ministries of the Republic of Indonesia.
10. "DGH" means the Directorate General of Highways in the Republic of Indonesia's Ministry of Public Works and any successor thereto.
11. "Disbursement Letter" means the letter from the Commonwealth to the Republic of Indonesia setting forth instructions on the financing of Eligible Expenses under the Project and additional to the instructions set forth in the Disbursement Guidelines for Projects Financed under the Australia-Indonesia Partnership for Reconstruction and Development Program.
12. "Eastern Indonesia" means the Republic of Indonesia's provinces of Bali, West Nusa Tenggara (Nusa Tenggara Barat), East Nusa Tenggara (Nusa Tenggara Timur), West

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- Kalimantan (Kalimantan Barat), Central Kalimantan (Kalimantan Tengah), South Kalimantan (Kalimantan Selatan), East Kalimantan (Kalimantan Timur), North Sulawesi (Sulawesi Utara), Gorontalo, Central Sulawesi (Sulawesi Tengah), South East Sulawesi (Sulawesi Tenggara), South Sulawesi (Sulawesi Selatan), West Sulawesi (Sulawesi Barat), Maluku, North Maluku (Maluku Utara), Papua, and West Irian Jaya (Irian Jaya Barat).
13. "Environmental and Social Safeguards" means the policy statement adopted on 29 June 2007, pursuant to Letter No. HL.02.01-SJ/416 from the Secretary General of the Ministry of Public Works, setting forth the measures to be taken during the implementation of the Project to eliminate or offset adverse environmental and social impacts of said implementation or to reduce such impacts to acceptable levels, and setting forth the actions needed to implement such measures; as such document may be amended from time to time with the written agreement of the Commonwealth.
  14. "Financial Audit Consultant" means the independent financial auditor, referred to in Section I.C.7 of Schedule 2 to this Agreement, employed by the Commonwealth, to audit financial activities under the Project in accordance with terms of reference prepared by the Commonwealth in consultation with the Republic of Indonesia.
  15. "Financial Monitoring Report" means the report prepared in accordance with paragraph 2 of Section III of Schedule 2 to this Agreement
  16. "Fiscal Year" means the Republic of Indonesia's fiscal year commencing 1 January and ending 31 December.
  17. "Incremental Operating Costs" means the reasonable costs of incremental expenses incurred by the Central and Provincial level units and the PMU in the carrying out of the Project (which expenditures would not have been incurred absent the Project), including staff travel and per diem, communications, consumables, web page operation and maintenance, advertisement of bidding, printing and publication of Project information, rental of meeting and training facilities, and specific output-related services, but in all cases excluding Government staff salaries, allowances (except for per diem) and honoraria.
  18. "Isolated Vulnerable Peoples" means those social groups in the Republic of Indonesia that have a distinct social and cultural identity, and that are susceptible to being disadvantaged in the development process induced by the Project or any part thereof.
  19. "Isolated Vulnerable Peoples Development Plan" means the plan to be prepared where a proposed Sub-project will have a significant impact on such Isolated Vulnerable Peoples, such plan to identify ways of ensuring that adverse impacts on Isolated Vulnerable Peoples are fully mitigated.
  20. "Land Acquisition and Resettlement Action Plan" and "LARAP" mean a land acquisition and resettlement action plan under one or more Sub-Projects for the provision of compensation, rehabilitation and resettlement assistance to Project Affected Persons and prepared in accordance with the Environmental and Social Safeguards.

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21. "Land Acquisition and Resettlement Policy Framework" and "LARF" mean the framework which identifies the conditions under which a LARAP or SLARAP is to be prepared when there are Project Affected Persons.
22. "Loan Category" means a category set forth in the table in Section III of Schedule 2 to this Agreement.
23. "Ministry of Finance" means the Republic of Indonesia's Ministry of Finance and any successor thereto.
24. "Monitoring and Evaluation Consultants" mean the independent consultants, referred to in Section I.C.7 of Schedule 2 to this Agreement, employed by the Commonwealth, to carry out the monitoring and evaluation program under the Project in accordance with terms of reference prepared by the Commonwealth in consultation with the Republic of Indonesia.
25. "MPW" means the Republic of Indonesia's Ministry of Public Works and any successor thereto.
26. "PAS" means the Procurement Advisory Services providing support to DGH, the Project Managers and the Procurement Committees, to help ensure that procurement and award decisions are undertaken in such a way as to avoid collusive and fraudulent practices.
27. "Perpres 36/2005" means the Republic of Indonesia's Presidential Regulation No. 36 of the year 2005 on Procurement of Land for Implementation of Development for Public Interest. [Title]
28. "Perpres 65/2006" means the Republic of Indonesia's Presidential Regulation No. 65 of the year 2006 on Amendment to Presidential Regulation No 36/2005.[Title]
29. "PIU" means a Republic of Indonesia Project implementation unit.
30. "PMSC" means the Project Management Support Consultants providing technical support to the DGH and the PMU in the management of the Project, including financial and progress monitoring and reporting, information management and dissemination, quality assurance and performance review for the Regional Supervision Consultants, implementation and monitoring of the Anti-Corruption Action Plan, support for Project monitoring and evaluation, and support for implementation of a training program to support Project management and implementation.
31. "PMU" means the Project Management Unit in DGH.
32. "Procurement Agent" means, for the purposes of this Agreement, the procurement agent referred to in Section I.C.7 of Schedule 2 to this Agreement, employed by the Commonwealth to assist DGH in the procurement of consultants' services under the Project.
33. "Procurement Plan" means the Republic of Indonesia's procurement plan for the Project and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

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34. "Project Affected Person" means a person who, on account of the execution of Part 1 of the Project, has experienced or would experience direct economic and social impacts caused by the involuntary taking of land, resulting in: (a) relocation or loss of shelter; (b) loss of assets or access to assets; or (c) loss of income sources or means of livelihood, whether or not such person must move to another location, and "Project Affected Persons" means, collectively, all such persons.
35. "Project Management Manual" and "PMM" mean the manual to assist DGH, PMU, Central and Provincial agencies and consultants under the Project in the implementation of the Project and referred to in Part B of Section I of Schedule 2 to this Agreement; as such Project Management Manual may be amended from time to time with the prior agreement of the Commonwealth.
36. "Project Progress Report" means the report prepared in accordance with paragraph 1 of Section III of Schedule 2 to this Agreement.
37. "Province" means a province, an administrative division of the Republic of Indonesia and "Provincial" means relating to a Province.
38. "RSC" means the Regional Supervision Consultants contracted and managed by DGH through the Directorate of Roads and Bridges, Eastern Region, and responsible for supervision of works and having the role of 'Engineer' under a FIDIC-type contract, including preparation and maintenance of a quality assurance plan, validation and updating of designs, supervision of all civil works, environmental and social monitoring and management, and support for financial and progress monitoring and reporting.
39. "Simplified Land Acquisition and Resettlement Action Plan" and "SLARAP" mean a simplified land acquisition and resettlement action plan, as defined in the LARF, under one or more Sub-Projects for the provision of compensation, rehabilitation and resettlement assistance to Project Affected Persons and prepared in accordance with the Environmental and Social Safeguards.
40. "Social Impact Assessment" means the assessment to be carried out where Isolated Vulnerable Peoples are identified within 10 km of a proposed Sub-project.
41. "Sub-Project" means each Sub-Project for road construction, betterment or expansion or for bridge construction under Part 1 of the Project that is included in an Annual Work Program and meets the requirements set forth in paragraph 1 of Part C of Section II of Schedule 2 to this Agreement.
42. "Tax Letter" means the letter issued by the Republic of Indonesia setting out the procedures for the levy, reimbursement of, or the exemption from, taxes under the Project.
43. "Technical Audit Consultant" means the technical audit consultant, referred to in Section I.C.7 of Schedule 2 to this Agreement, employed by the Commonwealth, to carry out technical audits during the implementation of civil works under the Project to assess to what extent the required quality has been achieved, in accordance with terms of reference prepared by the Commonwealth in consultation with the Republic of Indonesia.

44. "Western Indonesia" means the Republic of Indonesia's provinces of Nanggroe Aceh Darussalam, North Sumatra (Sumatera Utara), West Sumatra (Sumatera Barat), Riau, Riau Islands (Kepulauan Riau), Jambi, Bengkulu, South Sumatra (Sumatera Selatan), Bangka-Belitung, Lampung, Jakarta Special Capital Region (Daerah Khusus Ibukota Jakarta), Banten, West Java (Jawa Barat), Central Java (Jawa Tengah), Yogyakarta Special Region (Daerah Istimewa Yogyakarta), and East Java (Jawa Timur).
45. "World Bank" means the International Bank for Reconstruction and Development and the International Development Association.

## **Section II. Modifications to the AIPRD General Conditions**

The modification to the *AIPRD General Conditions for Project Loans*, dated 21 June 2006, is as follows:

1. Section 2.07 of the AIPRD General Conditions is amended to read:

### **“Section 2.07. Reallocation**

Notwithstanding any allocation of an amount of the Project Loan to a category of expenses under the Project Loan Agreement, if the Commonwealth reasonably determines at any time that such amount will be insufficient to finance such expenses, it may, by notice to the Republic of Indonesia reallocate any other amount of the Project Loan which in the opinion of the Commonwealth is not needed for the purpose for which it has been allocated under the Project Loan Agreement, to the extent required to meet the estimated shortfall.”

## **Section III. Amendments to the AIPRD Partnership Loan Agreement**

Pursuant to clause 5.1 of the *AIPRD Partnership Loan Agreement*, dated 27 June 2006, said Agreement (excluding Schedules 1 and 2) is hereby amended as follows for the purposes of this Agreement, and this provision shall prevail:

1. Clause 7.2 (8) of the AIPRD Partnership Loan Agreement is amended to read:


“(8) a Project manual (including an anti-corruption action plan);”

2. The first sentence of Clause 8.1 of the AIPRD Partnership Loan Agreement is amended to read:

“8.1 The Republic of Indonesia must ensure that, in the procurement of goods and works, only the following entities are eligible to tender for or are awarded Implementation Contracts:”.

3. A new Clause 8.2 is added to the AIPRD Partnership Loan Agreement as follows:

“8.2 The Republic of Indonesia must ensure that, in the procurement of consultants services, no restrictions are applied as to the country of origin of firms or the geographical spread of the country of origin of firms.”

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