

**November 2020**

**TERMS OF REFERENCE**

**Consulting Services for Preparation of  
Environmental and Social Management Plan (ESMP)  
Resettlement Plan (RAP) and Indigenous Peoples Plan (IPP)  
for the Indonesia Sustainable Least-cost Electrification (ISLE) Project**

**PT. Perusahaan Listrik Negara Persero (PLN)**

## 1 Project Background

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**Indonesia has made it a priority to reach 100 percent electrification by 2024.** From the current 98 percent access rate, the Government of Indonesia is targeting universal access by 2024. The majority of the 6 million people who lack access to electricity live in the Eastern Islands. According to the Government of Indonesia's access rate, the lowest electrification rates are in NTT with 86 percent, South Maluku with 91 percent and Central Kalimantan and Central Papua with 94.5 percent. The Government of Indonesia's access rate encompasses (i) PLN's customers, (ii) villages that were electrified under the electrification program of the Ministry of Villages, Disadvantaged Areas Development and Transmigration (in short: Ministry of Villages) and (iii) households that were electrified under the Ministry of Energy and Mineral Resources (MEMR) pre-electrification program. When restraining the definition of electrification to PLN customers, the country access rate is 95 percent, with the lowest rates being 49 percent in Central Papua, 57 percent in NTT, 77 percent in West Sulawesi and 86 percent on average in Maluku.

**In Indonesia, the low electrification ratio is usually paired with high average generation cost.** In addition to significantly lower access rates, the Eastern Islands are also characterized by small to medium size grids (below 150 MW) mostly powered with diesel generators. Their average cost of generation is the highest in Indonesia. As presented in Table 2, in 2018, the average generation cost in those islands was around US\$ 0.16 per kWh, compared to around US\$ 0.07 per kWh in Java-Bali. The cost of generation has been steadily increasing due to diesel fuel fluctuations in the last few years. As of today, the impact of the Covid-19 crisis and the drastic reduction in fuel cost on the average generation cost is still to be determined.

**To support the development of a sustainable electrification plan and lessen PLN's financial burden who is requested by law to offer a uniformed tariff across islands, it is critical to also reduce the cost of generation of the island main grids as more customers will be connected to it.** As PLN is required by law to offer a uniform tariff across islands, currently PLN cannot recoup its costs in the Eastern Islands. Under MEMR Regulation 28/2016 and its amendments, MEMR set PLN's customer tariff according to types of customers and fixed it for the whole country – this decision was taken to reduce inequalities between islands and ensure a fair economic development across the country. Therefore, PLN cannot reflect the real cost of the electricity per island and capital expenditures (CAPEX) necessary for grid upgrades and extensions needed to connect new households. If PLN recovers some of its cost through cross-subsidization between grids, it will need to reduce the cost of its electricity in those grids. It would also reduce the burden of connecting new customers to grids that are not cost-reflective.

**The Indonesia Sustainable Least-cost Electrification (ISLE) program aims to enable PLN to develop and pilot a sustainable and affordable framework to electrification by reducing the cost of generation, improving grid reliability and mobilizing private investments.** ISLE provides a set of solutions to PLN to (i) reduce the cost of generation in its Eastern Islands by increasing the share of least-cost renewable generation, (ii) improve grid reliability by developing clear guidelines on how to assess electricity losses and lack of reliability and (iii) reduce the financial burden on the public finances by mobilizing private investments. All of these actions being key for large as well as small grids. The upstream activities focus on the development of the electrification roadmap and framework, ensuring its replicability, while the downstream activities focus on piloting such a framework. The downstream activities include preparation of feasibility studies (FS) and relevant environmental and social (E&S) instruments for the identified project investments, including Environmental and Social Management Plan (ESMP), Resettlement Plan (RAP) and Indigenous Peoples Plan (IPP), Stakeholder Engagement Plan (SEP). Labor Management Plan (LMP) will be developed as part of the ESMP.

**To enable the Framework to be replicated in the rest of Indonesia, PLN identified with the support of the World Bank, 10 islands that are representative of different categories of small to medium size island grids in the Eastern Islands.** The ten islands were selected by PLN based on the following criteria: (i) PLN grid size (5-250 MW); (ii) average generation cost; and (iii) existing electrification rate. The islands were divided into three groups, (i) Category 1: islands with installed capacity below 10 MW, 100 percent diesel generation and low electrification ratio; (ii) Category 2: islands with an installed capacity between 10 and 50 MW with 100 percent diesel generation; and (iii) Category 3: islands with an installed capacity between 50 and 300 MW with a diverse energy mix. ISLE is focusing on two regions, namely Maluku and Nusa Tenggara (NTT and NTB). As per the official letter from PLN Planning Director received in February 2019, the selected islands are Alor, Morotai and Rote for Category 1; Buru, Seram and Tual/Kei Kecil for Category 2; and Flores, Sumbawa, Ternate and Timor Barat for Category 3 (together the Pilot Islands).

**The ISLE Phase 1 upstream technical assistance has identified the following investments** as below:

- a. 6 hybridization projects of 20-30 MWp solar with battery combined to existing diesel in Alor, Buru, Morotai, Rote, Seram, Tual/Kei Kecil
- b. 10 stand-alone PV projects (around 50 MWp each) in Flores, Sumbawa, Timor and Ternate,
- c. 5 grid-connected stand-alone battery storage in Flores, Sumbawa and Timor
- d. Two transmission lines have been identified as critical for grid reliability and stability in Timor (around 80km as per RUPTL) and Flores (around 80km as per RUPTL)
- e. Grid upgrades including 500m doubling of 150kV line and doubling two transformers in Timor, doubling of two transformers and implementation of a SCADA system with automatic generation control (AGC) in Sumbawa, doubling of transformers and implementation of a SCADA system with AGC in Flores, capacitor banks on distribution feeders, doubling of 20 kV line and implement SCADA in Alor, doubling of 20 kV system and transformer and implement SCADA in Rote, doubling transformer and implement SCADA with AGC in Ternate, implement SCADA system in Buru and Morotai, doubling transformers, interconnection of system and implement SCADA in Seram, doubling 20 kV line and implement SCADA system in Tual/Kei Kecil.

The precise location of the above project investments will be provided by the FS conducted under a separate contract. The FS will also include preliminary environmental and social assessment which will feed information to this ESMP and the AMDAL or UKL-UPL, which is required to obtain the environmental permit later during the investment and physical construction phase.

**Under the new World Bank Environmental and Social Framework (ESF), these identified project investments are considered a substantial risk due to the potential footprint they may have as one MWp represents around 1.2 hectares of land.** The following E&S standards (ESS) may be triggered by investment projects, more precisely:

- a. **ESS 2: Labor and Working Conditions** - Environmental and social screening activities associated with the FS prepared by the project will consider risks and impacts of proposed project investments on labor and working conditions, as well as draft provisions and labor procedures for later consideration in the design and tender process. Identified project investments' LMP will be prepared as part of the ESMP;
- b. **ESS 3: Resource Efficiency and Pollution Prevention and Management** - the FS shall assess the possible impacts and risks on environmental pollution from procuring goods and materials (such as used batteries handling and other hazardous waste materials), impacts on human health and safety and the possible construction impacts to the environment. The required mitigation measures will be developed as part of the ESMP;

- c. **ESS 4: Community Health and Safety** - the FS will assess the possible impacts and risks on community health and safety from construction activities, interactions between contractors and the remote local beneficiaries and affected communities, electromagnetic fields from transmission line (if any) and possible impacts related to ecosystem services and safety. The required mitigation measures will be developed as part of the ESMP;
- d. **ESS 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement** - as the target locations of the identified project investments are in the Eastern Islands of Indonesia, communal/customary land may be encountered. The environmental and social screening conducted for the FS and E&S instruments will include a social impact assessment designed to identify the extent of land taking requirements, the social impacts associated with these, and the potential modalities for the acquisition of land that mitigate impacts on affected stakeholders. The necessary Resettlement Plan (RAP), including a social assessment, will be prepared based on TOR provided below;
- e. **ESS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources** - the E&S instruments to be produced under the technical assistance will contain provisions for biodiversity assessment, management and conservation. The required mitigation measures will be developed as part of the ESMP;
- f. **ESS 7: Indigenous Peoples (IPs)/Sub-Saharan African Historically Underserved Traditional Local Communities** - the presence of Indigenous Peoples at the project investments' locations will be confirmed as part of the environmental and social screening. Where IPs are confirmed to be present or attached to areas in which future investments are to be developed, IPP (Indigenous People Plan) will be developed as a stand-alone document or as a separate section of the ESMP with the provisions equivalent to IPP. The necessary IPP, including a social assessment, would be prepared based on TOR provided below. Meaningful consultation will be conducted under the E&S instrument development as mentioned in the project's Stakeholder Engagement Framework (SEF) that provides specific engagement requirements to ensure the inclusion of the indigenous peoples. Free, prior, and informed consent (FPIC) may be required in the event of adverse impacts on IPs following ESS7 i.e.: i) have adverse impacts on land and natural resources subject to traditional ownership or under customary use; ii) cause IPs relocation from land/natural resource; and iii) have significant impacts on IPs that are material to the identity and/or cultural, ceremonial, or spiritual aspects of IPs live;
- g. **ESS 8: Cultural Heritage** - the technical assistance will include identification of cultural heritage and assessment of tangible and intangible significance in consultation with affected stakeholders, and deployment of a chance find procedure. The procedures will be provided in the proposed ESMP. Given that the identified project investments are likely to take place in areas with Indigenous Peoples, the ESMPs should identify areas of cultural significance to local communities, particularly natural features with tangible and intangible heritage significance including spirit sites associated with streams and other water bodies, cliffs, caves, and grottos, etc. Chance Finds Procedure will be prepared as part of the ESMP;
- h. **ESS 10 Stakeholder Engagement and Information Disclosure** – Given the identified project investment locations are yet to be determined, a framework-level approach (Stakeholder Engagement Framework – SEF) is prepared to guide the preparation of Stakeholder Engagement Plan (SEP) for each identified project investment as soon as their sites are known. The engagement with the stakeholders is as an integral part of the TA FS, including the preparation of environmental and social documents. As part of the information disclosure arrangement, draft ES documents are disclosed publicly in the PLN website and regional offices of PLN at these 3 (three) regions. The feedback and grievance redress mechanism (FGRM) will be informed publicly to let stakeholders lodge a grievance or feedback for the TA project.

**ISLE is designed to avoid the greatest extent of the need to use land other than government or PLN owned land.** Expropriation of property, physical displacement, and issue on land use would not be envisaged. ESS5 (Land Acquisition, Restrictions on Land Use and Involuntary Resettlement) recognizes that project-related land

acquisition<sup>1</sup> and restriction on land use can have adverse impacts on communities and persons through physical displacement (relocation, loss of residential land or loss of shelter), and economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood, or both. These impacts (referred to as Involuntary Resettlement) in accordance with the mitigation hierarchy, should be avoided. The Feasibility Study will screen the project impacts, including impact related to land taking, by avoiding involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives. These TORs are developed as precautionary action where involuntary resettlement is unavoidable that it will be minimized and appropriate measures to mitigate adverse impacts on affected people will be carefully planned and implemented. As the target locations of the ISLE project will be in eastern Indonesia, communal/customary land may be encountered.

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<sup>1</sup> Land acquisition refers to all methods of obtaining land for project purposes, which may include outright purchase, expropriation of property and acquisition of access rights, such as easements or right of way.

## 2 Assignment Objective and Location

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**The present assignment aims to develop E&S instruments for** each identified project investment. Based on the results of preliminary environmental and social assessment under the feasibility studies, separate consultants will be assigned to develop ESMP that also includes Labor Management Plans (LMPs), RAPs, IPPs, and SEP. The Consultants shall assess the needs for RAPs and IPPs based on the results of the ESMPs and site assessments.

**The ISLE FS will be in the Eastern Islands of Indonesia particularly in three regions:** Maluku, West Nusa Tenggara – NTB, and East Nusa Tenggara – NTT. With 6 solar/battery hybridization projects in Alor, Buru, Rote, Seram, Kei Kecil and Morotai; 10 solar projects divided between Sumbawa, Timor, Flores and Ternate and 5 battery storage projects divided between Sumbawa, Timor and Flores, as well as transmission lines in Flores and Timor and small grid upgrades in all islands.

### 3 Environmental and Social Impact Assessment

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#### 3.1 ESMP Objective

The present assignment aims to develop ESMPs for each identified project investment, including investment-specific LMP and SEP. The consultant is expected to meet the following objectives:

- a. Inform the feasibility studies and the overall project design, to be undertaken in parallel to this assignment.
- b. Prepare an Environmental and Social Management Plan (ESMP) for each identified project investment in accordance with the ESF and the Indonesian regulations.
- c. Prepare a Stakeholder Engagement and Consultation Plan for each identified project investment based on SEF of the project.
- d. Prepare a Labor Management Plan as part of the ESMP for each identified project investment, in accordance with the ESS2 and the Indonesia regulations.
- e. Support PLN to consult with stakeholders and disclose the safeguards instruments.
- f. Conduct training with PLN with regard to the implementation of safeguards instruments.

The present assignment shall be aligned with the ESF and the Indonesian regulations in place. The final outputs shall be done in a manner that it will be approved by the appropriate ministries/agencies that may approve any E&S permits.

#### 3.2 Scope of Work: Duties and Responsibilities

Consulting services are required to conduct:

a. **Review the proposed investment and assess the E&S risks**

Review the proposed physical investments and technical advisory support for PLN, including any associated facilities such as landing sites, access roads, distribution networks and other activities that will be necessary to implement the projects (regardless of funding sources). Assess the proposed project investments for environmental and social risks and impacts. Undertake a social assessment in accordance with ESF, documenting the socio-economic context, gender context, cultural context and specific needs and vulnerabilities of the potentially affected people and beneficiaries for each island. This can be achieved through secondary data, focus group discussions and key informant interviews.

b. **Site visits**

Undertake research, site visits, focus group discussions and key stakeholder meetings in each island to collate relevant information on sensitive receptors that may be affected (specifically natural habitats, physical

cultural resources, vulnerable communities/community members, schools, critical infrastructure), and key services that may be required (access to freshwater, waste recycling and disposal, worker accommodation).

**c. Grievance Redress Mechanism**

Prepare a Grievance Redress Mechanism, based on existing PLN Grievance Redress Mechanism and the ESF required processes. This should include a process for receiving, managing and closing out complaints and grievances, a process for escalating significant grievances, roles and responsibilities of all parties, database for recording progress, a reporting template, and materials to support the communication of the GRM to the public and stakeholders.

**d. ESMP**

Prepare the draft ESMP in accordance with ESF and the Indonesian regulations. Tools may be prepared to assist with generic activities/impacts, such as codes of practice and checklists, report templates, bid document clauses, draft terms of reference for technical assistance, consultation methods. Support PLN to consult with key stakeholders. A draft Labor Management Plan (LMP) will also be prepared as part of the ESMP, in accordance with ESF, especially ESS2 and the Indonesian regulation.

**e. Prepare the Stakeholder Engagement Plan (SEP)**

Undertake a stakeholder analysis, prepare objectives for stakeholder engagement, identify roles and responsibilities for the implementation of the plan and prepare a budget for implementation. Support PLN to have early consultations with key stakeholders during the preparation of the project and to present the draft ESMP, RAP and IPP.

**3.3 Outline of the ESMP**

**The ESMP should cover all activities relating to infrastructure investments** including sourcing aggregates, disposal of waste, management of contractors and their workforce, health and safety of workers and the community, hazardous substances management, disposal of batteries, etc. The ESMP should also include:

**a. Introduction**

An overview of the project investment and the proponent including information such as i) project investment name and general description; ii) background; iii) objectives of the ESMP.

**b. Policy and Legal Framework**

Brief outline relevant policies, guidelines and laws and regulations that apply to the identified project investment and the approvals that need to be obtained from different government agencies.

**c. Project description and Justification**

- Brief description of the development proposal including project investment location and footprint (including maps), a summary of key design features, resource requirements and source, predicted type and quantify of waste outputs, workforce size and accommodation, and implementation schedule;
- Brief justification including benefits accruing to the local area, island, country or region; and project investment relevance in light of local or national development needs.



- d. Description of the area of the identified project investment  
A brief description of the environmental, socio-economic and cultural characteristics relevant to the project investment and its area of influence (i.e. focus on sensitive receptors).
- e. Process for reviewing/assessing environmental and social risks relating to the technical advisory.
- f. A summary of consultation, stakeholder engagement, and information dissemination activities during the ESMP process and including general issues raised, and responses to those issues.
- g. Summary of environmental and social risks and impact assessment results (based on the preliminary E&S assessment that carried out as part of the FS). When the available information is not sufficient, further efforts may be required to obtain the necessary assessment of significant environmental and social risks and impacts.
- h. IPs risk and impact assessment with the provisions equivalent to IPP.
- i. Identification of measures and actions in accordance with the mitigation hierarchy that reduce potentially adverse environmental and social impacts to acceptable levels. The ESMP will include compensatory measures, if applicable. Specifically, this section will include:
  - (i) identifies and summarizes all anticipated adverse environmental and social impacts (including those involving indigenous people or involuntary resettlement);
  - (ii) describes—with technical details—each mitigation measure, including the type of impact to which it relates and the conditions under which it is required (e.g., continuously or in the event of contingencies), together with designs, equipment descriptions, and operating procedures, as appropriate;
  - (iii) estimates any potential environmental and social impacts of these measures; and
  - (iv) takes into account, and is consistent with, other stand-alone mitigation plans required for the project (e.g., for involuntary resettlement, indigenous peoples, or cultural heritage as relevant).

The impact mitigation measures will be concluded in the environmental and social mitigation plan matrix, following the below template as a minimum:

**Environmental and Social Mitigation Plan**

Activity	Potential Environmental /Social Impact	Proposed Mitigation Measures	Responsibility for Implementation of Mitigation Measures	Success Indicator(s)	Location of mitigation measure(s)	Period for Implementation of Mitigation Measures	Mitigation Measures Implementation Costs Estimation (and who bears it)
<b>Pre-Construction Phase</b>							
1.							
...							
<b>Construction Phase</b>							
1.							
...							
<b>Operation &amp; Maintenance Phase</b>							
1.							

Activity	Potential Environmental /Social Impact	Proposed Mitigation Measures	Responsibility for Implementation of Mitigation Measures	Success Indicator(s)	Location of mitigation measure(s)	Period for Implementation of Mitigation Measures	Mitigation Measures Implementation Costs Estimation (and who bears it)
...							
<b>Decommissioning phase (if applies)</b>							
1.							

- j. Identification of monitoring plan and reporting activities. This will include identify monitoring objectives and specify the type of monitoring, with linkages to the impacts assessed in the environmental and social assessment and the mitigation measures described in the mitigation plan matrix. Specifically, this section will include: (a) a specific description, and technical details, of monitoring measures, including the parameters to be measured, methods to be used, sampling locations, frequency of measurements, detection limits (where appropriate), and definition of thresholds that will signal the need for corrective actions; and (b) monitoring and reporting procedures to (i) ensure early detection of conditions that necessitate particular mitigation measures, and (ii) furnish information on the progress and results of mitigation.

The monitoring plan will be concluded in a matrix, following the below template as a minimum:

### Monitoring Plan

Proposed Mitigation Measures	What parameter is to be monitored?	Where is the parameter to be monitored? (Location)	How is the parameter to be monitored? (Measurements incl. Method, equipment)	When is the parameter to be monitored (time and frequency)?	Who monitors the parameter (responsibility)? (incl. reporting and review)	Cost of monitoring the parameter (equipment and personnel), and who bears it?
<b>Pre-Construction Phase</b>						
1.						
...						
<b>Construction Phase</b>						
1.						
...						
<b>Operation and Maintenance Phase</b>						
1.						
...						
<b>Decommissioning phase (if applies)</b>						
1.						
...						

- k. Procedures for inclusion of the ESMP requirements in bid documents.
- l. Implementation arrangements: This section will provide a specific description of institutional arrangements, identifying which party is responsible for carrying out the mitigation and monitoring measures (e.g., for operation, supervision, enforcement, monitoring of implementation, remedial action, financing, reporting, and staff training).
- m. Capacity building plan: To strengthen institutional environmental and social management capability, the ESMP recommends the establishment or expansion of the parties responsible, the training of staff and any additional measures that may be necessary to support implementation of mitigation measures and any other recommendations of the environmental and social assessment.
- n. Labor Management Plan:
 

The identified project investment will involve the hiring of project workers (may include direct, contracted, primary supply, community, government workers) for construction of infrastructure civil works, the supply of associated goods and services, and management of facilities during project investment implementation. As part of this ESMP process, an assessment of the potential labor management requirements under the project investment will be carried out. This assessment will include reviewing the existing national laws and regulations for consistency with the objectives and requirements under the ESS2. Key areas to be reviewed are as follows:

  - Existing national labor management procedures with clear employment terms and conditions;
  - Provisions for equal opportunity, prevention of discrimination and protection of vulnerable workers;
  - The role of Worker’s Organizations where applicable under national law;
  - Protections against all kinds of forced labor and protections against child labor below the minimum national working age;
  - Provisions for management of third-party contracted workers, for ascertaining the reliability of contractor entities, and for monitoring primary suppliers and remedying non-compliances;
  - Provisions for application of Occupational Health and Safety Measures taking into account the Environmental Health and Safety Guidelines (EHSGs);
  - Existing of specific employment grievance mechanisms relevant to this Scheme.
- o. Grievance Redress Mechanism.
- p. Chance Finds Procedure.
- q. Schedule and Budget for implementation: For all three aspects (mitigation, monitoring, and capacity development), the ESMP provides (a) an implementation schedule for measures that must be carried out as part of the project, showing phasing and coordination with overall project implementation plans; and (b) the capital and recurrent cost estimates and sources of funds for implementing the ESMP. These figures are also integrated into the total project cost tables.
- r. Supporting data/information

## **1.2 Outline of the SEP**

- a) Description of the identified project investment
- b) Location of the identified project investment
- c) The objective of the SEP
- d) Previous Stakeholder Engagement Activities (if any)
- e) Stakeholder Identification and Analysis (including a matrix of stakeholder analysis)
- f) Institutional Arrangement
- g) Stakeholder Communication
- h) Information Disclosure
- i) Feedback and Grievance Redressed Mechanism (FGRM)
- j) Monitoring and Reporting

## 2 Resettlement Plan

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### 2.1 RAP Objective

**The overall objective of this assignment is to prepare a RAP to address physical and/or economic displacement in the identified investments in the 10 islands.** Specific objectives for this assignment to:

- Obtain reliable information on the project scope of impacts on land and assets, including analysis of severity impacts on project-affected peoples;
- Set project investment compensation policy and eligibility matrix based on the relevant Indonesia Laws and Regulations, as well as the Bank's ESS5;
- Conduct meaningful consultation and participation to gain broad community support and acceptance;
- Identify the existence of Indigenous Peoples in the project investment location in accordance with WB criteria for IP

**The scope of requirements and level of detail of the RAP vary with the magnitude and complexity of resettlement.** The plan should be based on up-to-date and reliable information about: (i) the proposed project investments and their potential impacts on the affected people and other adversely affected groups, including Indigenous Peoples, (ii) appropriate and feasible mitigation measures, and (iii) the legal and institutional arrangement required for effective implementation of mitigation measures.

**The present assignment shall be aligned with the ESF and the Indonesian regulations in place.** The feasibility study will continue in parallel with the preparation of this RAP. The Consultant will work with the feasibility studies team and share information and data where possible and must be prepared to adapt their work plan and outputs to ensure that the RAP responds to the most up to date design features, and that environmental and social risks can be mitigated through design. This will include public and stakeholder consultation as set in the project investment Stakeholder Engagement Plan (SEP), fieldwork and the drafting of the RAP and finalizing it.

### 2.2 Scope of Work: Duties and Responsibilities

**Consulting services are required to:**

- a. Prepare necessary works to execute RAP development, i.e. (i) detailed work plan, methodology, timeframe and organization; (ii) a questionnaire and survey guidance; (iii) conduct training for all involved parties joining in the RAP development. Program to execute the RAP development subject to PLN and WB approval.
- b. Identify potential impacts that will include identification of (i) the identified project investment component or activities requiring land acquisition, (ii) zone of impact of such components/activities.
- c. Undertake fieldwork and collect primary and secondary data to adequately describe the baseline social setting and using quantitative and qualitative methods, assess the potential impacts from proposed VRE systems in relation to land taking for the project investment.

- d.** Identify the affected peoples<sup>2</sup> whose lands are potentially affected by the project (both temporary and permanent) and its associated facilities (if any). As the land acquisition is to be conducted by other parties with no fixed schedule yet, if it is not possible to do a census to each to-be affected landowner, the identification will be the closest estimation of the number of landowners to be affected in each facility and the current land use.
- e.** Conduct preliminary surveys and asset inventory to identify potentially affected peoples whose land/assets are to be affected by the project investment, include the establishment of a cut-off date, and documenting the process and outcomes in a preliminary Resettlement Plan (preliminary RAP), and to carry out an inventory of their affected assets or to undertake a Detailed Measurement Survey (DMS) of loss of land (homes, agricultural, or other lands), and non-land assets (structure/building, trees/crops), and/or communal assets (local public infrastructures), loss of income or access to livelihood source, including conducting an assessment on any other impacts due to land taking action. The identification of the potentially affected peoples should follow eligibility classification under ESS5;
- f.** Conduct Socio-Economic Survey and prepare socio-economic profiles of the potential project-affected people in terms of categorization of households against the type and severity of impacts, household sizes, livelihoods source, social organization, and other relevant socio-economic conditions. The survey should ensure vulnerable groups are included in the survey.
- g.** Conduct initial consultation with the affected peoples potentially affected by the identified project investments. The purpose of the initial consultation is to discuss the project investments and the intention to acquire the land for the VRE system and to obtain their aspirations on the process and find out the impact of the land acquisition on their asset and/or livelihood. Plan for further consultations, with the affected peoples will be included in the preliminary RAP document.
- h.** Provide timely advice on social issues and risks, especially related to the land aspect to guide the FS team to ensure that impacts can be managed in design where possible and be flexible to adapt the RAP based on new design information.
- i.** Include women and vulnerable groups, including Indigenous People in the engagement process and the methods must be appropriate to ensure active engagement from these groups. Feedback from the stakeholders shall be incorporated into the final RAP. Consultation methods should be consistent with the cultural and social norms and values of the local communities, be inclusive, the consultation could be in national (Bahasa) or in local languages to ensure the local communities be able to follow the discussion, convenient times and locations.

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<sup>2</sup> Affected peoples under ESS5 may be classified as persons: i) who have formal legal rights to land or assets; ii) who do not have formal legal rights to land or assets, but have a claim to land or assets that is recognized or recognizable under national law; iii) who have no recognizable legal right or claim to the land or assets they occupy or use.

- j. Prepare a preliminary RAP that clearly explains the institutional responsibilities, timetable/program, land area/survey details, maps, land ownership and others with attachments to land, and cost and budget for the land acquisition implementation, including estimated cost for assets compensation. It should specify how the project investment's GRM will be used for the land acquisition aspect, how it has been communicated to the affected people, and how it has been modified (if at all) for the local context.
- k. Set methods and procedures to determine the value of assets to be offered to land/assets owners for each type of affected asset that should reflect the replacement cost<sup>3</sup> of acquired assets. This will include the development of methods for transparency in negotiation based on independent appraiser formula. The matrix of eligibility of the affected people based on the type and status of assets affected will be developed.
- l. Undertake final consultations and surveys for land acquisition for development of the RAP to be implemented by PLN or other parties that eligible to facilitate it for the implementation of land acquisition that in compliance with the World Bank's ESS5, including in preparing the document of *Rencana Pengadaan Tanah* (Land Acquisition Plan) required by the UU No. 2/2012.
- m. Incorporate the feedback from PLN and the World Bank on the draft RAP;
- n. Prepare a final RAP report that accurately documents the findings, including summarizes consultation and stakeholder engagement and that follow the minimum elements of the RAP as provided in this TOR;
- o. Where there is an intention to move forward with a voluntary land transaction (through willing buyer-willing seller approach or voluntary land donation. Protocol provided as annex 1), conduct a survey to identify and record land-owners assets (land, structures, plants/trees, etc.) are to be permanently acquired or leased. The survey will gather information (and present in the matrix form) on the name of assets owners; main occupation or source of main income of the household head; use of land to be acquired; tenants, and other occupiers or users that have an attachment to the land; assets other than land to be acquired (structures, plants/trees, etc.) and the scale of impacts; provide an estimate the size of land to be acquired (entirely or partly); determine whether the land has already been surveyed; for each of the land parcels identified by PLN for the project investment; and
- p. Where there is an intention to move forward with a voluntary land donation, ensure that the draft RAP provides a mechanism to follow requirements under ESS5 and document the process properly.

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<sup>3</sup> Replacement cost is defined under ESS5 as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning market exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labor for construction of structure or other fixed assets, plus transaction costs.

## 2.3 Elements of a Resettlement Plan

The RAP shall include:

- a. **Description of the project.** General description of the project and identification of the identified project investment area.
- b. **Potential impacts.** Identification of:
  - the project component or activities that give rise to displacement, explaining why the selected land must be acquired for use within the timeframe of the project;
  - the zone of impact of such components or activities;
  - the scope and scale of land acquisition and impacts on structures and other fixed assets;
  - any project-imposed restrictions on the use of, or access to, land or natural resources;
  - alternatives considered to avoid or minimize displacement and why those were rejected; and
  - the mechanisms established to minimize displacement, to the extent possible, during project implementation
- c. **Objectives.** The main objectives of the resettlement program.
- d. **Census survey and baseline socio-economic studies.** The findings of a household-level census identifying and enumerating affected persons, and with the involvement of the affected persons, surveying land, structures, and other fixed assets to be affected by the project. The census survey also serves other essential functions, such as information on vulnerable peoples/groups, identifying public or community infrastructure or property that may be affected; land tenure and transfer systems (especially in regard to customary land); social and cultural characteristics, and the pattern of social interaction in the affected communities.
- e. **Legal framework.** The findings of an analysis of the legal framework, covering: (i) the scope of the power of compulsory acquisition and imposition of land use restriction and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment; (ii) applicable legal and administrative procedures, including relevant judicial process and any available grievance redress mechanisms; (iii) laws and regulations relating to the agencies responsible for implementing resettlement activities; and (iv) gaps between local laws and practices covering compulsory acquisition, restriction of land use and provision of resettlement measures and ESS5, and the mechanisms to bridge such gaps.
- f. **Institutional framework,** covering (i) identification of agencies responsible for RAP, (ii) assessment of the relevant agencies capacities; (iii) any steps to improve the institutional capacity of the relevant agencies.
- g. **Eligibility.** Definition of the affected people and criteria for determining their eligibility for compensation and other resettlement assistance.



- h. Valuation of and compensation for losses.** Methodology to be used in valuing losses to determine their replacement cost, and a description of the proposed types and levels of compensation for land, natural resources and other assets under local law and such supplementary measures as are necessary to achieve replacement cost for them.
- i. Community participation.** Strategy for consultation with, and participation of, affected people, design and implementation of the resettlement action; summary of view and how the views were taken into account in preparing the RAP; the choice made by affected people regarding options available for them; and institutional arrangement by which affected people can communicate their concerns, and measures to ensure that such vulnerable people, including indigenous peoples and women, are adequately represented.
- j. Implementation schedule.**
- k. Cost and budget.** For all action plans, including allowance and inflation.
- l. Grievance Redress Mechanism.** Affordable and accessible procedures to settle disputes arising from the resettlement. The GRM should consider the availability of judicial recourse and community/traditional disputes settlement mechanisms.
- m. Monitoring and Evaluation.** Arrangement for monitoring of the action plan implementation by the implementing agency, supplemented by third-party monitors as considered appropriate by the Bank and performance monitoring indicators to measure inputs, outputs and outcomes for resettlement plans.
- n. Arrangement for adaptive management.** Include provisions for adapting RAP implementation in response to unanticipated changes in project condition, or unanticipated obstacles to achieving satisfactory resettlement outcomes.

### 3 Indigenous Peoples Plan

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#### 3.1 IPP Objective

**The present assignment aims to develop IPPs in the case indigenous people are present in the identified investments in the 10 islands.** The present assignment shall be aligned with the ESF and the Indonesian regulations in place. As mentioned in Section 1, the presence of Indigenous Peoples at the project locations will be confirmed as part of the environmental and social identification and screening for the FS and the ESMP. ESS 7 is being applied to ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples. The project is required to avoid adverse impacts of projects on Indigenous Peoples or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts. ESS 7 also promotes sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate and inclusive. An IPP or similar instrument will be prepared as part of the technical assistance to guide consultation, engagement and management of impacts on Indigenous Peoples if they are present and/or will be affected by the project activities.

**The overall objective of this assignment is to prepare an IPP based on the outline provided in the TOR to ensure promoting sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible and culturally appropriate in accordance with ESS7 in ISLE TA.** Specific objectives for this assignment to:

- Obtain reliable information on the characteristic of the Indigenous Peoples and scope of the potential impacts of the project on them in the technical assistance locations;
- Conduct meaningful consultation and participation to gain broad community support and acceptance;
- Assess social risks and potential impacts and benefits concerning indigenous peoples present in the identified investment area;
- Set a plan to avoid adverse impacts of projects on Indigenous Peoples or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts;
- Set a plan to promote sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate and inclusive in the project;
- Obtain FPIC in accordance with ESS7 (Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities) that builds on and expands the process of meaningful consultation in circumstances in which the project will (i) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (ii) cause relocation of Indigenous Peoples from land and natural resources; and (iii) have significant impacts on Indigenous Peoples cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples.

**The IPP covers all Indigenous Peoples and vulnerable communities as characterized by the ESS 7, irrespective of formal recognition by the Government of Indonesia.** The scope of the measures required under the IPP is defined based on the nature of risks and impacts and specific provisions may be required depending on the nature of the anticipated impacts. In the context of Indonesia, Indigenous Peoples are often referred to as *Masyarakat Adat* (Customary Communities) and *Masyarakat Hukum Adat* (Customary Law Communities) for those who have

obtained legal recognition. The application of the ESS 7 will equally apply to other vulnerable groups who may not necessarily identify themselves and/or meet the requirements of *Masyarakat Adat* under the Government of Indonesia's framework but qualify for policy coverage under ESS 7. Such a rationale was adopted to recognize the diversity and complexity of socio, cultural, and traditional characteristics, vulnerability, and relationships with the land and natural resources amongst communities in local areas, where the FS will be conducted.

**Under ESS 7, the term “Indigenous Peoples” is used in a generic sense to refer exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:**

- Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others;
- Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas;
- Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

**The IPP also applies to communities or groups of Indigenous Peoples** who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area. It also applies to forest dwellers, hunter-gatherers, pastoralists or other nomadic groups, subject to satisfaction of the criteria established in this TOR.

**The IPPs will be prepared in parallel with the feasibility study.** This will include public and stakeholder consultation as set in the Project SEP, fieldwork and the drafting of the IPPs and finalizing it.

### **3.2 Scope of Work: Duties and Responsibilities**

**Consulting services are required to conduct:**

#### **a. Site Screening**

Site screening will commence in consultations with community representatives, local organizations, including Adat organizations or other community organizations, relevant government agencies, academics, etc. of affected Indigenous Peoples and *Masyarakat Adat*, their leaders and recognized institutions. Site screening will refer to the identification criteria and be led by relevant social specialists in PLN, assisted other expert consultants. This screening will inform further engagement processes, including consultation approaches that seek to promote the participation of women, youth and other vulnerable members of the affected communities. Such screening will not only be limited to the immediate project footprints but also cover potential areas where projects do not have footprints for the FS.

#### **b. Consultation and Engagement**

On the basis of screening, conduct consultation and engagement to assist PLN in a process of meaningful consultations with affected Indigenous Peoples and/or *Masyarakat Adat*. Such engagement is expected to be an iterative process until common-understanding has been reached, including the involvement of Indigenous

people's knowledge in the FS. The extent, frequency and degree of engagement required by the consultation process should be commensurate with the identified potential risks and concerns raised by respective Indigenous Peoples and *Masyarakat Adat*. Meaningful consultations are built on a mutually accepted process by community representatives and their legitimate leaders. These consultations serve at least two purposes:

- Provide a platform to enable community participation to express their concerns, views on the project's benefits, risks, impacts, and mitigation measures and explore ways to ensure project implementation is culturally and socially acceptable; and
- Enable decision-making processes based on local/customary mechanisms.

Community participation needs to be based on gender-sensitive and inter-generationally inclusive approaches. Effective consultations are built upon a two-way process that should:

- Involve members of affected communities and their recognized representative bodies and organizations in good faith;
- Capture the views and concerns of men, women and vulnerable community segments including the elderly, youth, displaced persons, children, people with special needs, etc., about impacts, mitigation mechanisms, and benefits where appropriate. If necessary, separate forums or engagements need to be conducted based on their preferences;
- Begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise;
- Be based upon the prior disclosure and dissemination/socialization of relevant, transparent, objective, meaningful, and easily accessible information that is in a culturally appropriate language(s) and format and is understandable for affected communities. In designing consultation methods and use of media, special attention needs to be paid to include the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits;
- Place greater emphasis on inclusive engagement for people directly affected by the project, rather than people affected indirectly;
- Ensure that the consultation processes are free of external manipulation, interference, coercion and/or intimidation. The consultations' design should create enabling environments for meaningful participation, where applicable. In addition to the language(s) and media used, the timing, venues, participation composition need to be carefully thought through to ensure everyone could express their views without repercussions; and
- Be documented.

**c. Obtain Free, Prior and Informed Consent**

Circumstances requiring FPIC from Indigenous Peoples for are required under ISLE, such circumstances include:

- Activities/sub-activities have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation;
- Activities/sub-activities cause the relocation of Indigenous Peoples and/or *Masyarakat Adat* from land and natural resources subject to traditional ownership or under customary use or occupation; or
- Activities/sub-activities have significant impacts on Indigenous Peoples and/or *Masyarakat Adat's* cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples and/or *Masyarakat Adat*.

#### **d. Social Assessment**

Commensurate to the potential risks and impacts, social assessments will be required as part of the ESMP process to identify the presence and understand the nature of the project's impacts on Indigenous Peoples and/or *Masyarakat Adat*. A standalone assessment may not be required, unless there is a further notice regarding the locations of the shelter development *on* or *nearby* Indigenous land, which will restrict Indigenous people access to land or water. The assessment is expected to provide a more informed understanding and analysis of risks as well as opportunities through which mitigation measures can be tailored to specific contexts and needs. In this circumstance, both qualitative and quantitative data will inform the assessment, including baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples and *Masyarakat Adat*, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend. Main areas to be covered include:

- Nature of vulnerability and attachments to land and natural resources;
- Specific risks and potential adverse impacts as a result of the project and/or sub-project implementation;
- Level of community acceptance to the activities and/or initiatives supported by the project and/or sub-project activities;
- Analysis of relevant stakeholders, either who will be impacted or who have an interest to the activities in question and the elaboration of a culturally appropriate process for consulting with the Indigenous Peoples and *Masyarakat Adat* at each stage of activity preparation and implementation;
- Opportunities to enhance participation of the communities concerned as well as benefit-sharing arrangements; and
- Approach to participation, including specific measures to promote participation and inclusion of vulnerable groups in risk management and overall project implementation.

The approach and engagement with affected communities for the social assessment purposes are based on meaningful consultations in good faith. Such consultations will be oversighted by social specialists in PLN.

#### **e. Indigenous Peoples Plan preparation**

During the FS, the environmental and social screening will be undertaken to assess whether Indigenous Peoples are present. If the activity/sub-project will interact and/or affect Indigenous Peoples, a social assessment will examine the nature and scale as well as forms of potential risks and impacts (please see point 4 above). An IPP may be integrated under ESMP or as a stand-alone document. Such a plan will include relevant measures to avoid and/or minimize impacts, as well as outline a community engagement strategy, as well as available avenues for Feedback and Grievance Redressed Mechanism (FGRM) and community feedback. Such a planning instrument will be prepared in a flexible and pragmatic manner and its level of detail varies depending on the specific activities and nature of risks. IPPs will reflect key agreements reached during the consultations, main findings of the social assessments, proposed risk mitigation measures and time-bound action plans, including measures to promote community participation, related costs and resources needed to implement the IPPs and FGRM arrangements.

#### **f. Set Institutional arrangement**

Advice PLN on the institutional arrangement on the implementation of IPPs, including any specialist needed.

#### **g. Set up Monitoring and Grievance Handling**

Indigenous People Plan will include Monitoring and Evaluation and FRGM. FGRM will also consider a local dispute-resolving mechanism to ensure that the process entails good will and respect traditional values and

practices. Engagement activities, including consultations and dialogues, will be designed to be respect local values-systems and practices depending on the level and nature of risks and impacts.

#### **h. Disclosure**

The IPP will be disclosed in respective project sites where Indigenous Peoples and/or *Masyarakat Adat* are affected, and if necessary, a summary of key agreements will be prepared and/or communicated in language(s) accessible to the affected communities. At the project level, IPPs and other relevant documents will also be disclosed on the project's website.

### **3.3 Outline of an Indigenous Peoples Plan**

The following provides the key elements of a comprehensive IPP. In circumstances where Indigenous Peoples and/or *Masyarakat Adat* benefit from identified project investments' activities and/or minor impacts are envisaged, elements of an IPP can be integrated into other instruments such as Land Acquisition and Relocation Plans or ESMPs. These elements include:

- a. IPP Executive Summary.** This section concisely describes the critical facts, significant findings, and recommended actions (required for a standalone IPP);
- b. Assessments of the identified project investment activities with impacts on Indigenous Peoples and/or *Masyarakat Adat*.** This section provides an analysis of the nature and scale of such impacts, should:
  - i. Review the legal and institutional framework applicable to Indigenous Peoples and/or *Masyarakat Adat* in the project context.
  - ii. Provide baseline information on the demographic, social, cultural, and political characteristics of the affected communities; the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
  - iii. Identify key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with Indigenous Peoples and/or *Masyarakat Adat* at each stage of project preparation and implementation, taking the review and baseline information into account.
  - iv. Assess, based on meaningful consultation with the affected communities, the potential adverse and positive effects of the identified project investment activities. Critical to the determination of potential adverse impacts is a gender-sensitive analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples and/or *Masyarakat Adat*, given their circumstances and close ties to the land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live.
  - v. Include a gender-sensitive assessment of the affected Indigenous Peoples and/or *Masyarakat Adat*'s perceptions about the identified project investment and its impact on their social, economic, and cultural status.
  - vi. Identify and recommend, based on meaningful consultation with the affected communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identify measures to minimize, mitigate, and/or compensate for such effects and to ensure that Indigenous Peoples and/or *Masyarakat Adat* receive culturally appropriate benefits under the project.

- c. Assessments of circumstances requiring FPIC and alternative project design/siting to avoid adverse impacts (refer to the Section on Free, Prior and Informed Consent).**
- d. Information disclosure, consultation and participation.** This section should:
- i. Describes the information disclosure, consultation and participation process with the affected communities that can be carried out during project preparation;
  - ii. Summarize their comments on the results of the social impact assessment and identify concerns raised during consultation and how these have been addressed in project design;
  - iii. In the case of project activities requiring FPIC, document the process and outcome of consultations with affected communities and any agreement resulting from such consultations for the project activities and risk management measures addressing the impacts of such activities;
  - iv. Describe consultation and participation mechanisms to be used during implementation to ensure Indigenous Peoples and/or *Masyarakat Adat* participation during implementation; and
  - v. Confirm disclosure of the draft and final documents to the affected Indigenous Peoples and/or *Masyarakat Adat*;
- e. Benefit-sharing arrangements.** this section specifies the measures to ensure that the affected communities receive social and economic benefits that are culturally appropriate, and gender-responsive.
- f. Mitigation measures.** this section specifies the measures to avoid adverse impacts on Indigenous Peoples and/or *Masyarakat Adat*; and where the avoidance is impossible, specifies the measures to minimize, mitigate and compensate for identified unavoidable adverse impacts for each affected community.
- g. Capacity building.** this section provides measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples and/or *Masyarakat Adat*'s issues in the project area; and (b) affected communities' organizations in the project area to enable them to represent their communities more effectively and participate in the management of risks and impacts.
- h. Feedback and Grievance Redress Mechanism.** this section describes the procedures to redress grievances by affected Indigenous Peoples and/or *Masyarakat Adat* communities. It also explains how the procedures are accessible to Indigenous Peoples and/or *Masyarakat Adat*' and culturally appropriate and gender-sensitive.
- i. Monitoring, reporting and evaluation.** this section describes the mechanisms and benchmarks appropriate to the identified investment for monitoring and evaluating the implementation of the IPP. It also specifies arrangements for the participation of affected Indigenous Peoples and/or *Masyarakat Adat* in the preparation and validation of monitoring, and evaluation reports.
- j. Institutional arrangements.** this section describes institutional arrangement responsibilities and mechanisms for carrying out the various mitigation measures in the IPP. It also describes the process of including relevant local organizations and/or NGOs in carrying out the measures of the IPP.
- k. Budget and financing.** This section provides an itemized budget for all activities described in the IPP.

Where the requirement for FPIC is identified as part of the ESIA's, independent specialists will be engaged in order to facilitate FPIC. A stakeholder grievance mechanism will be prepared, included requirements to allow indigenous peoples to submit any feedback or grievances.



#### 4 Deliverables and Timeframe

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The report should be delivered in English and in Bahasa Indonesia that includes:

- a. Consultation materials for ESMP (including LMP), RAP, IPP, and SEP
- b. Preliminary ESMP (including LMP), RAP, IPP, and SEP, for review and comment by PLN and WB
- c. The final draft version of ESMP (including LMP), RAP, IPP, and SEP for review and comment by PLN and WB
- d. The final version of ESMP (including LMP), RAP, IPP, and SEP.

The Consultant shall visit the project investment location area to collect data and consult with affected people and relevant stakeholders within 3 weeks of the contract signing.

The Consultant shall prepare a draft ESMP (including LMP), RAP, IPP, and SEP for the Client and World Bank review and comment before 10 weeks after contract signing and the final ESMP (including LMP), RAP, IPP, and SEP shall be ready 15 weeks after selection.

## 5 Required Expertise

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The selected Consultants will be required to have extensive experience in Indonesia with regards to developing ESMP, RAPs and IPPs and in particular in Eastern Indonesia in compliance with World Bank's Environmental and Social Framework (ESF) and/or IFIs standards (International Financial Institutions). It will need to prove experience in delivering ESMPs, RAPs and IPPs that are aligned with World Bank standards.

The Consultant's team will need to have:

- A senior environmental specialist with a minimum of 10 years of experience in ESMPs in Indonesia.
- A senior social specialist with a minimum of 10 years of experience in ESMPs, LMPs, SEPs, IPPs and RAPs, as well as conducting public consultations in Indonesia,
- A gender specialist with a minimum of 5 years of experience, preferable in the context energy and VRE development project, and
- A local team that can speak the local language of the project investment locations

## **ANNEX 1 – Voluntary Land Transaction (Willing Buyer – Willing Seller) and Voluntary Land Donation**

In the event that government land is not available and/or additional land is needed, the project may acquire private land use through willing buyer-willing seller (voluntary land transaction) and voluntary land donation. In applying these schemes, special care is required to ensure that the owners of the land must be able to retain the land and to refuse to sell or donate it, without the threat of compulsory acquisition, and is fully informed about available choices and their implications.

ESS5 applies to land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation. ESS5 does not apply to voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to retain land and to refuse to sell it, and is fully informed about available choices and their implications. However, where such voluntary land transactions may result in the displacement of persons, other than the seller, who occupy, use or claim rights to the land in question, ESS5 will apply.

Below providing protocols for the willing buyer-willing seller and voluntary land donation (VLD) schemes to guide the consultants in assessing the risk related to the implementation of these schemes.

Such willing buyer-willing seller and voluntary land donation approaches will only be applied under these specific circumstances: a) land requirement is small; b) no site-specific linear infrastructure where there is no alternative siting; and c) there are viable alternative locations available to the project. In addition, the land should be free from disputes regarding ownership or tenure.

Such voluntary transactions request full and proper documentation of all consultations, meetings, grievances and actions taken to address grievances.

Applying the willing buyer-willing seller scheme needs to confirm that a) functional land market exists; b) the transaction has taken place with the owner's informed consent; c) the owner was aware that it was possible to refuse to sell, and would not be subject to compulsory acquisition; and d) the owner was paid a fair price based on prevailing market values.

These conditions shall equally apply where third parties, for example, land consolidators or aggregators, land developers, or other agents, are acting on behalf of the PLN.

The consultant team is to exercise their best judgment where voluntary land or applying willing buyer-willing seller is offered and conduct due diligence to avoid adverse impacts and reputational risks. The donations are based on the premise that the project benefit will offset or outweigh the loss of the land donated.

Willing buyer - willing seller and VLD is not applicable under the following scenarios:

- Medium/large-scale infrastructure particularly in cases where a government agency or entity that has a statutory obligation to provide the infrastructure and/or services for which the land is required
- Where inadequate consultation with donors results in a lack of understanding about the terms and conditions of the donation;
- In lieu of formal procedures for land acquisition where these do not exist;
- Where donor property owners, landowners or customary rights holders do not support, or will not directly benefit from, the Project;

- Where conflicts over land exist, including customary collective ownership;
- Conflicting land titling that makes it difficult to establish with certainty who has a right to own, donate and use a specific parcel of land;
- Where donors did not provide their informed consent and were subject to political or social pressure and coerced into making the donation.

This section outlines the process that should be followed once the threshold considerations above have been considered, and it has been determined that it is appropriate for the land to be provided to the identified project investment by voluntary donation or voluntary land transaction.

**(i) Determine and document that willing buyer – willing seller or VLD is appropriate in the circumstances of the project.**

The consultant should record the reasons why it thinks that the willing buyer – willing seller or the donation of land is appropriate for the sub-project. The project team should identify (in as much detail as possible):

- What the land will be used for;
- How much land the project will require on both a permanent and temporary basis;
- How much of the land will be sold/donated;
- The identities of the parties who intend to donate/sell;
- For the donation, the beneficiary of the donation; and
- Any details that are relevant to why willing buyer – willing seller or donation may be appropriate.

**(ii) Verify the requirements to transfer, and formalize the transfer of, the land**

It is important to understand the process that should be followed to transfer the land, and appropriate ways to formalize the transfer so as to achieve certainty for both the transferee of the land and the project.

**(iii) Conduct due diligence on who owns and uses the land**

It is important that the project team carries out careful due diligence to understand the type of land rights that exist in the area of the project investment, and to identify any particular issues relating to land ownership and use. Thereafter, a more specific due diligence must be conducted on each parcel of land proposed to be sold or for donation to identify:

- The owner/owners of the land;
- The users of the land, or any parties that occupy the land (either physically or through ownership of an asset or conduct of livelihood or business activities on the land);
- Any competing claims of ownership or use;
- Structures and assets on the land;
- Any encumbrances on the land.

It is important to (a) identify the right that is being transferred (an ownership right, a use right, a right of way, etc.); and (ii) check whether the transferee actually has the right s/he claims to have. In many circumstances where careful due diligence has not been carried out, a significant conflict has arisen at a later stage when another party

claims that they have the same or a competing right. In some circumstances – but not all – the transferee will have documentary evidence of such right. Where no such evidence exists, the due diligence can establish rights by speaking with local community officials and neighbors.

#### **(iv) Disclosure and Consultation**

The decision to sell or to donate must be taken on the basis of a full understanding of the identified project investment and the consequences of agreeing to sell or to donate the land. Accordingly, the parties that will be affected by the donation or transaction (the owners and users of the land) must be provided with accurate and accessible information regarding what the land will be used for, for how long, and the impact the donation will have on them and their families. It is important that prior written notification indicating the location and amount of land that is sought be provided and that its intended use for the project is disclosed. It is important to decide who else should be consulted; for example, spouses and older children.

There should be a clear agreement as to which party will pay the costs associated with the donated land. This could include measurement costs, documentation and notarial fees, transfer taxes, registration fees. It should also include the costs of re-measuring/re-titling the transferee's remaining land and any new documentation relating to it.

#### **(v) Establishing Informed Consent**

It is crucial that the project team is confident that the decision to sell or to donate was taken in circumstances of *informed consent or power of choice*. As discussed earlier, this means being confident that the owner(s) or user(s) of the land understand:

- What the land is going to be used for, by whom and for how long;
- That they will be deprived of the ownership or right to use the land, and what this really means;
- That they have a right to refuse to sell or to donate the land;
- Whether there are alternatives to using this land;
- What they will need to do to donate the land (e.g., execute documents, get spousal <sup>[11]</sup><sub>SEP</sub> consents, pay taxes);
- The effect of the donation on their family, and what they can do if they (or their family or heirs) want the land back.
- The exact demarcation of land boundary for the project's use;
- Whether there are proposals which would allow another land to be used;
- What they will need to do to donate the land;
- The intergenerational effect of the donation on their family, what they can do if they (or their family or heirs) want the land back.

The terms and conditions of the willing buyer-willing seller and land donation must be mutually agreed upon and detailing in a written agreement.

#### **(vi) Documentation**

It is necessary to distinguish between: (a) the agreement to donate the land; and (b) the document that carries out and evidences the legal transfer of the land. While it is important to have evidence of an intention and agreement to donate the land, it is equally important to ensure, where required and appropriate, that the land is legally transferred. While the process relating to the legal transfer of the land is frequently complicated and time-consuming, it must be addressed. Experience indicates that a lack of formal transfer can create significant uncertainty in the future, which impacts on the sustainability of the infrastructure and services, and can have a negative effect on community relations.]

To ensure that any land provided for the siting of project investment is contributed voluntarily, two representatives of the landowners (family or clan) are asked to sign a Land Commitment Letter. This certifies that the land is voluntarily donated for the purposes of the project investment and for the benefit of the community. The signature of the Letter is witnessed (as attested by their signature) by a suitable project representative.

The project team should:

- Identify the appropriate documentation, including the agreement to make the transfer and any legal documentation that may be required;
- Ensure that the agreement:
  - Refers to the consultation has taken place;
  - Sets out the terms of the transfer;
  - Confirms that the decision to transfer was freely made, and was not subject to coercion, manipulation, or any form of pressure;
  - Attaches an accurate map of the land being transferred (boundaries, coordinates);
  - Sets out who will bear the costs of the transfer (e.g., notarial fees, taxes, title issues) <sup>[1]</sup> and documenting the residual land rights.
- Ensure that all necessary parties sign the documents, including obtaining consent from spouses and children over a certain age;
- Ensure that the transfer and title is registered or recorded; and
- Ensure that the land remaining after the donated land is excised is properly titled, registered or recorded.

It is also important to maintain a record of the process that has been followed. Such documents could include the following:

- The notification indicating the location and amount of land that is sought and its intended use for the project, with a record of when and where this was made public;
- Records of the consultations that were held and what was discussed;
- A copy of the due diligence that was conducted;
- Copies of each of the formal statements of donation, establishing informed consent as described above, and signed by each owner or user involved;
- Copies of all documents, registrations or records evidencing the legal transfer of the land; and
- A map, showing each parcel of land.

PLN should maintain a record with the documentation for each parcel of land donated. Such documentation must be available for World Bank review, and for review in relation to any grievances that may arise.

**(vii) Grievance Arrangements**

GRM should be provided to address any complaint raised regarding the VLD application.