

**CONFORMED COPY**

**CREDIT NUMBER 3836 MG**

**Agreement providing for the  
Amendment and Restatement of the  
Development Credit Agreement**

**(Transport Infrastructure Investment Project)**

**between**

**REPUBLIC OF MADAGASCAR**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated January 18, 2006**

**AGREEMENT PROVIDING FOR THE AMENDMENT AND RESTATEMENT  
OF THE DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated January 18, 2006, between REPUBLIC OF MADAGASCAR (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS the Borrower and the Association have agreed to amend the Development Credit Agreement between the Borrower and the Association dated December 11, 2003 (hereinafter referred to as the Development Credit Agreement) in the manner hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE 1**

Section 1.01. The Development Credit Agreement is hereby amended and restated so as to read as set forth in the Annex hereto.

Section 1.02. This Agreement shall not become effective until:

(a) the Subsidiary Financing Agreement has been executed on behalf of the Borrower and Madarail;

(b) Madarail has established a computerized accounting and financial management system for Part E of the Project satisfactory to the Association; and recruited auditors satisfactory to the Association;

(c) evidence satisfactory to the Association shall have been furnished to the Association that: (i) the execution and delivery of this Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action; (ii) the Project Agreement has been duly authorized or ratified by Madarail and is legally binding upon Madarail in accordance with its terms; and (iii) the Subsidiary Financing Agreement has been duly authorized or ratified by the Borrower and Madarail and is legally binding upon the Borrower and Madarail in accordance with its terms.

Section 1.03. As part of the evidence to be furnished pursuant to Section 1.02 of this Agreement, there shall be furnished to the Association an opinion or opinions satisfactory to the Association of counsel acceptable to the Association

showing, on behalf of the Borrower, that this Agreement and the Subsidiary Financing Agreement have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms; and, on behalf of Madarail, that the Project Agreement and the Subsidiary Financing Agreement have been duly authorized or ratified by, and executed and delivered on behalf of Madarail and is legally binding upon Madarail in accordance with its terms.

Section 1.04. This Agreement shall come into force and effect on the date upon which the Association shall dispatch to the Borrower notice of its acceptance of the evidence required by Section 1.02 of this Agreement.

Section 1.05. If this Agreement shall not have come into force and effect by a date ninety (90) days after the date of this Agreement, this Agreement and all obligations of the parties hereunder shall terminate, unless the Association establishes a later date for the purposes of this Section. If this Agreement shall terminate under the provisions of this Section, the Development Credit Agreement shall continue in full force and effect, as if this Agreement had not been executed.

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

REPUBLIC OF MADAGASCAR

By: /s/ Benjamin Andriamparany Radavidson  
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ James Bond  
Authorized Representative

# **Development Credit Agreement**

**(RESTATED)**

**(Transport Infrastructure Investment Project)**

**between**

**REPUBLIC OF MADAGASCAR**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated December 11, 2003**

**CREDIT NUMBER 3836 MAG****DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated December 11, 2003, between REPUBLIC OF MADAGASCAR (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Project is the third in a series of several projects in support of the transport sector for which the Borrower has requested the assistance of the Association;

(C) the Borrower has issued a statement of national transport policy and road sector strategy, dated April 6, 2000 (hereinafter referred to as National Transport Policy and Road Sector Strategy), as well as a statement of rural transport policy and strategy, dated May 30, 2001 (hereinafter referred to as the Rural Transport Policy and Strategy), describing a program of actions, objectives and policies, designed to improve the rural population's access to markets and basic social services in order to promote economic development and enhance rural livelihood;

(D) the Borrower has issued a supplemental statement, dated November 6, 2003 (hereinafter referred to as the Transport Policy and Strategy Amendment), amending and supplementing the contents of both the National Transport Policy and Road Sector Strategy and the Rural Transport Policy and Strategy, and declared its commitment to the execution of the actions, objectives and policies described in both the National Transport Policy and Road Sector Strategy and the Rural Transport Policy and Strategy, as amended and supplemented by the Transport Policy and Strategy Amendment (hereinafter referred to collectively as the Program);

(E) the Borrower intends to reach agreement with other donors in view of obtaining additional loans and grants in an aggregate amount equivalent to three hundred and fifty-four million dollars (\$354,000,000) to assist in financing the Program on the terms and conditions set forth in agreements to be entered into between the Borrower and such other donors (the Co-financing Agreements); and

(F) Part E of the Project will be carried out by Madarail with the Borrower's assistance and, as part of such assistance, the Borrower will make part of the proceeds of the Credit provided for in Article II of this Agreement available to Madarail, as set forth in this Agreement.

WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

## ARTICLE I

### General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999), with the modifications set forth below (the General Conditions), constitute an integral part of this Agreement:

(a) Section 5.08 of the General Conditions is amended to read as follows:

“Section 5.08. *Treatment of Taxes*”

Except as otherwise provided in the Development Credit Agreement, the proceeds of the Credit may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower on the goods or services to be financed under the Credit, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Association’s policy of requiring economy and efficiency in the use of the proceeds of its credits. To that end, if the Association shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Credit is excessive or otherwise unreasonable, the Association may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Development Credit Agreement as required to be consistent with such policy of the Association.”

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth, and the following additional terms have the following

(a) “ACM” means *Aviation Civile de Madagascar*, the Borrower's civil aviation regulatory agency responsible for adopting sector regulations and providing sector supervision, established pursuant to Law No. 99-024 of the Borrower;

(b) “APMF” means *Agence Portuaire, Maritime et Fluviale*, an agency of the Borrower responsible for ports, maritime and river transportation;

(c) “*Charte Routière*” means the Borrower’s Law No. 98-026 governing the classification of its road network;

(d) “CGGTX” means *Cellule de Gestion des Grands Travaux*, the unit established within MTPW (as hereinafter defined) pursuant to the Borrower’s Arrêté N. 12777/05 du 25 aout 2005 « *portant institution d'une structure autonome dénommée Cellule de Gestion des Grands Travaux* » ;

(e) “Concession Agreement” means the agreement entered into between the Borrower and Madarail (as hereinafter defined) on October, 10, 2002, as amended on June 30, 2005;

(f) “Environmental Assessment” or “EA” means an Environmental Assessment referred to in paragraph 5 (a) (i) of Schedule 4 to this Agreement;

(g) “Environmental Management Plan” or “EMP” means an Environmental Management Plan referred to in paragraph 5 (a) (ii) of Schedule 4 to this Agreement;

(h) “Eligible Categories” means Categories 1-A, 2-A, 3-A, 4 and 5-A in respect of Special Account A and Categories 1-B, 2-B, 3-B and 5-B in respect of Special Account B as set forth in the table in Part A.1 of Schedule 1 to this Agreement;

(i) “Eligible Expenditures” means the expenditures for goods, works and services required for the Project, and to be financed out of the proceeds of the Credit allocated from time to time to the Eligible Categories;

(j) “FMA” means the Fiduciary Management Agent in charge of carrying out procurement and financial management activities under Parts A through D of the Project;

(k) “Financial Monitoring Report” or “FMR” means a report prepared in accordance with Section 4.02 (a) of this Agreement;

(l) “Fiscal Year” means the Borrower’s fiscal year beginning on January 1 in any one calendar year and ending on December 31 in the same calendar year;

(m) “Madarail” means a company established and operating pursuant to the laws of the Borrower and to its by laws dated September 25, 2003;

(n) “Madarail’s Environmental Assessment” or “MEA” means the Borrower's Environmental Assessment, dated July, 29, 2004, consisting of a detailed analysis of the social and environmental impacts associated with Part E of the Project, and giving details of measures appropriate or required to manage potential environmental risks and mitigate adverse impacts associated with Part E of the Project.

(o) “Madarail Manual” means the manual giving details of guidelines and procedures agreed with the Association for the implementation, supervision, and monitoring and evaluation, Part E of the Project, as same may be amended from time to time in agreement with the Association, and such term includes any schedules to the Madarail Manual;

(p) “Major Works Account” means the account referred to in Section 3.03 (a) of this Agreement;

(q) “MARPOL” means the International Convention for the Prevention of Marine Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), and subsequently supplemented and amended from time to time;



(r) “Ministry of Public Works and Transport” and “MPWT” means the Borrower’s ministry in charge of public works and transport, as established by Decree Nr 2005-144 Dated March 17, 2005;

(s) “Oversight Committee” means the committee established pursuant to the Concession Agreement in charge of monitoring the due performance of their obligations by the parties thereto;

(t) “Project Affected Person” or “PAP” means any person who owns or occupies land, property or other assets or structures which are adversely affected by the Project, or whose livelihood, business, trade or other occupation is adversely affected as a result of the Project, and who is declared accordingly eligible to compensation or other assistance under the relevant RAP;

(u) “Project Agreement” means the agreement entered into between the Association and Madarail, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(v) “Project Implementation Plan” means the Project Implementation Plan, dated October 3, 2003, giving details of guidelines and procedures agreed with the Association for the implementation, supervision, and monitoring and evaluation, of the Project, as same may be amended from time to time in agreement with the Association, and such term includes any schedules to the Project Implementation Plan;

(w) “Report-based Disbursements” means the Borrower’s option for withdrawal of funds from the Credit Account referred to in Part A.5 of Schedule 1 to this Agreement;

(x) “Resettlement Action Plan” or “RAP” means a Resettlement Action Plan referred to in paragraph 5 (a) (iii) of Schedule 4 to this Agreement;

(y) “Resettlement Policy Framework” or “RPF” means the Resettlement Policy Framework, dated January 18, 2002, issued by the Borrower, and describing a program of actions, measures and policies designed to avoid or minimize any adverse impact or hardship to PAPs as a result of Part A through E of the Project or, if such adverse impact or hardship cannot be avoided altogether, provide for the compensation and resettlement of such PAPs as may be appropriate;

(z) “RN” means *route nationale*, or national road, and references to RN numbers shall be construed as references to the corresponding national roads as laid down pursuant to the *Charte Routière*;

(aa) “Special Accounts” means the accounts referred to in Part B of Schedule 1 to this Agreement;

(bb) “Subproject” means any road upgrading, rehabilitation or maintenance activity, or other transport infrastructure development under Parts A through E of the Project;

(cc) "Subsidiary Financing Agreement" means the agreement to be entered into between the Borrower and Madarail pursuant to Section 3.01 (d) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Financing Agreement;

(dd) "Technical Railway Unit" or "TRU" means the Borrower's technical railway unit within MPWT in charge of supervising and monitoring activities in relation to the Concession Agreement and reporting to the MPWT and to the Oversight Committee;

(ee) "Transport Sector Environmental Assessment" or "TSEA" means the Borrower's Transport Sector Environmental Assessment, dated September 27, 1999, consisting of a detailed analysis of the social and environmental impacts associated with the Program, and giving details of measures appropriate or required to manage potential environmental risks and mitigate adverse impacts associated with the Program.

## **ARTICLE II**

### **The Credit**

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to one hundred and four million four hundred thousand Special Drawing Rights (SDR 104,400,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Credit.

Section 2.03. The Closing Date shall be June 30, 2008, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the

Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ( $3/4$  of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on May 15 and November 15 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each May 15 and November 15, commencing May 15, 2014, and ending November 15, 2043. Each installment to and including the installment payable on November 15, 2023, shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the

Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08 The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

### **ARTICLE III**

#### **Execution of the Project**

Section 3.01 (a) The Borrower declares its commitment to the objective of the Project as set forth in Schedule 2 to this Agreement and, to this end, shall carry out Parts A through D of the Project through MPWT, with technical leadership being provided by ACM, APMF and CGGTX, with due diligence and efficiency and in conformity with appropriate technical, administrative and financial practices, and with due regard to environmental and ecological considerations, and shall provide, promptly as needed, the funds, facilities, services and other resources required for Parts A through D of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section, and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out Parts A through D of the Project, in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) Without any limitation upon any of its obligations under this Agreement, the Borrower shall: (i) cause Madarail to: (A) carry out Part E of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, environmental and technical practices, and (B) perform, in accordance with the provisions of the Project Agreement, all the obligations of Madarail therein set forth; (ii) take and cause to be taken all action, including the provision of funds, facilities, services and other resources necessary or appropriate to enable Madarail to perform such obligations; and (iii) not take or permit to be taken any action which would prevent or interfere with such performance.

(d) For the purposes of carrying out Part E of the Project, the Borrower shall make the proceeds of the Credit allocated from time to time to Categories 1 (b), 2 (b), 3 (b) and 5 (b) of the table set forth in paragraph 1 of Schedule 1 to this Agreement available to Madarail, under a Subsidiary Financing Agreement to be entered between the Borrower and Madarail, under terms and conditions which shall have been approved by the Association.

(e) The Borrower shall exercise its rights under the Subsidiary Financing Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the objectives of the Project, and, except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Financing Agreement or any provision thereof.

Section 3.02 Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03 Except for activities under Part E of the Project, for purposes of each contract for works estimated to cost \$10,000,000 equivalent or more, the Borrower shall:

(a) prior to the signing of the contract, open and maintain in a commercial bank, and on terms and conditions satisfactory to the Association, an account in the currency of the Borrower (hereinafter referred to as Major Works Account), to be used exclusively to finance the Borrower's share of the cost of the contract, and deposit therein an amount equivalent to the Borrower's projected share of payments due under the contract during the first twelve months' period following signature of the contract; and

(b) during the remainder of the contract period, replenish the Major Works Account at twelve-monthly intervals by depositing therein an amount equivalent to the Borrower's projected share of payments due under the contract during the twelve months' period following each such replenishment.

Section 3.04 No later than June 30, 2006, the Borrower shall have provided Madarail with a payment of no less than \$ 2,020,000.

Section 3.05 For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall, in conjunction with Madarail:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan designed to ensure the continued achievement of the objective of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) The Borrower shall maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

(i) have the financial statements referred to in paragraph (a) of this Section for each Fiscal Year (or such other period agreed to by the Association) audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;

- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such Fiscal Year (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association) as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning said records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of Report-based Disbursements or statements of expenditure, the Borrower shall:

- (i) retain, until at least one year after the Association has received the audit report for, or covering, the Fiscal Year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such reports or statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02 (a) Without limitation upon the Borrower's progress reporting obligations set out in Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for Parts A through D of the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in implementation of Parts A through D of the Project, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation ; and
- (iii) sets forth the status of procurement under Parts A through D of the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

**ARTICLE V****Remedies of the Association**

Section 5.01 Pursuant to Section 6.02 (1) of the General Conditions, the following additional events are specified:

(a) a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out;

(b) the annual technical, financial and organizational audit of the Program reveals serious shortcomings or other deficiencies in its implementation;

(c) Madarail shall have failed to perform any of its obligations under the Project Agreement;

(d) Madarail's bylaws or any laws of the Borrower governing the operation of Madarail shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of Madarail to implement Part E of the Project;

(e) as a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that Madarail will be able to perform its respective obligations under the Project Agreement;

(f) the Borrower, Madarail or any party to the Concession Agreement shall have failed to perform their obligations thereunder, including, as far as the Borrower is concerned, the application of any tax exemption granted under the Concession Agreement;

(g) Madarail's shareholding shall have been modified in a manner that in the Association's opinion would impair the Borrower's or Madarail's ability to perform their obligations;

(h) the Borrower has failed to satisfactorily implement and/or enforce regulations pertaining to the truck road transport, including but not limited to: proper truck axle control through strategically located weighing stations on the corridor between Toamasina and Antananarivo; technical and environmental regulations on freight transport trucks; and proper VAT collection on truck transport traffic;

(i) the Borrower has failed to ensure equal access to container scanning devices at the port of Toamasina by rail and road operator involved in container transport;

(j) the Borrower has failed to satisfactorily implement and/or enforce regulations to include railway as a possible mode of transportation of petroleum products;

(k) any one or more of the Co-financing Agreements shall have failed to become effective by May 31, 2005, or such later date as the Association may agree; provided, however,



that the provisions of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement; and

- (l) (i) subject to subparagraph (ii) of this paragraph:
  - (A) the right of the Borrower to withdraw the proceeds of any grant or loan made to the Borrower pursuant the Co-financing Agreements shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of the respective Co-financing Agreement; or
  - (B) any such loan shall have become due and payable prior to the agreed maturity thereof.
- (ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that: (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02 Pursuant to Section 7.01 (h) of the General Conditions, the following additional events are specified:

- (a) an event specified in paragraph (b) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower; and
- (b) an event specified in paragraph (l) (i) (B) of Section 5.01 of this Agreement shall occur, subject to the proviso of paragraph (h) (ii) of that Section.

## **ARTICLE VI**

### **Effective Date; Termination**

Section 6.01 The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.02 The obligations of the Borrower under Articles III and IV of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on the date fifteen years after the date of this Agreement, whichever shall be the earlier.

**ARTICLE VII**

**Representative of the Borrower; Addresses**

Section 7.01 The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02 The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Economy, Finance and Budget  
B.P. 61  
Antananarivo 101  
Madagascar

Cable address:

Facsimile:

MEFB  
Antananarivo

(261) 20 22 34530

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

Facsimile:

INDEVAS  
Washington, D.C.

248423 (MCI) or  
64145 (MCI)

(202) 477-6391

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

## REPUBLIC OF MADAGASCAR

By /s/ Radavidson Andriamparany Benjamin

Authorized Representative

## INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Hafez Ghanem

Authorized Representative

**SCHEDULE 1****Withdrawal of the Proceeds of the Credit****A. General**

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Works		
(a) Under Parts A through D of the Project	61,620,000	100%
(b) Under Part E of the Project	7,660,000	100%
(2) Goods		
(a) Under Parts A through D of the Project	6,960,000	100%
(b) Under Part E of the Project	9,380,000	100%
(3) Consultants' services and audits		
(a) Under Parts A through D of the Project	10,440,000	100%
(b) Under Part E of the Project	2,300,000	100%
(4) Training under Parts A through D of the Project	700,000	100%
(5) Operating costs		
(a) Under Parts A through D of the Project	1,810,000	100%
(b) Under Part E of the Project	1,810,000	100%
(6) Unallocated	1,720,000	
TOTAL	<u>104,400,000</u> =====	

2. For the purposes of this Schedule, the term “operating costs” means the incremental operating costs arising under the Project on account of local contractual support staff salaries, social benefits, travel expenditures and other travel-related allowances; equipment rental and maintenance; vehicle operation, maintenance and repair; office rental and maintenance, materials and supplies; and utilities and communications' expenses; and bank charges.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, and no withdrawals shall be made in respect of payments made for expenditures incurred under Part E prior to the date of the Project Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 1,810,000, may be made on account of payments made for Eligible Expenditures incurred under Category (5) (b) before that date but after January 1, 2005.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures for: (a) works under contracts below \$500,000 equivalent; (b) goods under contracts below \$250,000 equivalent; (c) consulting and auditing services under contracts below \$200,000 equivalent, in the case of consulting firms, and \$50,000 equivalent, in the case of individual consultants; (d) training; and (e) operating costs, under such terms and conditions as the Association shall specify by notice to the Borrower.

5. The Borrower may request withdrawals from the Credit Account to be made on the basis of reports to be submitted to the Association in form and substance satisfactory to the Association, such reports to include the FMR and any other information as the Association shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Association before any withdrawal has been made from the Credit Account, the Borrower shall submit to the Association only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

## B. Special Accounts

1. The Borrower may open and maintain in Dollars two separate special deposit accounts, one for Part A through D of the Project (Special Account A) and one for Part E of the Project (Special Account B), each in a commercial bank acceptable to the Association, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment.

2. After the Association has received evidence satisfactory to it that the Special Accounts have been opened, withdrawals from the Credit Account of amounts to be deposited into the Special Accounts shall be made as follows:

(a) if the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) if the Borrower is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of the Special Accounts shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if the Association, at any time, is not satisfied that the reports referred to in Part A.5 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Association determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Borrower directly from the Credit Account; or

(c) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of: (A) the records and accounts for the Special Accounts; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Association shall not be required to make further deposits into the Special Accounts in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Association shall determine, in its sole discretion, whether further deposits into the Special Accounts may be made and what procedures should be followed for making such deposits, and shall notify the Borrower of its determination.

6. (a) If the Association determines at any time that any payment out of any of the Special Accounts was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association, provide such additional evidence as the Association may request, or deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association determines at any time that any amount outstanding in any Special Account will not be required to cover payments for Eligible Expenditures during the six-

month period following such determination, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Accounts.

(d) Refunds to the Association made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Credit Agreement.

**Annex A**  
**to**  
**SCHEDULE 1**

**Operation of Special Account**  
**When Withdrawals Are Not**  
**Report-based Disbursements**

1. For the purposes of this Annex, the term “Authorized Allocation” means the amount of \$ 9,000,000, in respect of Special Account A and the amount of \$ 4,000,000, in respect of Special Account B to be withdrawn from the Credit Account and deposited into the Special Accounts pursuant to paragraph 2 (a) of this Annex, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$ 5,750,000 in respect of Special Account A until the aggregate amount of withdrawals from the Credit Account for the purposes of expenditures carried out under Part A through D of the Project, plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions for Parts A through D of the Project, shall be equal to or exceed the equivalent of SDR 12,000,000.

2. Withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Accounts shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special Account of an amount or amounts which in the aggregate do not exceed the respective Authorized Allocation. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested.

(b) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposit into the respective Special Account at such intervals as the Association shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the respective Special Account for Eligible Expenditures. Each such deposit into the respective Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.

3. The Association shall not be required to make further deposits into any Special Account, once the total unwithdrawn amount of the Credit minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation for the respective



Special Account. Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments for Eligible Expenditures.

**Annex B  
to  
SCHEDULE 1**

**Operation of Special Account  
When Withdrawals Are  
Report-based Disbursements**

1. Withdrawals from the Credit Account shall be deposited by the Association into each Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the respective Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.
2. Upon receipt of each application for withdrawal of an amount of the Credit, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Association has determined, based on the reports referred to in Part A.5 of this Schedule 1 applicable to such withdrawal application accompanying said application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.

## SCHEDULE 2

### Description of the Project

The objective of the Project is to assist the Borrower in the rehabilitation of its major infrastructure in order to reduce transport costs and facilitate trade.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objective:

#### Part A: National Roads Upgrading, Rehabilitation and Maintenance

1. Implementation of a program of upgrading, rehabilitation and maintenance of national roads, including upgrading of about 112 km of RN 44 South, rehabilitation to gravel standard of about 69 km of RN44 North, periodic maintenance of about 310 km of RN2, and periodic maintenance of about 200km of RN7.

(2) Implementation of an action plan for the renewal of the ferry system through the rehabilitation of about 30 ferries.

#### Part B: Ports Upgrading, Rehabilitation and Maintenance

Implementation of a program of upgrading, rehabilitation and maintenance of ports, through:

(a) provision of technical advisory services and training, and establishment of a management information system, for the benefit of APMF, and acquisition of equipment for the benefit of APMF;

(b) rehabilitation of existing operational areas at Mahajanga as well as construction of a limited extension to cope with the growing number of containers passing through the port; and

(c) rehabilitation of the four main lighthouses, and provision of coastal navigation aids, supplies and technical advisory services to assist in ensuring compliance with MARPOL.

#### Part C: Airports Modernization and Institutional Reinforcement

1. Promotion of public-private partnership for the management and operation of secondary airports, through provision of technical advisory services.

2. Enhancement of safety, security and management of the airport network, through the acquisition of equipment.

Part D: MPWT Institutional Support

1. Implementation of an action plan to strengthen the MPWT's capacity to oversee and coordinate the sector, improve productivity and finalize the reform process, through:
  - (a) support for the social plan for the redeployment of staff;
  - (b) support to studies, equipments and initial operating costs for the land transport agency and the road authority;
  - (c) provision of technical advisory services and training,
  - (d) acquisition of equipment and optimization of their operation ; and
  - (e) carrying out of feasibility studies, preliminary and detailed designs, and preparation of bidding documents to meet future needs in the sector.
  
2. Assistance to the Technical Railway Unit and the Oversight Committee to strengthen their capacity to monitor the Concession Agreement through the provision of technical advisory services and equipment.

Part E: Northern Railway Investment Program

1. Implementation of a program of upgrading, rehabilitation and maintenance of the Northern railway line, through:
  - (a) (i) 145 km of railway replacement between KM 226 and KM 371 of the Tana Cote Est (TCE) line, (ii) 226 km of railway reinforcement between KM 0 and KM 226 of the TCE line, (iii) rehabilitation on several bridges between Toamasina and Andovoranto; (iv) equipments and tools for workshops and (v) equipment to improve communication capacity;
  - (b) implementation of social and environmental mitigation measures; and
  - (c) operating costs.

\* \* \*

The Project is expected to be completed by December 31, 2007.

**SCHEDULE 3****Procurement**Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than \$250,000 equivalent per contract and works estimated to cost less than \$500,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding.

2. Shopping. Goods estimated to cost less than \$30,000 equivalent per contract and works estimated to cost less than \$50,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. Direct Contracting. Goods and works which the Association agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

4. Force Account. Works which the Association agrees meet the requirements for Force Account may be carried out in accordance with the provisions of said procurement method.

5. Community Participation. Goods, works and services required for railways maintenance works may be procured on the basis of community participation in accordance with the procedures agreed within the Project Implementation Plan.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.

B. Other Procedures

1. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

2. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis subject to prior approval of the Association.

Section IV. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

**SCHEDULE 4****Implementation Program**

1. The Borrower shall:

(a) ensure that at all time during Project implementation MPWT ensure proper overall oversight of Project implementation and coordination with technical ministries and other relevant entities;

(b) ensure that at all time during Project implementation CGGTX and APMF and ACM be maintained with staff having qualifications and experience satisfactory to the Association and ensure proper technical supervision of road activities as regards CGGTX, of port activities as regards APMF and of airports activities as regards ACM;

(c) ensure that at all time during Project implementation the contract with FMA be maintained, unless otherwise agreed with the Association, and adequate coordination for the proper execution of its fiduciary duties by FMA;

(d) ensure that at all time during Project implementation staff from Madarail having qualifications and experience satisfactory to the Association be assigned to the Project and ensure overall oversight of implementation of Part E of the Project and coordination with technical ministries and other relevant entities;

(e) ensure that at all time during Project implementation the Railway Technical Unit be maintained with staff having qualifications and experience satisfactory to the Association and ensure proper monitoring of the railway concession activities;

(f) ensure that at all time during Project implementation staff having qualifications and experience satisfactory to the Association be assigned to the Oversight Committee and ensure that the Oversight Committee meet at least twice yearly to review Madarail's financial and technical performance as well as the implementation of the investment plan and provide a copy of the minutes of these meetings to IDA.

2. The Borrower shall carry out Parts A through D of the Project in accordance with procedures set forth in the Project Implementation Plan, and, except as the Association shall otherwise agree, shall not amend or waive any provision thereof, if such amendment or waiver may, in the opinion of the Association, materially or adversely affect the implementation of the Project.

3. Without limitation upon the provisions of Section 4.02 of this Agreement, the Borrower shall:

(a) not later than October 31 of each year, submit to the Association for review and comments a proposed annual work program and budget, giving details of its proposed work program activities and budget estimates, for the forthcoming Fiscal Year;



(b) proceed thereafter to implement the annual work program and budget, taking into account any comments thereon as the Association may have made; and

(c) not later than 45 days after the end of each quarter, beginning not later than 45 days after the end of the first quarter after the Effective Date, submit to the Association a quarterly report on the progress of Parts A through D of the Project.

4. The Borrower shall:

(a) implement policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objective thereof;

(b) prepare, jointly with Madarail under terms of reference satisfactory to the Association, and furnish to the Association, on or about April 30 of each year, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objective thereof during the period following such date; and

(c) review with the Association, by May 31 of each year, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objective thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

5. For purposes of each Subproject, the Borrower shall:

(a) prior to the approval of bid documents for the Subproject, prepare and submit to the Association:

(i) an Environmental Assessment (EA), acceptable to the Association, giving details of the social and environmental status, and potential environmental risks and adverse impacts, which are specific to the Subproject, along with proposed mitigation measures;

(ii) an Environmental Management Plan (EMP), acceptable to the Association, giving details of measures consistent with the TSEA, or as the case may be, the MEA and EA, which are deemed appropriate or required to manage potential environmental risks and mitigate adverse impacts associated with the Subproject, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with, the EMP; and

- (iii) wherever applicable, a Resettlement Action Plan (RAP), acceptable to the Association, giving details of measures consistent with the RPF and designed to facilitate the compensation and resettlement of PAPs, including the magnitude of displacement, proposed compensation and resettlement arrangements, and budget and cost estimates, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with, the RAP; and

(b) proceed thereafter to implement the EMP and, wherever applicable, the RAP, in accordance with the guidelines, timetable and other specifications set forth in the EMP and RAP, respectively.

6. Without limitation upon the Borrower's other reporting obligations under Section 4.02 of this Agreement, the Borrower shall submit quarterly consolidated reports on compliance with social and environmental safeguard measures under the Project, giving details of measures taken in furtherance of each EMP and RAP, conditions, if any, which interfere or threaten to interfere with the smooth implementation of any EMP or RAP, and remedial measures taken or required to be taken to address such conditions.

#### 7. Midterm Review

(a) On or about twenty four months after the Effective Date, the Borrower shall carry out jointly with the Association a midterm review of the progress made in carrying out the Project (hereinafter referred to as the Midterm Review).

The Midterm Review shall cover, amongst other things:

- (i) progress made in meeting the Project's objective; and
- (ii) overall Project performance against Project performance indicators.

(b) The Borrower shall prepare and, at least four weeks prior to the Midterm Review, furnish to the Association a separate report describing the status of implementation of each component of the Project and a summary report of Project implementation generally.

(c) The Borrower shall, not later than four weeks after the Midterm Review, prepare and submit to the Association an action program, acceptable to the Association, for the further implementation of the Project having regard to the findings of the Midterm Review and, thereafter, implement such action program. The Association shall provide its comments on said report within 15 days from its presentation to the Borrower.