

CONFORMED COPY

CREDIT NUMBER 2027 ZR

SNCZ Project
Agreement

(Transport Rehabilitation Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

SOCIETE NATIONALE DES CHEMINS DE FER ZAIROIS

Dated June 30, 1989

CREDIT NUMBER 2027 ZR

SNCZ PROJECT AGREEMENT

AGREEMENT, dated June 30, 1989, between the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and the SOCIETE NATIONALE DES CHEMINS DE FER ZAIROIS (SNCZ).

WHEREAS (A) by the Development Credit Agreement of even date herewith between the Republic of Zaire (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to fifty-seven million three hundred thousand Special Drawing Rights (SDR 57,300,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that SNCZ agree to undertake such obligations toward the Association as are set forth in this Agreement;

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

WHEREAS SNCZ, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) SNCZ declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement and, to this end, shall carry out Part B of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, economic, engineering and public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and SNCZ shall otherwise agree, SNCZ shall carry out Part B of the Project in accordance with the Implementation Program set forth in Schedule 1 to this Agreement.

Section 2.02. 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 2 to this Agreement.

Section 2.03. SNCZ shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of this Project Agreement and Part B of the Project.

Section 2.04. SNCZ shall duly perform all its obligations under the SNCZ Subsidiary Loan Agreement. Except as the Association shall otherwise agree, SNCZ shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the SNCZ Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) SNCZ shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement and under SNCZ Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) SNCZ shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by SNCZ of its obligations under this Agreement and under SNCZ Subsidiary Loan Agreement and the performance of the National Trading Company (SONATRAD) under its Convention

Specifique with SNCZ.

Section 2.06. As part of the information to be furnished to the Association pursuant to Section 2.03 of this Agreement and Section 9.01 of the General Conditions, SNCZ shall furnish semiannually to the Association reports on the progress achieved in the carrying out of the Project.

ARTICLE III

Management and Operations of SNCZ

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

Section 3.02. SNCZ shall at all times operate and maintain its plant, machinery, equipment and other property and, from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial economic and public utility practices.

Section 3.03. SNCZ shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.04. (a) SNCZ shall fulfill its obligations under its Contrat-Programme with the Borrower and shall not agree to any amendment thereof without the prior approval of the Association.

(b) SNCZ shall exchange views annually with the Association on the carrying out of the Contrat-Programme.

Section 3.05. SNCZ shall not agree to any modification of its Convention Specifique with the National Trading company (SONATRAD) without the prior approval of the Association.

Section 3.06. SNCZ shall carry out its Training Program, as agreed among the Borrower, SNCZ and the Association and shall exchange views from time to time with the Association on the progress of the Program.

Section 3.07, SNCZ shall establish by June 30, 1989 a commercial action plan designed to increase the volume of traffic from Ilebo to Shaba in order to reduce to the minimum the imbalance with traffic in the other direction, taking into account the renewal of track under the Project and the adoption of more effective commercial policies.

Section 3.08. SNCZ shall carry out its Joint Operational Action Plan with ONATRA according to a timetable satisfactory to the Association.

Section 3.09. SNCZ shall establish with the Borrower a decentralization plan and shall, by April 1, 1989, furnish such plan to the Association for its approval; such plan, modified as necessary to take into account the views of the Association, shall be put into effect by SNCZ by January 1, 1990.

Section 3.10. SNCZ shall continue to evaluate and monitor the carrying out of Part B of the Project on the

basis of the performance indicators set forth in Schedule 3 to this Agreement as well as the indicators utilized for previous projects financed by the Association.

Section 3.11. SNCZ shall carry out a study in 1990 of institutional reorganization based on the results of the current study of uneconomic lines and, taking into account the views of the Association, shall act on the recommendations of the latter study taking into account any comments of the Association thereon.

Section 3.12. SNCZ shall request the Borrower by the end of May 1989 to accord the means to cover losses incurred in the operation of structurally non-profitable services required by the Borrower to be continued by SNCZ or for authorization to close down such services.

ARTICLE IV

Financial Covenants

Section 4.01. (a) SNCZ shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) SNCZ shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, 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 year: (A) certified copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account or payments out of SNCZ Special Account were made on the basis of statements of expenditures, SNCZ shall:

- (i) maintain in accordance with paragraph (a) of this Section records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts be included in the annual audits referred to in paragraph (b) of this Section and that the report of such audits contain separate opinions by the said auditors as to whether the statements of expenditures submitted during the fiscal year together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. Among the information to be furnished to the Association pursuant to Section 2.03 of this Agreement and Section 9.01 of the General Conditions, SNCZ shall furnish to the Association:

- (i) draft annual financial statements, not later than four months after the end of the year to which they relate; and
- (ii) audited proposed budgets, projected balance sheets, cash-flow forecasts together with forecasts for the years to follow, by November 30 of the year preceding the first year to which they relate.

Section 4.03. (a) Except as the Association shall otherwise agree, SNCZ shall maintain a ratio of total working expense to total operating revenue not higher than 75% in 1989, 70% in 1990, 65% in 1991 and 1992 and 57% in 1993 and thereafter.

(b) Before October 31 in each of its fiscal years, SNCZ shall, on the basis of forecasts satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year, and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that SNCZ would not meet the requirements set forth in paragraph (a) for the SNCZ fiscal years covered by such review, SNCZ shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "total working expense" means the sum of all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding depreciation and interest and other charges on debt.
- (ii) The term "total operating revenue" means revenue from all sources related to operations.

Section 4.04. (a) Except as the Association shall otherwise agree, SNCZ shall maintain a quick ratio of current assets to current liabilities of not less than 0.8 in 1989 and 1990 and 1.0 thereafter.

(b) Before October 31 in each of its fiscal years, SNCZ shall, on the basis of forecasts satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that SNCZ would not meet the requirements set forth in paragraph (a) for the fiscal years covered by such review, the SNCZ shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirement.

(d) For the purposes of this Section:

- (i) The term "current assets" means cash, all assets which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, and prepaid expenses properly chargeable to operating expenses within the next fiscal year, but excluding inventories.
- (ii) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (iii) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (iv) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.05. (a) Except as the Association shall otherwise agree, SNCZ shall earn, for each of its fiscal years after its fiscal year ending on December 31, 1994, a positive annual return on capital and reserves.

(b) Before October 31 in each of its fiscal years, SNCZ shall, on the basis of forecasts satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that SNCZ would not meet the requirements set forth in paragraph (a) for SNCZ fiscal years covered by such review, SNCZ shall promptly take all necessary measures (including, without

limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The annual return on capital and reserves shall be calculated by dividing SNCZ's net result for the fiscal year in question by the total of capital and reserves.
- (ii) The term "not result" means not surplus available for distribution.

Section 4.06. SNCZ shall limit its annual investments to the levels included in its budgets and in the public expenditure program of the Borrower, shall not commit itself to any single additional investment costing more than \$1,000,000 equivalent in any one year without the prior approval of the Association and shall exchange views annually with the Borrower and the Association on its Investment Program and Financing Plan for 1988-1992, as approved by the Association.

ARTICLE V

Effective Date; Termination;
Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of SNCZ thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date twenty years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify SNCZ of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, telefacsimile or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Association:

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part D hereof, goods And works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).

2. Similar and related items, and items which can be furnished by a single supplier, shall be grouped in the largest practicable lots for the purpose of inviting bids.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in Zaire may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs I through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, SNCZ may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

Spare parts available only from a limited number of suppliers, and goods which, after grouping an required under paragraph A.2 of this Schedule, are estimated to cost less than \$100,000, may be procured on the basis of international and local shopping, in accordance with paragraph 3.4 of the Guidelines; provided, however, that the aggregate value of goods so procured shall not, without the prior approval of the Association, exceed the equivalent \$2,500,000.

Part E: Review by the Association of Procurement Decisions

1. With respect to each contract estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the SNCZ Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of such Special Account in respect of such contract.

2. With respect to each contract not governed by the preceding paragraph 1, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the SNCZ Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Association pursuant to said paragraph 3 shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 3 to the Development Credit Agreement.

3. The provisions of the preceding paragraphs 1 and 2 shall not apply to contracts on account of which the Association has authorized withdrawals from the Credit Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (c) (ii) of this Agreement.

4. The figure of 10% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist SNCZ in carrying out the Project, SNCZ shall employ such consultants and other experts, whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association, as shall be agreed with the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 3

Performance Indicators

	1987	1990	1992	1995
1. Locomotive availability (%)				
(a) Electric	78.7	83.0	85.0	85.0
(b) Diesel	45.0	75.0	75.0	75.0
2. Locomotive utilization (103 kms/available loco. per year)				
(a) Electric	76.0	85.0	89.0	95.0
(b) Diesel	79.0	85.0	89.0	95.0
3. Wagon availability (%)				
(a) Mineral wagons	69.1	77.0	88.0	90.0
(b) General service wagons	69.1	82.0	85.0	90.0
4. Wagon turn-around (days) for local mineral traffic (concentrates)	5.23	4.70	4.50	4.40
5. Staff (excluding construction staff)	21,893	19,981	18,800	17,150
6. Productivity ('000 tfc units/employee/year)	84,5	102,8	113,5	130,3
7. Transit time for export traffic on the Voie Nationale (days) ex-refinery to Ilebo	16.88	9.86	5.98	5.20