

**CONFORMED COPY**

**CREDIT NUMBER 4101-MAG**

# **Project Agreement**

**(Integrated Growth Poles Project)**

**between**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**and**

**PORT D'EHOALA**

**Dated December 5, 2006**

**CREDIT NUMBER 4101 – MAG**

**PROJECT AGREEMENT**

AGREEMENT dated December 5, 2006, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and PORT D'EHOALA, a company limited by shares (*société anonyme*) established and operating under the laws of the Republic of Madagascar having its registered seat at Villa 3 H, lot II j, 169 Ivandry, Antananarivo, Madagascar (PORT D'EHOALA).

WHEREAS (A) by the Development Credit Agreement dated July 13, 2005, between the Republic of Madagascar (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to eighty five million and nine hundred thousand Special Drawing Rights (SDR 85,900,000), on the terms and conditions set forth in the Development Credit Agreement, but only on conditions that PORT D'EHOALA agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary agreement to be entered into between the Borrower and PORT D'EHOALA, parts of the proceeds of the credit provided for under the Development Credit Agreement will be made available to PORT D'EHOALA on the terms and conditions set forth in said Subsidiary Agreement (the Port Operator Subsidiary Agreement); and

WHEREAS PORT D'EHOALA, 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 and the following additional term has the following meanings:

(a) “Port EMP” means the obligations undertaken by Port of Ehoala and its parent company, QMM SA, deriving from the *Plan de Gestion Environnementale du Projet* for the Ilmenite Project dated November 12, 2001, and more particularly the *Plan de Gestion Environnementale et Sociale* for the Port dated June 15, 2006.

(b) “Concession Agreement” means the concession agreement (*Convention de Concession Globale*) entered into between the Recipient and PORT D’EHOALA for the design, erection, financing of the design and erection, management and operation of a port in Taolagnaro, and its annexes, including the Technical Specifications for the Concession (*Cahier des Charges*).

## ARTICLE II

### Execution of the Project

Section 2.01. (a) PORT D’EHOALA 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 D.1 (a) of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and environmental practices, and shall provide, or cause to be provided, as promptly as needed, the funds, facilities, services and other resources required for Part D.1 (a) of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and PORT D’EHOALA shall otherwise agree, PORT D’EHOALA shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

Section 2.03. (a) PORT D’EHOALA 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 the Project Agreement and Part D.1 (a) of the Project, as the case may be under the conditions defined in the Concession Agreement.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, PORT D’EHOALA shall:

- (i) prepare in compliance with the terms and conditions of the Concession Agreement and any additional requirement that may reasonably be requested by 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 Association and PORT D'EHOALA, a plan for the future operation of Part D.1 (a) of the Project; and
- (ii) afford the Association a reasonable opportunity to exchange views with PORT D'EHOALA on said plan.

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

Section 2.05. (a) PORT D'EHOALA shall, at the request of the Association, exchange views with the Association with regard to the progress of Part D.1 of the Project, the performance of its obligations under this Agreement and under the Subsidiary Agreement, and other matters relating to the purposes of the Credit.

(b) PORT D'EHOALA 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 PORT D'EHOALA of its obligations under this Agreement and under the Subsidiary Agreement.

### **ARTICLE III**

#### **Management and Operations of PORT D'EHOALA**

Section 3.01. PORT D'EHOALA shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and environmental practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers and in compliance with the provisions of the Concession Agreement.

Section 3.02. PORT D'EHOALA shall at all times operate and maintain its port machinery, equipment and other property, and from time to time, as promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and environmental practices and in compliance with the provisions of the Concession Agreement.

Section 3.03. PORT D'EHOALA 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 and in compliance with the provisions of the Concession Agreement.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) PORT D'EHOALA shall establish and 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 its operations and financial condition and to register separately the operations, resources and expenditures related to the Project, as further defined in the Concession Agreement.

(b) In addition, PORT D'EHOALA shall:

- (i) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year (or 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 (6) months after the end of each such 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 such 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 such records and accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon PORT D'EHOALA's reporting obligations set out in Schedule 2 to this Agreement, PORT D'EHOALA shall prepare and

furnish to the Association a financial monitoring report (FMR), in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for 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 Project implementation, 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 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 of this Agreement, 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 the period not covered by the previous FMR until the end of such calendar quarter.

## **ARTICLE V**

### **Effective Date; Termination;**

### **Cancellation and Suspension**

Section 5.01. The following events are specified as conditions to the effectiveness of this Agreement:

(a) PORT D'EHOALA has established an accounting and financial management system satisfactory to the Association; meeting the requirements of the Concession Agreement and

(b) PORT D'EHOALA has employed the independent auditors referred to in Section of 4.01 (b) of this Agreement.

Section 5.02. (a) This Agreement and all obligations of the Association and of PORT D'EHOALA thereunder shall terminate on the date on which the Development Credit Agreement shall terminate in accordance with its terms

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) of this Section, the Association shall promptly notify PORT D'EHOALA 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, telex or facsimile 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. Deliveries made by facsimile transmission shall also be confirmed by mail. The addresses so specified are:

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

For PORT D'EHOALA:

Villa 3 H, lot II j  
169 Ivandry  
Antananarivo  
Madagascar

Facsimile:  
  
(261) 20 22 425 06

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of PORT D'EHOALA may be taken or executed by Mr. Guy Larin, or such other person or persons as Mr. Guy Larin shall designate in writing, and PORT D'EHOALA shall furnish



to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By:

/s/ James Bond  
Authorized Representative

PORT D'EHOALA

By:

/s/ Guy Larin  
Authorized Representative

## **SCHEDULE 1**

### **Procurement**

All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Annex 7 to the Concession Agreement.

## SCHEDULE 2

### Implementation Program

1. (a) PORT D'EHOALA shall: (i) carry out Part D.1 (a) of the Project in accordance with the terms and conditions of the Concession Agreement and any additional requirements of the Association as per the Project Implementation Manual.

(b) Without limitation upon the provision of Paragraph 1 of this Section, the Project Implementation Manual shall include specific arrangements for the carrying out of Part D.1 of the Project by PORT D'EHOALA with respect to: (i) monitoring and evaluation; (ii) procurement; (iii) financial management; (iv) environmental management; and (v) such other administrative, financial, technical and organizational arrangements as shall be required for Part D.1 of the Project.

(c) PORT D'EHOALA shall ensure that Part D.1 of the Project is implemented in accordance with the provisions of the Port EMP and the provisions of the Concession Agreement and of the ESDs, and except as the Association shall otherwise agree, shall not amend or waive any provision of the Port EMP or of such ESDs, if such amendment or waiver may, in the opinion of the Association materially or adversely affect the implementation of the Project.

2. (a) PORT D'EHOALA shall prepare a business plan and a Concession Report in compliance with the terms and conditions of the Concession Agreement and meeting the requirements, if any, of the Association, which shall set out in such detail as the Association shall reasonably request activities and sources of financing, to be provided under Part D.1 (a) of the Project as well as financial projections in the form of a budget, operating account and marketing strategy.

(b) PORT D'EHOALA shall, no later than six (6) months after the term of each its fiscal year, furnish the Concession Report provided for in Article 33 of the Technical Specification for the Concession (*Cahier des Charges*) together with any additional information necessary for meeting the requirements of the Association in terms of business plan for the following year to its Board for approval and to the Association for review and comments. PORT D'EHOALA shall update the business plan annually and promptly furnish each updated plan to its Board for approval and to the Association for review and comments.

(c) PORT D'EHOALA shall prepare and furnish to its Board, no later than 30 days after the end of each quarter, an activity report on its operations and progress made in carrying out of the Concession Agreement and related business plan during the quarter. Said quarterly report shall specify any problems encountered in the carrying out

of Part D.1 (a) of the Project and include updated performance indicators on PORT D'EHOALA's operations.

3. PORT D'EHOALA shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 3 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under the conditions set forth in the Concession Agreement as further developed by the Association to meet any reasonable additional requirements, and furnish to the Association, on or about June 30<sup>th</sup> 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 Part D.1 (a) 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 objectives thereof during the period following such date;

(c) review with the Association, by July 31, 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 Part D.1 of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter; and

(d) exchange views with the Association on the progress achieved in carrying out Part D.1 (a) of the Project, and more generally on the progress of the Ilmenite Mining Project.

### **SCHEDULE 3**

#### **Performance indicators**

##### Construction of the Port

- The construction of the Port must be carried out in compliance with the terms and conditions of the Concession Agreement.

##### Operation of the Port

- The operation of the Port shall meet the performance indicators set forth in Annex 8A, 8B and 8C of the Technical Specifications for the Concession.