

CONFORMED COPY

CREDIT NUMBER 2538 MAG

Agreement Providing for Amendment
and Restatement of
Project Agreement

(Petroleum Sector Reform Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

SOCIETE "SOLITANY MALAGASY"

Dated January 30, 1997

CREDIT NUMBER 2538 MAG

PROJECT AGREEMENT

AGREEMENT, dated January 30, 1997 between the INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association) and SOCIETE "SOLITANY MALAGASY" (hereinafter referred to as SOLIMA).

WHEREAS the Association and SOLIMA have agreed to amend the Project Agreement between the Association and SOLIMA dated August 25, 1993, (hereinafter called the Project Agreement) in the manner hereinafter set forth;

WHEREAS the REPUBLIC OF MADAGASCAR and the Association have also agreed to amend the Development Credit Agreement between the Republic of Madagascar and the Association dated August 25, 1993 (hereinafter called the Development Credit Agreement) in the manner set forth in the amended Development Credit Agreement of even date herewith; and

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

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

Section 1.02. This Agreement shall come into force and effect on the date upon which the amended Development Credit Agreement becomes effective.

Section 1.03. If the Development Credit Agreement shall not

have come into force and effect by June 30, 1997, 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 Project Agreement shall be cancelled.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Callisto Madavo
Regional Vice President
Africa

SOCIETE "SOLITANY MALAGASY"

By /s/ Louis Christian Ntsay
Authorized Representative

ANNEX

To Agreement Providing
for Amendment and
Restatement of Project
Agreement dated
August 25, 1993

CREDIT NUMBER 2538 MAG

AMENDED AND RESTATED
PROJECT AGREEMENT

(Petroleum Sector Reform Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

SOCIETE "SOLITANY MALAGASY"

Dated August 25, 1993
As amended and restated on January 30, 1997

PROJECT AGREEMENT

AGREEMENT, dated August 25, 1993, as amended and restated on January 30, 1997, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and SOCIETE "SOLITANY MALAGASY" (SOLIMA).

WHEREAS (A) by the Development Credit Agreement of even date herewith between 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 twenty-seven million three hundred twenty five thousand Special Drawing Rights (SDR 27, 325,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that SOLIMA agree to undertake such obligations toward the Association as are set forth in this Agreement;

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

WHEREAS SOLIMA, 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 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) SOLIMA 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 Parts C, D and E of the Project with due diligence and efficiency, in conformity with appropriate administrative, financial and engineering practices and with due regard to ecological and environmental factors, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Parts C, D and E of the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and SOLIMA shall otherwise agree, SOLIMA shall carry out Parts C, D and E of 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 consultants' services required for Parts C, D and E of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to the Development Credit Agreement.

Section 2.03. SOLIMA 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 Parts C, D and E of the Project.

Section 2.04. SOLIMA shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree and except as provided under Section 3.01 (c) (ii) of the Development Credit Agreement, SOLIMA shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

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

(b) SOLIMA shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of Parts C, D and E of the Project, the accomplishment of the purposes of the Credit, or the performance by SOLIMA of its obligations under this Agreement and under the Subsidiary Loan Agreement.

(c) Without limitation upon the provisions of the foregoing paragraphs (a) and (b), SOLIMA shall participate in the midterm review of the Project provided under paragraph 3 of Schedule 4 to the Development Credit Agreement and, soon thereafter, shall implement the recommendations of such a review.

Section 2.06. Delete.

Section 2.07. SOLIMA shall enter into a convention with SEPT (the SOLIMA-SEPT Convention), on terms and conditions which shall have been approved by the Association, for the purposes of defining the modalities of execution of works and use by all distributors of petroleum products with respect to the petroleum loading/unloading facility at Toamasina under Part D of the Project.

ARTICLE III

Management and Operations of SOLIMA

Section 3.01. (a) SOLIMA shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and engineering practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

(b) Without any restriction to the generality of the foregoing provisions, until the completion of the Project, SOLIMA shall follow competitive bidding procedures acceptable to the Association in the procurement of crude oil and shall furnish to the Association, for its review, bidding documents related thereto; in addition, SOLIMA shall furnish to the Association a copy of bid evaluation reports.

Section 3.02. SOLIMA 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 and financial practices.

Section 3.03. SOLIMA 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.

ARTICLE IV

Financial Covenants

Section 4.01. (a) SOLIMA shall maintain, or cause to be maintained, records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition, including separate records and accounts in respect of Parts C, D and E of the Project.

(b) SOLIMA shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) and records and accounts for the SOLIMA Special Account 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 were made on the basis of statements of expenditures, SOLIMA shall:

- (i) maintain, or cause to be maintained, 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 SOLIMA 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 are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

(d) [Deleted]

Section 4.02. (a) Except as the Association shall otherwise agree, SOLIMA shall not incur any debt unless a reasonable forecast of the revenues and expenditures of SOLIMA shows that the estimated net revenues of SOLIMA for each fiscal year during the term of the debt to be incurred shall be, for fiscal year 1995, at least 1.0 times and, thereafter, 1.5 times the estimated debt service requirements of SOLIMA in such year on all debt of SOLIMA, including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of SOLIMA maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a

loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

- (iii) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations and net non-operating income; and
 - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) 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.
- (vi) The term "reasonable forecast" means a forecast prepared by SOLIMA not earlier than twelve months prior to the incurrence of the debt in question, which the Association and SOLIMA accept as reasonable and as to which the Association has notified SOLIMA of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of SOLIMA.
- (vii) 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 4.03. Until the completion of the Project, SOLIMA shall not, without prior approval from the Association, commit itself to any new investment, (other than the investments agreed upon between SOLIMA and the Association) which would exceed the equivalent of two million dollars (\$2,000,000).

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 SOLIMA 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 fifteen 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 SOLIMA 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 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:

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

Cable address:

INDEVAS
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For SOLIMA:

Solitary Malagasy
2, avenue Grandidier
B.P. 140
Antananarivo
Madagascar

Cable address:

SOLIMA
Antananarivo

Telex:

222.22

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 SOLIMA, or by SOLIMA on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the General Manager or such other person or persons as the General Manager shall designate in writing, and SOLIMA 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 the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Francisco Aguirre-Sacasa
Acting Regional Vice President
Africa

SOCIETE "SOLITANY MALAGASY"

By /s/ Pierrot Rajaonarivelo
Authorized Representative

SCHEDULE

Implementation Program

1. For the purpose of the execution of Parts C, D and E of the Project, SOLIMA shall employ at all times a Project manager, a mechanical engineer and an accountant, all with responsibilities, qualifications and experience satisfactory to the Association. In addition, SOLIMA shall employ an engineering consultant in accordance with the provisions of Section II of Schedule 3 to the Development Credit Agreement.

2. SOLIMA shall fully cooperate with the Borrower with respect to Part A of the Project.

