

CONFORMED COPY

CREDIT NUMBER 2850 MLI

Project Agreement

(Selingue Power Rehabilitation Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ENERGIE DU MALI

Dated May 13, 1996

CREDIT NUMBER 2850 MLI

PROJECT AGREEMENT

AGREEMENT, dated May 13, 1996, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and ENERGIE DU MALI (EDM).

WHEREAS (A) by the Development Credit Agreement of even date herewith between THE REPUBLIC OF MALI (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to eighteen million five hundred thousand Special Drawing Rights (SDR 18,500,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that EDM agrees to undertake such obligations toward the Association as are set forth in this Agreement;

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

WHEREAS EDM, 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 terms have the following meanings:

(a) "fiscal year" means EDM's fiscal year which begins January 1, and ends on December 31 of the same year; and

(b) "Environmental Mitigation Plan" means the action plan for the mitigation of the Project's adverse impact on the environment, described in EDM's letter of April 17, 1996, as the same may be modified from time to time subject to the Association's prior approval.

ARTICLE II

Execution of the Project

Section 2.01. (a) EDM 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 the Project with due diligence and efficiency and in conformity with appropriate environmental, administrative, financial, 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 EDM shall otherwise agree, EDM 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 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 1 to this Agreement.

Section 2.03. EDM 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 Agreement and the Project.

Section 2.04. (a) EDM 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 other matters relating to the purposes of the Credit; and

(b) EDM 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 EDM of its obligations under this Agreement.

Section 2.05. EDM shall duly perform all its obligations under the Subsidiary Loan Agreement and the Grant Agreement. Except as the Association shall otherwise agree, EDM shall not take or concur in action which would have the effect of amending, abrogating, or waiving the Subsidiary Loan Agreement or the Grant Agreement or any provision thereof.

Section 2.06. For the purposes of Section 9.07 of the General Conditions, EDM shall:

(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 EDM and the Association, a plan designed to ensure the continued achievement of the objectives of the Project; and

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

ARTICLE III

Management and Operations of EDM

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

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

Section 3.03. EDM 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. Unless EDM and the Association shall otherwise agree, EDM shall, at all times during the implementation of the Project, employ, under a management contract awarded in accordance with the provisions of Section II of Schedule 1 to this Agreement, an independent operator to manage its operations under terms and conditions acceptable to the Association.

ARTICLE IV

Financial Covenants

Section 4.01. (a) EDM shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition, including its operations in respect to the Project.

(b) EDM shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements), including those for the 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 (6) 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.

Section 4.02. (a) Except as the Association shall otherwise agree, EDM shall not incur any debt, unless a reasonable forecast of the revenues and expenditures of EDM shows that the estimated net revenues of EDM for each fiscal year during the term of the debt to be incurred, shall be at least 1.1 times the estimated debt service requirements of EDM in such year on all debt of EDM including the debt to be incurred.

(b) For the purposes of this Section:

- (i) the term "debt" means any indebtedness of EDM 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 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 EDM not earlier than twelve months prior to the incurrence of the debt in question, which both the Association and EDM accept as reasonable and as to which the Association has notified EDM 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 EDM; and
- (vii) whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the guarantor, 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. (a) Except as the Association shall otherwise agree, EDM shall generate, for each of its fiscal years after its fiscal year ending on December 31, 1996, funds from internal sources equivalent to not less than ten percent (10%) of the annual average of the capital expenditures incurred, or expected to be incurred, for that year, the previous fiscal year and following fiscal year.

(b) Before November 30 in each of its fiscal years, EDM shall, on the basis of forecasts prepared by EDM and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such fiscal year and the next following fiscal year and shall furnish to the Association a copy of such review

upon its completion.

(c) If any such review shows that EDM would not meet the requirements set forth in paragraph (a) for EDM's fiscal years covered by such review, EDM shall promptly take all necessary measures in order to meet such requirements.

(d) For the purposes of this Section:

- (i) the term "funds from internal sources" means the difference between:
 - (A) the sum of revenues from all sources related to electric power operations, consumer deposits and consumer contributions in aid of construction, net non-operating income and any reduction in working capital other than cash; and
 - (B) the sum of all expenses related to electric power operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures;
- (ii) the terms "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to electric power operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above;
- (iii) the term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year;
- (iv) the term "current assets excluding cash" means assets other than cash which would in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year;
- (v) 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, taxes and payments in lieu of taxes, and dividends;
- (vi) 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;
- (vii) the term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to electric power operations; and
- (viii) 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 pre-

vailing 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 4.04. EDM shall at all times make adequate annual provisions for depreciation and renewals of its fixed assets in accordance with sound accounting practices, acceptable to the Association.

Section 4.05. EDM shall by December 31, 1997, take all measures as shall be necessary to reduce its consumer arrears to no more than the equivalent of the amounts billed for the previous three (3) months, and maintain such arrears at not more than that level thereafter.

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 EDM 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 25 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 EDM 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 EDM:

B.P. 69
Square Patrice Lumumba

Bamako, Mali

Telex:

2587

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 EDM, or by EDM on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the General Manager of EDM or such other person or persons as the General Manager shall designate in writing, and EDM 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/ Stephen Denning
Regional Vice President
Africa

ENERGIE DU MALI

By /s/ Cheick Oumar Diarra
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with the provisions of "Section I of the Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1996 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this part B:

(a) Prequalification

Bidders for works shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(b) Grouping of contracts

To the extent practicable, contracts for goods shall be grouped in bid packages estimated to cost \$100,000 equivalent or more each.

(c) Preference for domestically manufactured goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

Part C: Other Procurement Procedures

1. National Competitive Bidding

Goods estimated to cost less than \$100,000 equivalent per contract up to an aggregate amount not to exceed \$500,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. National Shopping

Goods estimated to cost less than \$40,000 equivalent per contract, up to an aggregate amount not to exceed \$150,000 equivalent, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. International Shopping

Goods estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$250,000 equivalent, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

4. Direct Contracting

Spare parts for the rehabilitation and repair of existing electrical and mechanical equipment under Parts A and B of the Project, which are of a proprietary nature, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraph 3.7 (c) of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph.

2. Prior Review

With respect to each contract for goods estimated to cost the equivalent of \$100,000 or more, and for works, the procedures set forth in paragraph 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II: Employment of Consultants

1. Consultants' services shall be procured under contracts awarded

in accordance with the provisions 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 (the consultants Guidelines). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Bank shall be used.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Association review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts, shall not apply to: (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each, or (b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Association review shall not apply to: (i) the terms of reference for such contracts, (ii) single-source selection of consulting firms, (iii) assignments of a critical nature, as reasonably determined by the Association, (iv) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (v) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 2

Implementation Program

1. The Project shall be implemented by EDM under the supervision of MMHE.
2. EDM shall carry out the Project, in accordance with the procedures set out in Project Implementation Plan and, except as the Association shall otherwise agree, EDM shall not amend, abrogate or waive any provision thereof in a manner which, in the opinion of the Association, will materially and adversely affect the implementation of the Project.
3. EDM shall:
 - (a) maintain 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 objectives thereof;
 - (b) furnish to the Association for its review and comments quarterly progress reports on the status of the Project;
 - (c) not later than June 30 and December 31 of each year, commencing in 1997, undertake, in conjunction with the Association and the Borrower a joint semiannual review on all matters relating to the progress of the Project and, in particular, the progress achieved by EDM during the current fiscal year, having regard to the monitoring indicators referred to in subparagraph (a) of this paragraph;
 - (d) not later than one month prior to each semiannual review, furnish to the Association: (i) for its approval, a proposed semiannual work program, including a proposed budget and financing plan, for the forthcoming fiscal year, and (ii) for its review, a report in such detail as the Association shall reasonably request, on the progress of the Project during the current year; and
 - (e) following each semiannual review, act promptly and diligently in order to take any corrective action deemed necessary to remedy any shortcoming identified in the implementation of the Project, or to implement such measures as may have been agreed upon between the parties in furtherance of the objectives of the Project.
4. (a) Not later than June 30, 1998, EDM shall carry out, jointly with the Borrower and the Association, a comprehensive review of the execution of the Project. Without limitation upon the generality of the

foregoing, the review shall, inter alia, cover: (i) the status and results of training, reporting, accounting and audit performance, disbursement and procurement procedures and the overall sustainability of the Project, (ii) the execution of the management contract referred to in Section 3.04 of this Agreement, (iii) the impact of the Project on the environment, and (iv) the status of implementation of the action plan for the strengthening of the institutional framework of the Borrower's power sector referred to in Section 3.04 (a) of the Development Credit Agreement.

(b) Not later than thirty days prior to the review referred to in paragraph (a) above, EDM shall furnish to the Association, for its comments, a report in such detail as the Association shall reasonably request, including an evaluation of the progress achieved in implementing the various components of the Project, and a draft action plan containing proposals for remedying any identified deficiencies.

(c) Promptly after said review, EDM shall: (i) prepare an action plan satisfactory to the Association based on the recommendations stemming from the aforementioned review, and (ii) adopt and implement said action plan for the remainder of the Project implementation period.

5. Until completion of the Project, EDM shall carry out, under terms of reference acceptable to the Association, an annual technical inspection of the Selingue dam and power station, and thereafter take all measures necessary on its part, to remedy any defect identified by said inspection.

6. EDM shall implement with due diligence and efficiency the Environmental Mitigation Plan.

7. Not later than December 31, 1996, EDM shall furnish to the Association an action plan satisfactory to the Association designed to remedy the environment and health problems, and income loss caused by the Selingue dam to the population living in the area surrounding the dam site, and thereafter, implement said action plan with due diligence and efficiency.

8. EDM shall take all action necessary on its part to implement the action plan for the EDM Financial Restructuring Plan.

