

CONFORMED

CREDIT NUMBER 3862 DRC

Development Credit Agreement

(Post-Reunification Economic Recovery Credit)

between

DEMOCRATIC REPUBLIC OF CONGO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated March 9, 2004

CONFORMED

CREDIT NUMBER 3862 DRC

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated March 9, 2004, between DEMOCRATIC REPUBLIC OF CONGO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Association has received a letter dated January 21, 2004 from the Borrower (Letter of Development Policy) describing a program of actions, objectives and policies designed to improve economic development in all of the Borrower's territory (hereinafter referred to as "the Program"), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof; and

(B) on the basis, *inter alia*, of the foregoing, the Association has decided in support of the Program to provide such assistance to the Borrower by making the Credit as hereinafter provided;

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 thereof set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 12, is modified to read:

“‘Project’ means the Program, referred to in the Preamble to the Development Credit Agreement, in support of which the Credit is made.”;

- (b) Section 4.01 is modified to read:

“Except as the Borrower and the Association shall otherwise agree, withdrawals from the Credit Account shall be made in the currency of the Deposit Account specified in Section 2.02 of the Development Credit Agreement.”;

- (c) Section 5.01 is modified to read:

“The Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in accordance with the provisions of the Development Credit Agreement and of these General Conditions.”;

- (d) The last sentence of Section 5.03 is deleted;

(e) Section 9.06 (c) is modified by replacing the words “the Project” by the words: “the Program referred to in the Preamble of the Development Credit Agreement”; and

(f) Section 9.04 is deleted and Sections 9.05, 9.06 (as modified above), 9.07 and 9.08 are renumbered, respectively, Sections 9.04, 9.05, 9.06 and 9.07.

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 meanings:

(a) “Central Bank of Congo” means the Borrower’s Central Bank, established and operating under the laws of the Borrower;

(b) “Deposit Account” means the account or accounts, as the case may be, referred to in Section 2.02 (b) of this Agreement;

(c) “Effectiveness Tranche” means the Tranche (as hereinafter defined) referred to in Category (1) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after Effectiveness Date;

(d) “Retirement Tranche” means the Tranche (as hereinafter defined) referred to in Category (2) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after the date on which the conditions referred to in Schedule 1 paragraph (4) of this Agreement have been met;

(e) “Internal Debt” means the debt as identified in the Stock of Debt (as hereinafter defined);

(f) “Internal Debt Tranche” means the Tranche (as hereinafter defined) referred to in Category (3) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after the date on which the conditions referred to in Schedule 1 paragraph (5) of this Agreement have been met;

(g) “Centralized Payments Tranche” means the Tranche (as hereinafter defined) referred to in Category (4) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, to be released by the Association on or after the date on which the conditions referred to in Schedule 1 paragraph 4 (c) of this Agreement have been met;

(h) “Letter of Development Policy” means the letter set forth in Recital A to this Agreement;

(i) “REGIDESO” means *Régie des Distributions d’Eau de la République Démocratique du Congo*, the Borrower’s public water distribution company established and operating pursuant to *Ordonnance-loi* No. 66-460, dated August 25, 1966, as amended by *Ordonnance* No. 78-197, dated May 5, 1978 (*Journal Officiel* No. 10 du 15 mai 1978);

(j) “SITC” means the Standard International Trade Classification, Revision 3 (SITC, Rev. 3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev. 3 (1986);

(k) “SNEL” means *Société Nationale d’Electricité*, the Borrower’s public electricity company, established and operating pursuant to *Ordonnance-loi* No. 70-033, dated May 16, 1970 (*Moniteur congolais* No. 19 du 1-10-1970), as amended by *Ordonnance* No. 78-196, dated May 5, 1978 (*Journal Officiel* No. 10 du 15 mai 1978);

(l) “Stock of Debt” means the amount of domestic debt held in private hands owed by the Borrower to domestic creditors, delivered prior December 31, 2001 midnight local time, as determined by independent auditors dated January, 2004; and

(m) “Tranche” means any of the following: Effectiveness Tranche, Retirement Tranche, Internal Debt Tranche or Centralized Payments Tranche.

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 thirty five million two hundred thousand Special Drawing Rights (SDR 135,200,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b) and (c) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Association, the first request for withdrawal from the Credit Account, and thereafter maintain a deposit account: (i) either in its Central Bank on terms and conditions satisfactory to the Association; and/or (ii) in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set off, seizure or attachment, as the case may be. All withdrawals shall be deposited by the Association into the Deposit Account or the Deposit Accounts, respectively.

(c) The Borrower undertakes that the proceeds of the Credit shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the Credit shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Association: (i) deposit into the Deposit Account an amount equal to the amount of said payment; or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be credited to the Credit Account for cancellation.

Section 2.03. The Closing Date shall be June 30, 2005 or such later date as the Association shall establish upon request by the Borrower. 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 cancelled; 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 March 1st and September 1st 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 March 1st and September 1st, commencing March 1st, 2014 and ending September 1st, 2043. Each installment to and including the installment payable on September 1st, 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 the Association 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

Financial and other Covenants

Section 3.01. (a) The Borrower undertakes to implement the Program with due diligence to ensure that actions and policies adopted under the Program are duly implemented.

(b) The Borrower and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 2 to this Agreement.

(c) Prior to each such exchange of views, the Borrower shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.

(d) Without limitation upon the provisions of paragraph (b) of this Section, the Borrower shall exchange views with the Association on any proposed action to be taken after the disbursement of the Credit which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including the actions specified in Schedule 2 to this Agreement.

Section 3.02. Upon the Association's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied by independent auditors acceptable to the Association;

(b) furnish to the Association as soon as available, but in any case not later than four (4) months after the date of the Association's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Deposit Account and the audit thereof as the Association shall have reasonably requested.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Effective Date; Termination

Section 5.01. 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.

ARTICLE VI

Representative of the Borrower; Addresses

Section 6.01. The Minister of the Borrower responsible for finance is designated as the representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Minister of, Finance
Ministry of, Finance
BP 12997
Kinshasa I
Democratic Republic of Congo

Facsimile:
243 88 02 381

For the Association:

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

Cable address:

Telex:

Facsimile:

6391

INDEVAS

248423 (MCI) or

(202) 477

Washington, D.C.

64145 (MCI)

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

DEMOCRATIC REPUBLIC OF CONGO

By /s/ Emmanuel Mbi

Authorized Representative

INTERNATIONAL DEVELOPMENT
ASSOCIATION

By /s/ Faïda Mitifu

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. Subject to the provisions set forth or referred to in this Schedule, the table below sets forth the amounts allocated to specific Tranches to be withdrawn from the Credit Account:

	<u>Tranche</u>	Amount of the Credit Allocated (Expressed in <u>SDR Equivalent</u>)	% of Expenditures <u>to be financed</u>
(1)	Effectiveness Tranche	57,400,000	100% of foreign expenditures
(2)	Retirement Tranche	32,100,000	100% of foreign expenditures
(3)	Internal Debt Tranche	28,800,000	100% of foreign expenditures
(4)	Centralized Payments Tranche	16,900,000 <u>=====</u>	100% of foreign expenditures
	TOTAL	<u>135,200,000</u>	

2. For the purposes of this Schedule the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower.

3. For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Credit shall not be used to finance any of the following expenditures:

(a) expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(b) expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the

Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another credit or a loan;

(c) expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122 manufactured	-	Tobacco, (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum

group metals (except

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
971	-	watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems) Gold, non-monetary (excluding gold ores and concentrates);

(d) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

(e) expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party);

(f) expenditures: (i) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (ii) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

(g) expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Credit during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation.

4. (a) No withdrawals shall be made from the Credit Account under Category (2) of the table in paragraph 1 of this Schedule unless the amounts specified in Category (1) have been withdrawn by the Borrower and the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

(A) that the requirements of Part A of Schedule 2 to this Agreement have been fulfilled; and

- (B) that the actions described in Part B of Schedule 2 to this Agreement have been undertaken in form and substance satisfactory to the Association.

(b) No withdrawals shall be made from the Credit Account under Category (3) of the table in paragraph 1 of this Schedule unless the amounts specified in Category (1) have been withdrawn by the Borrower and the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

- (A) that the requirements of Part A of Schedule 2 to this Agreement have been fulfilled; and

- (B) that the actions described in Part C of Schedule 2 to this Agreement have been undertaken in form and substance satisfactory to the Association.

(c) No withdrawals shall be made from the Credit Account under Category (4) of the table in paragraph 1 of this Schedule unless the amounts specified in Category (1) have been withdrawn by the Borrower and the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

- (A) that the requirements of Part A of Schedule 2 to this Agreement have been fulfilled; and

- (B) that the actions described in Part D of Schedule 2 to this Agreement have been undertaken in form and substance satisfactory to the Association.

5. If, after any of said exchange of views referred to in paragraph 4 above, the Association shall have given notice to the Borrower that the requirements under Part A of Schedule 2 to this Agreement, or the actions taken under Parts B, C or D of said Schedule 2, as the case may be, are not satisfactory and, within 90 days after such notice, the Borrower shall not have met the requirements of Part A of Schedule 2 to this Agreement or taken the actions under Part B, C or D of said Schedule 2, as the case may be, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit or any part thereof.

SCHEDULE 2

Requirements for Release of the Floating Tranches

Part A: General Requirements for Tranche Releases

1. The Association is satisfied with the progress achieved by the Borrower in the carrying out of the Program.
2. The macroeconomic policy framework of the Borrower is satisfactory, as measured on the basis of indicators agreed upon between the Borrower and the Association.

Part B: Conditions for the Release of the Retirement Tranche

The Borrower has furnished to the Association evidence that he has adopted, in form and substance satisfactory to the Association, a strategy and implementation action plan, in form and substance satisfactory to the Association setting forth, pursuant to paragraphs 47, 48 and 49 of the Letter of Development Policy, *inter alia*:

1. the sequencing of actions required pursuant to the laws of the Borrower to carry out the transition of civil servants from active duty into retirement after having fulfilled mandatory retirement criteria;
2. (a) determination by amount and other modalities, as applicable, of the retirement payment due to civil servants eligible to receive said payments pursuant to the laws of the Borrower; and

(b) a cut-off date for eligibility to the entitlement of retirement payment financed under the Borrower's program supported through this Retirement Tranche; and
3. (a) a transparent mechanism for: (i) the identification of beneficiaries of retirement payments referred to in paragraph 2 of this Part B of Schedule 2 to the Agreement; (ii) the disbursement of retirement payments to said beneficiaries; and (iii) the control of funds disbursed to said beneficiaries; and

(b) (i) the guaranteed access of the public to information pertaining to: (A) the list of beneficiaries as referred to in paragraph 2 of this Part B of Schedule 2 to the Agreement; (B) the calendar of payments to said beneficiaries; and (C) calculation method used to identify the retirement payments due to said

beneficiaries, and (ii) the publication of regulations and administrative acts pertaining to all matters set forth in paragraphs 2 and 3 of this Part B of Schedule 2 to the Agreement in the Borrower's Official Gazette and the press and other media of wide circulation in the Borrower's territory.

Part C: Specific Conditions for the Release of the Internal Debt Tranche

The Borrower has furnished to the Association evidence in form and substance satisfactory to the Association pursuant to paragraphs 67 and 73 of the Letter of Development Policy, *inter alia* that:

1. the Stock of Debt has been validated by the Borrower pursuant to procedures satisfactory to the Association.
2. a cut-off date after which domestic creditors are precluded from: (a) submitting claims to be included in the Stock of Debt; or (b) completing or modifying already submitted claims to be included in the Stock of Debt, has been published in the Borrower's Official Gazette and the press and media of wide circulation in the Borrower's territory;
3. an agreement, has been concluded between the Borrower and its creditors representing at least 75 percent of the Stock of Debt, pertaining to a common discount factor, or discount factors, as the case may be, satisfactory to the Association, applicable to the entire Stock of Debt; and
4. a commercial bank, acceptable to the Association, has been appointed by the Borrower, following a transparent competitive selection process satisfactory to the Association, to effect payment to entitled creditors pursuant to the agreement set forth in paragraph 3 of this Part C, subject to a procedure satisfactory to the Association.

Part D: Specific Conditions for the Release of the Centralized Payments Tranche

The Borrower has furnished to the Association evidence in form and substance satisfactory to the Association pursuant to paragraph 74 of the Letter of Development Policy, *inter alia* that:

1. an action plan, in form and substance satisfactory to the Association, has been adopted and is being carried out by the Borrower to control utility use and related centralized payments; and
2. SNEL and REGIDESO have begun to implement respective action plans in form and substance satisfactory to the Association to improve the reliability, the transparency and the accountability of their respective billing procedures of the Borrower's public administration.

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