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CREDIT NUMBER 4602-MAI

# Financing Agreement

(Regional Communications Infrastructure Project)

between

REPUBLIC OF MALAWI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 17, 2009

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Public Disclosure Authorized



**CREDIT NUMBER 4602-MAI**

**FINANCING AGREEMENT**

AGREEMENT dated July 17, 2009, entered into between REPUBLIC OF MALAWI (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”). The Recipient and the Association hereby agree as follows:

**ARTICLE I — GENERAL CONDITIONS; DEFINITIONS**

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions.

**ARTICLE II — FINANCING**

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a credit in an amount equivalent to thirteen million five hundred thousand Special Drawing Rights (SDR 13,500,000) (variously, “Credit” and “Financing”) to assist in financing the project described in Schedule 1 to this Agreement (“Project”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.
- 2.05. The Payment Dates are May 1 and November 1 in each year.
- 2.06. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.
- 2.07. The Payment Currency is Dollar.

**ARTICLE III — PROJECT**

- 3.01. The Recipient declares its commitment to the objectives of the Project and the Program. To this end, the Recipient shall carry out the Project through the Privatization Commission in accordance with the provisions of Article IV of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

**ARTICLE IV — EFFECTIVENESS; TERMINATION**

- 4.01. The Additional Condition of Effectiveness shall be that the Recipient has appointed to the PC a Project manager with qualifications, experience and terms of reference satisfactory to the Association.
- 4.02. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.
- 4.03. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty years after the date of this Agreement.

**ARTICLE V — REPRESENTATIVE; ADDRESSES**

5.01. The Recipient's Representative is the Minister responsible for finance.

5.02. The Recipient's Address is:

Ministry of Finance  
P.O. Box 30049  
Capital City  
Lilongwe 3  
Malawi

Facsimile:

265-1-789173

5.03. The Association's Address is:

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

Cable:

Telex:

Facsimile:

INDEVAS  
Washington, D.C.

248423 (MCI)

1-202-477-6391

AGREED at Lilongwe, Republic of Malawi, as of the day and year first above written.

**REPUBLIC OF MALAWI**

**By /s/ Ken E. Kandodo**

**Authorized Representative**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**By /s/ Timothy Gilbo**

**Authorized Representative**

## SCHEDULE 1

### Project Description

The objective of the Project is to support the Recipient's efforts to improve the quality, availability and affordability of broadband within its territory for both public and private users.

The Project constitutes the third phase of the Program, and consists of the following parts:

#### **Part A:**        **Enabling Environment**

1. Building the capacity of the PC, MICE, MACRA and other key agencies involved in the ICT Sector for monitoring and evaluation, and implementation of the Project activities to improve the overall competitive environment for the ICT sector including provision of technical advisory services and training for, *inter alia*: (a) supporting the negotiations with private and public agencies in the development and operation of cross-border connectivity; (b) maximizing the benefits under access to capacity and to assess the policy and regulatory environment; (c) supporting the policy and regulatory capacity, consensus building activities, and strengthening the policy making role of the MICE; (d) drafting new ICT legislation and developing a corresponding regulatory framework; (e) developing a legal framework to support the development of public private partnerships arrangements in ICT sector; and (f) supporting monitoring and evaluation of the Project activities.
2. Carrying out an analysis of potential environmental and social impacts of the Project, including monitoring and evaluation of the mitigation measures that may be implemented pursuant to the ESMF and the RPF, through the provision of technical advisory services.
3. Carrying out the overall communications strategy including supporting: (i) airing communication messages to promote proactive engagement of the civil society and other ICT-interest groups; (ii) timely disclosure, dissemination and implementation of recommendations specified in key documents; (iii) institutions involved in upgrading of ICT infrastructure; and (iv) the private sector engagement in ICT.

**Part B:        Connectivity**

1.     Purchasing international connectivity capacity to support the development of regional communications links with coastal landing stations of submarine cables, including provision of technical advisory services, studies, providing legal advice and transaction support for a public private partnership.
  
2.     Supporting connectivity for selected public institutions and public internet access points.
  
3.     Supporting the establishment and operation of a neutral point of interconnection to allow equal access to regional connectivity by the private sector and other operators.

**Part C:        Project Management**

Supporting the PC's capacity for management and coordination of the Project activities including, recruitment of a Project manager, a technical expert, a procurement specialist, and a financial management specialist, through the provision of technical advisory services, and acquisition of goods.



**SCHEDULE 2****Project Execution****Section I. Implementation Arrangements****A. Institutional Arrangements**1. Privatization Commission

The Recipient shall ensure that the Privatization Commission is maintained at all times during the implementation of the Project with mandate, staffing and resources satisfactory to the Association for the purpose of ensuring the prompt and efficient overall coordination, monitoring, reporting, evaluation and communication of Project activities.

2. MACRA

Without limitation upon the provision of paragraph A.1 of this Section, the Recipient shall ensure that MACRA is maintained at all times during the implementation of the Project with mandate, staffing and resources satisfactory to the Association for the purpose of ensuring the prompt and efficient day-to-day implementation of Part B.2 of the Project.

3. Project Steering Committee

(a) Without limitation upon the provisions of paragraph A.1 of this Section, the Recipient shall maintain at all times until the completion of the Project, the Project Steering Committee with a composition, mandate and resources satisfactory to the Association.

(b) Without limitation to sub-paragraph (a) of this paragraph, the Project Steering Committee shall be responsible for, *inter alia*: (i) policy guidance; (ii) reviewing progress made towards achieving the Project's objectives, and making recommendations for removal of any obstacles to the timely implementation of the Project; and (iii) providing comments on reports and reviews prepared by the PC for the benefit of the Recipient and the Association.

**B. Implementation Arrangements****1. Project Implementation Manual**

The Recipient shall carry out the Project in accordance with the arrangements, procedures and guidelines set out in the Project Implementation Manual (provided, however, that in case of any conflict between the arrangements and procedures set out in the Project Implementation Manual and the provisions of this Agreement, the provisions of this Agreement shall prevail) and, except as the Association shall otherwise agree in writing, shall not amend, abrogate or waive any provision of the Project Implementation Manual without prior written approval of the Association if such amendment, abrogation or waiver may, in the opinion of the Association, materially or adversely affect the implementation of the Project.

**2. Annual Work Plan and Budget**

- (a) The Recipient shall prepare and furnish to the Association for its approval, not later than May 31 of each year during the implementation of the Project, or such later date as the Association may agree, the Annual Work Plan and Budget containing all proposed activities to be carried out in the following Fiscal Year, modified in a manner satisfactory to the Association, taking into account the Association's comments and views on the matter.
- (b) The Recipient shall cause MACRA and any agency with responsibility for ICT activity to implement, monitor and evaluate such activity in accordance with the provisions set forth in this Agreement and in more detail in the Project Implementation Manual, and shall not make or allow to be made any material change to any activity included in the approved Annual Work Plan and Budget without prior consultation with and written approval of the Association.

**C. Anti-Corruption**

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

**D. Environmental and Social Safeguards**

1. The Recipient shall carry out the Project in accordance with the environmental, social and resettlement guidelines, rules and procedures defined in the Environmental and Social Management Framework, and the Resettlement Policy Framework. To this end, in cases of any activity requiring the adoption of an EMP and RAP, the Recipient shall:
  - (a) prepare, disclose and implement EMPs in accordance with the ESMF and in form and substance acceptable to the Association, defining: (i) the measures to be taken during the implementation of such activity to eliminate or offset adverse environmental or social impacts, or to reduce them to acceptable levels; and (ii) the actions needed to implement these measures; and
  - (b) prepare, disclose and implement Resettlement Action Plans in accordance with the RPF and in form and substance acceptable to the Association, defining a program of actions, measures and policies for compensation and resettlement of Affected Persons, including the magnitude of displacement, proposed compensation and resettlement arrangements, budget and cost estimates, and sources of funding, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with, the RAPs.
2. The Recipient shall not amend or waive, or permit to be waived, the ESMF, RPF, RAPs, the EMPs, or any provision of any one thereof, without the prior written consent of the Association.
3. The Recipient shall ensure that all measures for carrying out the recommendations of the ESMF, RPF, RAPs, EMPs are taken in a timely manner.
4. Without limitation upon its other reporting obligations under this agreement and under Section 4.08 of the General Conditions, the Recipient shall:
  - (a) include in the Project Reports referred to in Section II.A of this Schedule adequate information on monitoring the measures defined in the ESMF, EMPs, RPF and RAPs, giving details of:
    - (i) measures taken in furtherance of such ESMF, EMPs, RPF and RAPs;

- (ii) conditions, if any, which interfere or threaten to interfere with the smooth implementation of such ESMF, EMPs, RPFs and RAPs;
    - (iii) remedial measures taken or required to be taken to address such conditions and to ensure the continued efficient and effective implementation of such ESMF, EMPs, RPF and RAPs; and
  - (b) afford the Association a reasonable opportunity to exchange views with the Recipient on such reports.
5. Each such report shall be furnished to the Association not later than one month after the end of the six months covered by such report.

**Section II. Project Monitoring, Reporting and Evaluation**

**A. Project Reports**

1. (a) The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators set forth below in sub-paragraph (b) of this paragraph. Each Project Report shall cover the period of six calendar months, and shall be furnished to the Association not later than one month after the end of the period covered by such report.
- (b) The performance indicators referred to above in sub-paragraph (a) consist of the following:
- (i) international internet bandwidth (Mbit/s);
  - (ii) internet user penetration;
  - (iii) total teledensity (fixed and mobile);
  - (iv) retail price of internet access (US\$ per month); and
  - (v) number of market players accessing capacity on submarine fibre-optic cables.

2. For the purpose of Section 4.08 (c) of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Association not later than the date twenty four (24) months after the Effective Date.

**B. Financial Management, Financial Reports and Audits**

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association, not later than forty-five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.
3. The Recipient shall audit or cause the Financial Statements to be audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one Fiscal Year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six months after the end of such period.

**Section III. Procurement**

**A. General**

1. **Goods and Works.** All goods and works required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. **Non-consulting Services.** All services that are not of intellectual or advisory nature, and which are not consultants' services. Non-consulting services under this Project will include, airing of information, education and communication messages and telecom services. Non-consulting services required for the Project

shall be procured in accordance with the corresponding method described in the Procurement Guidelines for procurement of works and goods, and referred to in Paragraph A.1 of this Section.

4. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

**B. Particular Methods of Procurement of Goods and Works**

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods and works shall be procured under contracts awarded on the basis of International Competitive Bidding (ICB).
2. **Other Methods of Procurement of Goods and Works.** The following methods of procurement, other than International Competitive Bidding, may be used for goods and works under the circumstances specified in the Procurement Plan for each such method: (a) National Competitive Bidding may be used, except that in accordance with paragraph 1.14(e) of the Procurement Guidelines, each bidding document and contract shall provide the following: (i) the bidders, suppliers, contractors and subcontractors shall, on request, permit the Association to inspect the accounts and records relating to the bid submission and performance of the contract, and shall have the said accounts and records audited by auditors appointed by the Associations; and (ii) any deliberate and/or material violation of such provision by any bidder, supplier, contractor or subcontractor may amount to an obstructive practice provided for in paragraphs 1.14(a) and (v) of the Procurement Guidelines; (b) Shopping; (c) Direct contracting; and (d) Established Private or Commercial Practices which have been found acceptable to the Association.

**C. Particular Methods of Procurement of Consultants' Services**

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.
2. **Other Methods of Procurement of Consultants' Services.** The following methods of procurement, other than Quality- and Cost-based Selection, may be used for consultants' services under the circumstances specified in the Procurement Plan for each such method: (a) Quality Based Selection; (b) Least Cost Selection; (c) Selection Based on Consultants' Qualifications;

(d) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants; (e) Single Source Selection; (f) Sole Source Procedures for the Selection of Individual Consultants; and (g) Established Private or Commercial Practices which have been found acceptable to the Association.

**D. Review by the Association of Procurement Decisions**

1. The Procurement Plan shall set forth those contracts which shall be subject to the Association Prior Review.
2. All other contracts shall be subject to Post Review by the Association.

**Section IV. Withdrawal of the Proceeds of the Financing**

**A. General**

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing (“Category”), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<b>Category</b>	<b>Amount of the Financing Allocated (expressed in SDR)</b>	<b>Percentage of Expenditures to be Financed (inclusive of Taxes)</b>
(1) Consultants’ services, Non-Consulting services and Training for Part A of the Project	1,300,000	100%

<b>Category</b>	<b>Amount of the Financing Allocated (expressed in SDR)</b>	<b>Percentage of Expenditures to be Financed (inclusive of Taxes)</b>
(2) Goods, works, Non-consulting services, and consultants' services, for Part B of the Project	9,800,000	100%
(3) Goods, Consultants' services, and Operating Costs for Part C of the Project	1,300,000	100%
Unallocated	1,100,000	
<b>TOTAL AMOUNT</b>	<b>13,500,000</b>	

**B. Withdrawal Conditions; Withdrawal Period**

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement.
2. The Closing Date is February 28, 2015.

**Section V. Other Undertakings**

**A. Appointment of Financial Auditors, and Training of Financial Management and Disbursement Staff**

1. The Recipient shall not later than four months after the Effective Date, appoint the independent auditors referred to in Section 4.09 (b) of the General Conditions, in accordance with the provisions of Section III of this Schedule.
2. The Recipient shall not later than three months after the Effective Date, provide the relevant PC staff with training, satisfactory to the Association, on financial management and disbursement policies.



**B. Waiver of Taxes for Purchase of Capacity and Consultants' Services under Part B of the Project.**

1. The Recipient shall pursuant to a letter dated April 28, 2009 from the Recipient to the Association, waive the Value Added Tax, the Excise Duty, Withholding Tax, and Border Tax levied on telecommunications services and consultants' services under Part B of the Project pursuant to a waiver of said tax made under the relevant laws of the Recipient.

**SCHEDULE 3****Repayment Schedule**

<b>Date Payment Due</b>	<b>Principal Amount of the Credit repayable (expressed as a percentage)*</b>
On each May 1 and November 1:	
commencing November 1, 2019 to and including May 1, 2029	<b>1%</b>
commencing November 1, 2029 to and including May 1, 2049	<b>2%</b>

\* The percentages represent the percentage of the principal amount of the Credit to be repaid, except as the Association may otherwise specify pursuant to Section 3.03 (b) of the General Conditions.

**APPENDIX****Definitions**

1. “Affected Persons” means persons who, on account of the execution of the Project had or would have their: (i) standard of living adversely affected; or (ii) right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently; (iii) access to productive assets adversely affected, temporarily or permanently; or (iv) business, occupation, work or place of residence or habitat adversely affected.
2. “Annual Work Plan and Budget” means the work plan and budget for the Project prepared annually by the PC and MACRA, and consolidated by the PC in accordance with Section I.B.2 of Schedule 2 to this Agreement.
3. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
4. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
5. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004 and revised in October 2006.
6. “eGovernment” means use of ICT to enhance the delivery of services by government units, departments and ministries.
7. “Environmental and Social Management Framework” or “ESMF” means the document of the Recipient dated April 2009, as the said document may be amended and/or supplemented from time to time with the prior written concurrence of the Association, setting forth the modalities for environmental screening and procedures for the preparation and implementation of environmental assessments and management plans under the Project pursuant to Section I.D.1 of Schedule 2 to this Agreement, and such term includes all schedules and annexes to the ESMF.
8. “Environmental Management Plan” or “EMP” means an environmental and social management plan, acceptable to the Association and consistent with the ESMF,

adopted for the purposes of an activity, and giving details of the magnitude of the environmental impacts, as well as the specific actions, measures and policies designed to facilitate the achievement of the objective of the ESMF under the activity, including the budget and cost estimates, and sources of funding, along with the institutional and procedural measures needed to implement such actions, measures and policies, and such EMP may be amended from time to time with the prior written agreement of the Association.

9. “Fiscal Year” means the Recipient’s fiscal year commencing July 1 and ending June 30 of each year.
10. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006).
11. “ICT” means Information and Communication Technology.
12. “MICE” means the Recipient’s Ministry of Information and Civic Education, and any successors thereto.
13. “MACRA” means Malawi Communications Regulatory Authority, established and operating under the Communications Act, CAP 68:01 of the laws of the Recipient, and any successors thereto.
14. “Operating Costs” means the incremental costs incurred by the PC and MACRA, in the course of the implementation of the Project, and on the basis of approved Annual Work Plan and Budget for the Project, on account of operation and maintenance costs for Project vehicles, office supplies including costs of communications, including faxes, internet and related services, consumables, travel costs and per diems, and accommodation, but excluding salaries of the Recipient’s civil servants.
15. “Privatization Commission” and “PC” mean the Privatization Commission established and operating under the Public Enterprises (Privatization) Act, CAP 46:07 of the laws of the Recipient, and any successors thereto.
16. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October, 2006.

17. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated April 27, 2009, and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
18. “Project Implementation Manual” means the Recipient’s manual dated April 27, 2009, in form and substance satisfactory to the Association, including an administrative, financial and accounting procedures manual, and containing or referring to detailed arrangements and procedures for the implementation of the Project, including: (i) institutional administration, coordination and day-to-day execution of activities of the Project; (ii) capacity building activities for sustained achievement of the Project’s objectives; (iii) disbursement and financial management; (iv) procurement; (v) monitoring, evaluation, reporting, information, education and communication; and (vi) such other administrative, financial, technical and organizational arrangements and procedures as shall be required for the Project, as such manual may be amended and supplemented from time to time, with the prior written approval of the Association, and such term includes all schedules and annexes to said manual.
19. “Program” means the program designed to support the Recipient’s information communications technology and to facilitate connectivity to support the development of regional communications links with coastal landing stations of the submarine fiber-optic cables under the Regional Communications Infrastructure Program.
20. “Project Steering Committee” means the committee referred to in Section 1.A.3 of Schedule 2 to this Agreement.
21. “Resettlement Action Plan” or “RAP” means the plan referred to in Section I.D.1 (b) of Schedule 2 to this Agreement; and “RAPs” means, collectively, each such RAP.
22. “Resettlement Policy Framework” or “RPF” means the Resettlement Policy Framework of the Recipient dated April 2009, as the said framework may be amended and/or supplemented from time to time with the prior concurrence of the Association, setting forth the modalities for resettlement and compensation of Affected Persons under the Project and referred to in Section I.D.1 of Schedule 2 to this Agreement, as the same may be amended from time to time with the agreement of the Association.
23. “Training” means the costs associated with the training and workshops, and study tours based on Annual Work Plan and Budget approved by the Association

pursuant to Section III.D.1 of Schedule 2 to this Agreement, including travel and subsistence costs for training and workshops participants, costs associated with securing the services of trainers, rental of training facilities, preparation, reproduction, and acquisition of training materials, and other costs directly related to course preparation and implementation.