

CONFORMED COPY

CREDIT NUMBER 4148 - KE

Development Credit Agreement

(East Africa Trade and Transport Facilitation Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated April 5, 2006

CREDIT NUMBER 4148 - KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated April 5, 2006, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower has, pursuant to the Protocol on the Establishment of the East African Community Customs Union (the EACCU Protocol) dated March 2, 2004, entered into the Customs Union (as hereinafter defined), with other EAC Partner States (as hereinafter defined), confirming, *inter alia*, EAC Partner States' commitment to a regional trade and transport facilitation program in the Customs Union (the Regional Program);

(B) the East African Community (as hereinafter defined) and NCTTCA Countries (as hereinafter defined) have pursuant to a Memorandum of Understanding (MOU) dated October 18, 2005, committed to cooperate in the development of transport infrastructure, transit transport, customs and trade facilitation including, *inter alia*, implementation of the Regional Program;

(C) the Association has received a letter from the Borrower, dated June 8, 2005, declaring the Borrower's commitment to the execution of the Regional Program;

(D) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing Parts C and D of the Project;

(E) the East African Community (EAC), NCTTCA and (CCTFA) (all hereinafter defined) intend to obtain financial assistance from the African Development Fund (AfDB Grant) in an amount of approximately eleven million United States Dollars (\$11,000,000) to assist in financing Parts A and B of the Project;

(F) Part C1 of the Project will be carried out by Kenya Ports Authority (KPA); and Part C.2 will be carried out by Kenya Revenue Authority (KRA), all with the Borrower's assistance and, as part of such assistance, the Borrower will make part of the proceeds of the credit provided for in Article II of this Agreement (the Credit) available to KPA and KRA, respectively, as set forth in this Agreement; and

WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

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 May 1, 2004), (the General Conditions), constitute an integral part of this Agreement.

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) “Concession Agreement” means the agreement to be entered into between the Borrower and the concessionaire (the Concessionaire) pursuant to which the Borrower shall award the concession referred to in Part D.1 of the Project, to the Concessionaire, for a period of at least twenty five years as of the Commencement Date as defined in the said concession agreement;

(b) “Central Corridor Transport Facilitation Agency” or “CCTFA” means the transit and transport coordination body to be established under an agreement to be entered into among Republic of Burundi, Democratic Republic of the Congo, Republic of Rwanda, the Republic of Uganda and the United Republic of Tanzania;

(c) “Commencement Date” means the commencement date of the Concession Agreement as defined in said concession agreement;

(d) “Displaced Person” means a person who, on account of the execution of Part D of the Project, has experienced or would experience direct economic and social impacts caused by the involuntary taking of land, resulting in: (i) relocation or loss of shelter, commercial or trading premise; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not such person must move to another location; and “Displaced Persons” means more than one Displaced Person;

(e) “EACCU” or “Customs Union” means the East African Community Customs Union established under Article 2 of the EACCU Protocol;

(f) “East African Community” or “EAC” means the community established under Article 2 of the Treaty for the Establishment of the East African Community (the Treaty), dated November 30, 1999;

(g) “East African Community Customs Management Act, 2004” means the Act of the East African Community dated January 1, 2005 to make provisions for the management and administration of Customs and for related matters;

(h) “EAC Directorate of Trade and Customs” means the Directorate established under Article 75(3) of the Treaty, and operating pursuant to the provisions of Section 3 of the East African Community Customs Management Act, 2004;

(i) “EAC Secretariat” means the secretariat of the East African Community as defined in the Treaty;

(j) “Eligible Categories” means Categories (1) through (6) set forth in the table in Part A.1 of Schedule 1 to this Agreement;

(k) “Eligible Expenditures” means the expenditures for goods, works and consultants’ services referred to in Section 2.02 of this Agreement;

(l) “eligible employees of KRC” means employees of KRC (as hereinafter defined) eligible to receive retirement or retrenchment benefits in accordance with the laws of the Borrower, including the provisions of the Pension Fund (as hereinafter defined);

(m) “EAC Partner States” means the Borrower, The Republic of Uganda and the United Republic of Tanzania, and any other country granted membership to the Community under Article 3 of the Treaty;

(n) “EIA” or “Environmental Impact Assessment” means the specific environmental assessment dated June 3, 2005, undertaken in respect to the activities under Part D of the Project and specifically outlining appropriate institutional measures required for monitoring, evaluation, and mitigating the environmental impacts of such activities;

(o) “EMP” or “Environmental Management Plan” means the plan referred to in paragraph 9(a) of Schedule 4 to this Agreement, dated June 3, 2005, and adopted by

the Borrower, which constitutes the framework for a set of mitigation, enhancement, monitoring, and institutional measures to be taken during implementation of the Project to mitigate adverse environmental and social impacts, offset them, or reduce them to acceptable levels, or to enhance positive impacts of any activity under Part D of the Project;

(p) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

(q) “Implementing Agencies” means MOT, MORPW, KRA and KPA (all as hereinafter defined); and the term “Implementing Agency” means either one of such Implementing Agencies;

(r) “IMO ISPS Code” means the International Ship and Port Facility Security Code (ISPS) of the International Maritime Organization, which entered into force on July 1, 2004;

(s) “Kenya Ports Authority” or “KPA” means a body corporate established and operating under the Kenya Ports Authority Act (CAP 391), of the laws of the Borrower, and responsible for the management and control of the Ports and harbors located in the territory of the Borrower;

(t) “Kenya Railways Corporation” or “KRC” means a body corporate established and operating pursuant to the Kenya Railways Corporation Act (CAP 397) of the laws of the Borrower, and responsible for the management and control of the railway network located in the territory of the Borrower;

(u) “KRC Retrenchment and Retirement Account” means the account to be established in a bank under terms and conditions satisfactory to the Association pursuant to Part D.2 of the Project, and referred to in Section 3.04 of this Agreement to be used for payment of retrenchment and retirement benefits pertaining to the service of eligible employees of KRC, pensioners or their beneficiaries;

(v) “Kenya Revenue Authority” or “KRA” means an incorporated body established and operating pursuant to the Kenya Revenue Authority Act, (CAP 469) of the laws of the Borrower, and responsible for the management and customs administration in the territory of the Borrower;

(w) “Kenya Shilling” or “Ksh” means the currency of the Borrower;

(x) “KPA Subsidiary Financing Agreement” means the agreement to be entered into between the Borrower and KPA pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the KPA Subsidiary Financing Agreement;

(y) “KRA Subsidiary Financing Agreement” means the agreement to be entered into between the Borrower and KRA pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the KRA Subsidiary Financing Agreement;

(z) “MOF” means the Ministry of Finance of the Borrower;

(aa) “MOT” means the Ministry of Transport of the Borrower;

(bb) “MORPW” means the Ministry of Roads and Public Works of the Borrower;

(cc) “MOU” or “Memorandum of Understanding” means the memorandum of understanding dated October 18, 2005, between the EAC and NCTTCA (as hereinafter defined);

(dd) “National Coordinator” means the coordinator designated by the Borrower to be responsible for the coordination of Project-related activities of agencies of the Borrower;

(ee) “Northern Corridor Transit Transport Coordination Authority” or “NCTTCA” means the transit and transport coordination authority established under the agreement (the Northern Corridor Transit Agreement), dated February 19, 1985 (as amended), among the Borrower, Republic of Burundi, Democratic Republic of Congo, Republic of Rwanda and the Republic of Uganda;

(ff) “NCTTCA Countries” means the Borrower, Republic of Burundi, Democratic Republic of Congo, Republic of Rwanda and the Republic of Uganda;

(gg) “Non-tariff barriers” means the non-tariff barriers as described in the EACCU Protocol including, laws, regulations, administrative and technical requirements other than tariffs imposed by a Partner State whose effect is to impede trade;

(hh) “Operating Accounts” means the accounts referred to in paragraph 7 of Schedule 1 to this Agreement;

(ii) "Project Account" means the MORPW project account, and MOT/KRC project account referred to in Section 3.03 of this Agreement;

(jj) "PCT" means the Project Coordination Team referred to in paragraph 3(a) of Schedule 4 to this Agreement;

(kk) "Pension Fund" means the Pension Fund of Kenya Railways established and operating under the Retirement Benefits Act Number 3 of 1997, of the laws of the Borrower;

(ll) "Project Implementation Manual" or "PIM" means the manual setting out the measures required for the implementation of the Project, as the same may be amended from time to time, subject to prior approval of the Association;

(mm) "PIT" means the project implementation team referred to in paragraph 1 of Schedule 4 to this Agreement, and established by MOT, MORPW, KPA and KRA; and the term "PITs" means, collectively, the MOT-PIT, MOT/KRC-PIT, MORPW-PIT, KPA-PIT and KRA-PIT;

(nn) "Procurement Plan" means the Borrower's procurement plan, dated October 27, 2005, covering the initial 18-month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding 18-month periods (or longer) of Project implementation;

(oo) "PSC" means the Project Steering Committee referred to in paragraph 3(b) of Schedule 4 to this Agreement;

(pp) "RRA" means Rwanda Revenue Authority an incorporated body established and operating pursuant to the Republic of Rwanda's Law No. 15/97 of November 8, 1997, responsible for the management and customs administration in the territory of the Republic of Rwanda;

(qq) "Regional Countries" means the Borrower, Republic of Rwanda, the Republic of Uganda and United Republic of Tanzania, all participating in the Regional Program, and the term 'Regional Country' means any such country participating in the Regional Program;

(rr) "Regional Steering Committee" or "RSC" means the committee referred to in paragraph 4 of Schedule 4 to this Agreement, established by the EAC Partner States and the Republic of Rwanda;

(ss) “Report-based Disbursements” means the Borrower’s option for withdrawal of funds from the Credit Account referred to in Part A.5 of Schedule 1 to this Agreement;

(tt) “Resettlement Action Plan” and “RAP” mean the plan titled “Relocation Action Plan for Improving the Safety Along Kenya Railway Line”, dated June 3, 2005, and referred to in Part D.3 of the Project, for implementing the involuntary resettlement of Displaced Persons in the areas of *Kibera* and *Mukuru* in Nairobi on Kenya Railways land;

(uu) “Retirement Benefits Act” means Act No. 3 of 1997 of the laws of the Borrower;

(vv) “SMP” or “Safety Management Plan” means the plan referred to in paragraph 9(b) of Schedule 4 to this Agreement, to be prepared and implemented by the Concessionaire, outlining appropriate institutional measures required for monitoring, evaluation, and mitigating the environmental, safety and health impacts of activities of the Concessionaire pursuant to the concession referred to in Part D.1 of the Project;

(ww) “Staff Retrenchment Manual” means the KRC staff retrenchment manual referred to in paragraph 7 of Schedule 4 to this Agreement, and adopted by the Borrower on October 28, 2005, setting forth, *inter alia*, a specification of the eligible employees of KRC, the severance payments to be made, the verification process to be followed to confirm that said eligible employees of KRC have received such payments and have been removed from KRC’s payroll, as such retrenchment manual may be amended from time to time, and such terms include any schedules to the retrenchment manual;

(xx) “Subsidiary Financing Agreements” means KPA Subsidiary Financing Agreement and KRA Subsidiary Financing Agreement, as the same may be amended from time to time, and such term includes all schedules to said Subsidiary Financing Agreements;

(yy) “Special Account” mean each of the accounts referred to in Part B of Schedule 1 to this Agreement;

(zz) “Tripartite Agreement on Road Transport” means the Agreement dated November 29, 2001, among the EAC Partner States relating to regulation and facilitation of road transport in the EAC;

(aaa) “TRA” means Tanzania Revenue Authority, an incorporated body established and operating pursuant to the Tanzania Revenue Authority Act No. 11 of 1995 of the laws of the United Republic of Tanzania, and responsible for the

management and customs administration in the territory of the United Republic of Tanzania;

(bbb) “Team Leader” means the person designated by either MOT, MORPW, KPA or KRA to manage a PIT in the implementation of Parts C and D of the Project; and

(ccc) “URA” means Uganda Revenue Authority, an incorporated body established and operating pursuant to the Uganda Revenue Authority Act (CAP 196) of the laws of the Republic of Uganda, and responsible for the management and customs administration in the territory of the Republic of Uganda.

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 this Agreement, an amount in various currencies equivalent to eighty three million three hundred thousand Special Drawing Rights (SDR 83,300.000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of: (a) works, goods and services required for the Project; (b) severance payments; and (c) pension payments, all to be financed out of the proceeds of the Credit.

Section 2.03. The Closing Date shall be September 30, 2011 or such later date as the Association shall establish. 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 canceled; 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 May 15 and November 15 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 May 15 and November 15, commencing May 15, 2016 and ending November 15, 2045. Each installment to and including the installment payable on November 15, 2025 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 them 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 United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall carry out Parts C and D of the Project through the Implementing Agencies, and: (i) cause KPA to carry out Part C.1 of the Project; (ii) cause KRA to carry out Part C.2 of the Project; (iii) through MORPW carry out Part C.3 of the Project; and (iv) through MOT carry out Parts C.4 and D of the Project, all with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, technical and environmental practices, and shall provide, 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 Borrower and the Association shall otherwise agree, the Borrower shall cause the Implementing Agencies to carry out Parts C and D of the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) The Borrower shall: make part of the proceeds of the Credit available to KPA and to KRA as a grant, all under Subsidiary Financing Agreements to be entered into: (i) between the Borrower and KPA; and (ii) between the Borrower and KRA,

respectively, all under terms and conditions which shall have been approved by the Association, which shall include the terms and conditions set forth in paragraph 8 of Schedule 4 to this Agreement.

(d) The Borrower shall exercise its rights under each Subsidiary Financing Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive any Subsidiary Financing Agreement or any provision thereof.

Section 3.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than 12 months after the date of the preceding Procurement Plan, for the Association's approval.

Section 3.03. Without limitation to its obligations under Section 3.01 of this Agreement, the Borrower shall:

(a) open and thereafter maintain, until completion of the Project, MORPW project account and MOT/KRC project account in Ksh, in a commercial bank acceptable to the Association and on terms and conditions acceptable to the Association;

(b) promptly thereafter, make an initial deposit of Ksh 11,700,000 for MORPW and KSH 33,750,000 for MOT/KRC, respectively, into the respective Project Account to finance the Borrower's contribution to the costs of Parts C and D of the Project;

(c) thereafter, on a quarterly basis during the Project Implementation, timely replenish the Project Account with such adequate amounts as shall be required to carry out Parts C and D of the Project; and

(d) use the Project Account funds exclusively to finance expenditures under Parts C and D of the Project in addition to those financed from the proceeds of the Credit.

Section 3.04. The Borrower shall: (a) open and maintain in the Central Bank of Kenya the KRC Retrenchment and Retirement Account for the purposes of executing Part D.2 of the Project; and

(b) cause MOT to make payments to eligible employees of KRC, pensioners or their beneficiaries in accordance with the Retrenchment and Retirement Manual.

Section 3.05. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) cause the Implementing Agencies to 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 Borrower and the Association, a plan for the future operation of the Project; and

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

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall, and shall cause the Implementing Agencies to, maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to Parts C and D of the Project.

(b) The Borrower shall, and shall cause the Implementing Agencies to:

(i) have the respective financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association): (A) certified copies of the respective financial statements referred to in paragraph (a) of this Section for such year (or such other period agreed to by

the Association), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and

- (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of reports referred to in Part A.5 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Borrower shall cause the Implementing Agencies to:

- (i) retain, until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraphs 11 through 13 of Schedule 4 to this Agreement the Borrower shall, and shall cause the Implementing Agencies to, prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for Parts C and D of the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in implementation of Parts C and D of the Project implementation, both cumulatively and for the period covered

by said report, and explains variances between the actual and planned implementation of Parts C and D of the Project; and

- (iii) sets forth the status of procurement under Parts C and D of the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under Parts C and D of the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

(a) the Borrower shall have abrogated or modified the legal status of KPA or KRA, or taken any action, including the enactment or issuance of laws or regulations, which, in the opinion of the Association, may adversely affect, prevent, or interfere with, the carrying out of Part C of the Project or the performance by the Borrower of any of its obligations under this Agreement;

(b) the Borrower shall have failed to afford reasonable opportunity for representatives of the Association to visit any part of its territory for purposes related to the Project; and

(c) KPA and KRA shall have failed to perform their obligations under the respective Subsidiary Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional event is specified, namely that the events specified in Section 5.01 (a) through (c) of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) each of the Subsidiary Financing Agreements has been executed on behalf of the Borrower, KPA and KRA, respectively;

(b) the Borrower has: (i) adopted a risk based internal audit system; and (ii) caused PSC to establish risk management oversight functions in form and substance satisfactory to the Association;

(c) the Borrower has adopted the Project Implementation Manual in form and substance satisfactory to the Association;

(d) the Borrower has, for the purpose of implementing the RAP, appointed a technical team, including a team leader, all with qualifications, experience and terms of reference satisfactory to the Association;

(e) the Borrower has implemented a training program for the staff of KPA and KRA relating to the procurement guidelines and procedures, in a form and substance satisfactory to the Association; and

(f) the Project Accounts, have been opened and the respective initial deposits referred to in Section 3.03 (b) have been made.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the KPA Subsidiary Financing Agreement has been duly authorized or ratified by the Borrower and KPA and is legally binding upon the Borrower and KPA in accordance with its terms; and

(b) that the KRA Subsidiary Financing Agreement has been duly authorized or ratified by the Borrower and KRA and is legally binding upon the Borrower and KRA in accordance with its terms.

Section 6.03. 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 VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30007
Nairobi

Kenya

Cable address:	Telex:	Facsimile:
FINANCE MINIFIN-KE Nairobi	2292	254 20 330426

For the Association:

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

Cable address:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477-6391

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

REPUBLIC OF KENYA

By /s/ Amos Kimunya

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Colin Bruce

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Goods		100 % of foreign expenditures and 90% of local expenditures
(a) for Part C.1 of the Project	7,620,000	
(b) for Part C.2 of the Project	3,680,000	
(c) for Part C.4 of the Project	700,000	
(d) for Part D of the Project	200,000	
(2) Works		100% of foreign expenditures and 75% of local expenditures
(a) for Part C.2 of the Project	200,000	
(b) for Part C.3 of the Project	14,900,000	
(c) for Part D of the Project	8,400,000	
(3) Consultants' services		100% of foreign expenditures and 94% of local expenditures
(a) for Part C.1 of the Project	1,340,000	
(b) for Part C.2 of the Project	1,180,000	
(c) for Part C.3 of the Project	900,000	
(d) for Part C.4 of the Project	1,300,000	
(e) for Part D of the Project	3,380,000	

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(4) severance payments	28,900,000	100 % of the amounts disbursed
(5) pensions payments	5,300,000	100% of the amounts disbursed
(6) Operating costs		90%
(a) for Part C.1 of the Project	350,000	
(b) for Part C.2 of the Project	330,000	
(c) for Parts C.4 of the Project	330,000	
(7) Unallocated	4,290,000	
	<u>83,300,000</u>	
TOTAL	<u>=====</u>	

2. For the purposes of this Schedule:

(a) 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;

(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(c) the term “severance payments” means payments made to the eligible employees of KRC under Part D.2 of the Project; and

(d) the term “pensions payments” means payments made to eligible KRC pensioners or their beneficiaries under Part D.2 of the Project.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 1,000,000, may be made in respect of Categories (1), (3) and (6) on account of payments made for expenditures before that date but after June 30, 2005;

(b) expenditures under Categories (1) through (3) for Part D.1 of the Project unless: (i) the Concession Agreement has been executed between the Borrower and the Concessionaire; and (ii) the Borrower and the Concessionaire confirm to the Association that all conditions set forth in paragraph B.2.1 of the Interface Agreement to be entered into, *inter alia*, by the Borrower, the Government of The Republic of Uganda, the Concessionaire and the concession companies have been met and notifying the Association of the date of the proposed Closing (as defined in the Interface Agreement) which shall not be earlier than seven (7) days after such notification;

(c) expenditures under Category (4) for severance payments unless: (i) the Borrower shall have furnished to the Association a list of eligible KRC employees to be retrenched at Commencement Date including, for each individual employee, the total amount of severance payments due under the retrenchment program specified in the Staff Retrenchment Manual; list, amount and retrenchment notification processes for each individual employee, duly certified by an independent audit firm employed by MOT under terms and conditions satisfactory to the Association; and (ii) the KRC Retrenchment and Retirement Account has been opened;

(d) expenditures under Category (5) for pensions and retirement benefits payments, unless: (i) the Borrower has furnished to the Association a list of retired KRC staff or their beneficiaries including, for each individual staff, the total amount due in arrears under the current Kenya Railways Retirement Benefits Regulations, list, amount, and arrears notification processes for each individual staff, duly certified by an independent audit firm employed by MOT under terms and conditions satisfactory to the Association; and (ii) the KRC Retrenchment and Retirement Account has been opened; and

(e) expenditures by KRA under Categories (1) through (6) unless the Borrower has caused KRA to submit to the Association KRA audited accounts for the Fiscal Year ending June 30, 2004, all in form and substance satisfactory to the Association.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$100,000 equivalent per contract; (b) works costing less than \$200,000 equivalent per contract; (c) services of individual consultants costing less than \$50,000 equivalent per contract; and (d) services of consulting firms under contracts costing less

than \$100,000 equivalent per contract, all under such terms and conditions as the Association shall specify by notice to the Borrower.

5. The Borrower may request withdrawals from the Credit Account to be made on the basis of reports to be submitted to the Association in form and substance satisfactory to the Association, such reports to include the FMR and any other information as the Association shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Association before any withdrawal has been made from the Credit Account, the Borrower shall submit to the Association only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

B. Special Accounts

1. The Borrower may open and maintain in Dollars five separate special deposit accounts: (i) KPA Special Account for Part C.1 of the Project; (ii) KRA Special Account for Part C.2 of the Project; (iii) MOT/KRC Special Account for Part D of the Project; (iv) MOT Special Account for Part C.4 of the Project; and (v) MORPW Special Account for Part C.3 of the Project all in a commercial Bank acceptable to the Association, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment.

2. After the Association has received evidence satisfactory to it that the Special Accounts have been opened, withdrawals from the Credit Account of amounts to be deposited into the Special Accounts shall be made as follows:

(a) if the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) if the Borrower is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of each Special Account shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower out of a Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Association shall not be required to make further deposits into any Special Account:

(a) if the Association, at any time, is not satisfied that the reports referred to in Part A.5 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Association determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Borrower directly from the Credit Account; or

(c) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of: (A) the records and accounts for any Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Association shall not be required to make further deposits into any Special Account in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Association shall determine, in its sole discretion, whether further deposits into the Special Accounts may be made and what procedures should be followed for making such deposits, and shall notify the Borrower of its determination.

6. (a) If the Association determines at any time that any payment out of any Special Account was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association, provide such additional evidence as the Association may request, or deposit into said Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association determines at any time that any amount outstanding in any Special Account will not be required to cover payments for Eligible Expenditures during the six-month period following such determination, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in a Special Account.

(d) Refunds to the Association made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Credit Agreement.

7. (a) The Borrower shall open and maintain or cause to be opened and maintained in Kenya Shilling an Operating Account for each of KPA, KRA, MOT, MOT/KRC and MORPW, in one or more commercial banks, on terms and conditions satisfactory to the Association (including appropriate protection against set-off, seizure or attachment).

(b) The Borrower shall, in accordance with procedures acceptable to the Association, withdraw from time to time from the respective Special Account and deposit into each Operating Account, an amount required to finance eligible expenditures for a period of 90 days of Project implementation.

(c) Payments out of the respective Operating Account shall only be made for eligible expenditures.

(d) In the event that the Association, after consultation with the Borrower, determines that any outstanding amount in any Operating Account is not further required to cover payments for eligible expenditures, the Borrower, upon notice from the Association shall promptly refund such outstanding amount to the respective Special Account.

Annex A

to

SCHEDULE 1

**Operation of Special Accounts
When Withdrawals Are Not
Report-based Disbursements**

1. For the purposes of this Annex, the term “Authorized Allocation” means:
 - (a) in respect of KPA Special Account, an amount of \$1,500,000 to be withdrawn from the Credit Account and deposited into said Special Account pursuant to paragraph 2 of this Annex;
 - (b) in respect of KRA Special Account, an amount of \$500,000 to be withdrawn from the Credit Account and deposited into said Special Account pursuant to paragraph 2 of this Annex;
 - (c) in respect of MOT/KRC Special Account, an amount of \$1,000,000 to be withdrawn from the Credit Account and deposited into said Special Account pursuant to paragraph 2 of this Annex;
 - (d) in respect of MOT Special Account, an amount of \$500,000 to be withdrawn from the Credit Account and deposited into said Special Account pursuant to paragraph 2 of this Annex; and
 - (e) in respect of MORPW Special Account, an amount of \$2,000,000 to be withdrawn from the Credit Account and deposited into said Special Account pursuant to paragraph 2 of this Annex.

2. Withdrawals of a Special Account’s Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special Account of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. On the basis of each such request, the Association shall, on behalf of the Borrower,

withdraw from the Credit Account and deposit into the said Special Account such amount as the Borrower shall have requested.

(b) For replenishment of said Special Account, the Borrower shall furnish to the Association requests for deposit into said Special Account at such intervals as the Association shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the respective Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.

3. The Association shall not be required to make further deposits into a Special Account, once the total unwithdrawn amount of the Credit minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in said Special Account as of the date of such notice will be utilized in making payments for Eligible Expenditures.

Annex B

to

SCHEDULE 1

**Operation of Special Accounts
When Withdrawals Are
Report-based Disbursements**

1. Withdrawals from the Credit Account shall be deposited by the Association into any Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the respective Special Account shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the Credit, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Association has determined, based on the reports referred to in Part A.5 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.

SCHEDULE 2

Description of the Project

The objectives of the Project are: (a) improving the trade environment among the Regional Countries, through effective implementation of the EACCU Protocol; (b) enhancing the efficiency of transport and logistic services along key transport corridors by reducing non-tariff barriers and uncertainty of transit time; and (c) improving railway services in the territory of the Borrower and the Republic of Uganda.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Support to Implementation of the EACCU

1. Strengthening the capacity of EAC Secretariat, EAC Directorate of Trade and customs department in the Regional Countries, including provision of: (a) training to the staff of EAC Secretariat, EACCU and customs departments in the EAC Partner States; (b) technical advisory services and acquisition of equipment for monitoring implementation of the EACCU, Non-tariff barriers to trade within the EAC; and (c) enhanced communication facilities to the EAC Secretariat and customs authorities in the EAC Partner States.

2. Improving information technology connectivity within the EACCU, including: (a) designing a study of interconnectivity for Regional Countries within the customs union; (b) carrying out studies for investing in customs inter connectivity; (c) establishing common database within EACCU; and (d) developing EAC customs training centre.

3. Strengthening and modernizing the customs departments of the Regional Countries, including: (a) rolling out information communication technology systems at key border posts; (b) provision of training to customs officers, and provision of technical advisory services in specific areas essential for the development of the Customs Area; (c) acquisition of equipment; and (d) development of necessary infrastructure.

Part B: Institutional Support for Transport Facilitation

1. Strengthening the NCTTCA, including: (a) building the capacity of its secretariat to improve its efficiency and for monitoring and evaluation performance; (b) facilitating harmonization of national policies and regulations relating to transport and transit; (c) developing participation of its stakeholders; and (d) carrying out a comparative study on

cost of transport in the Region, all through the acquisition of goods and provision of technical advisory services.

2. Supporting the establishment of the CCTFA, including: (a) supporting its secretariat, and stakeholder consultations; (b) provision of monitoring tools; and (c) carrying out studies on transport and trade issues along the corridor.

3. Supporting the harmonization of Regional Countries regulations relating to cross-border transport, for consistency with the relevant regional treaties and agreements, including harmonization of axle load control policies.

4. Supporting the EAC Secretariat in implementing and monitoring the implementation of the Tripartite Agreement on Road Transport among the EAC Partner States.

5. Supporting the secretariats of EAC, NCTTCA, and CTCCA in coordinating the implementation of the Regional Program, including in effectively carrying out: (a) their role as part of the Regional Steering Committee; and (b) monitoring of efficiency along key transport corridors in the Regional Countries.

Part C: Support to Implementation of EACCU Trade and Transport Facilitation in the Territory of the Borrower

1. Supporting KPA:

(a) to implement measures to make the security requirements in the Port of Mombasa compliant with the IMO ISPS Code requirements, including upgrading security equipment and infrastructure, through: (i) the acquisition of security equipment; and (ii) the provision of technical advisory services on enhancement of port security; and (iii) training of KPA Staff; and

(b) in establishing and implementing a community-based system, to facilitate data exchange among stakeholders in the transport logistics chain, including setting up a one-stop window, through: (i) the provision of technical advisory services and training; and (ii) the acquisition of equipment.

2. Supporting KRA:

(a) to implement interconnection of cargo tracking system with URA, RRA and TRA for effective monitoring of transit transport crossing the territory of the Borrower;

(b) to facilitate the Borrower's revenue authority's customs department implement its 2004 customs reform and modernization program, through the provision of technical advisory services, training of staff and acquisition of equipment.

3. Supporting MORPW:

(a) in carrying out: (i) harmonization of axle load control among the EAC Partner States; and (ii) formulation of a clear policy on enforcement of axle load control, including management of weigh bridges, rehabilitation and modernization of the *Mariakani* and *Athi River* stations; and

(b) to establish one-stop border posts in key border crossings, including: *Malaba* border post and bridge; developing the Borrower's side of five one-stop border posts, including, *Busia* border post, *Lunga-Lunga-Horo-Horo* border post, *Taveta* border post, and, *Isebania* –Sirari border post.

4. Supporting MOT:

(a) to facilitate implementation of regional and national transport regulations, including relevant transport conventions and agreements; and

(b) develop the capacity for monitoring and evaluation of Parts C.1, C.2, C.3, and C4 (a) of the Project.

Part D: Support to Joint Concession of Kenya and Uganda Railways

1. Institutional Support to KRC Subsequent to Railways Concession:

(a) Assisting KRC in: (i) restructuring its remaining assets, training and retraining its staff on their new role; and (ii) acquisition of necessary equipment; and

(b) Assisting KRC in developing a corporate strategy and a business plan for its operations during the first three years of the concession indicating, *inter alia*: (i) the organization structure and staffing levels; (ii) options for remaining businesses and assets; and (ii) financial projections for the subsequent three years and the expected gap in income and expenditure, if any.

2. KRC Staff Retrenchment and Staff Retirement:

(a) Assisting KRC to carry out a plan for the retrenchment of: (i) about 5,300 staff at the Commencement Date; and (ii) up to 20% of the staff taken over by the Concessionaire during the subsequent three year period, at the option of the Concessionaire.

(b) Assisting KRC to implement measures to mitigate the social impact of retrenchment, including, implementing the provisions of the Retrenchment Manual through the provision of social, psychological, financial and professional counseling for retrenched KRC staff, retraining, where appropriate said staff, and providing other forms of assistance as may be needed.

(c) Assisting KRC in complying with the Retirement Benefits Act, through: (i) the establishment and operation of a retirement benefit scheme for the KRC staff, including transfer to such scheme of real estate assets, liquidation of pension arrears, renovation and transfer of selected real estate assets; and (ii) managerial services for the first year of operation of the scheme.

(d) Assisting the Borrower in implementing the retirement plan and pension scheme through verification of the accuracy of the completed packages and payments.

3. Implementation of Resettlement Action Plan:

Implementing the RAP for involuntary resettlement of about 3,500 Displaced Persons along the railway tracks, specifically on Kenya Railways land in the areas of *Kibera* and *Mukuru* in Nairobi, including: (a) relocating and providing housing for Displaced Persons to be resettled from *Kibera* to make way for construction of the markets, the footpath, and the safety corridor; (b) constructing three market structures, each to accommodate about 400 traders (vendors), pedestrian bridge and necessary utility facilities adjacent to the rail line in *Kibera*; (c) clearing and fencing of the footpath alignment, and the safety corridor defined in the RAP; and (d) constructing a footpath or a side walk parallel to the rail tracks.

* * *

The Project is expected to be completed by March 31, 2011.

SCHEDULE 3

Procurement

Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding.

Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

B. Other Procurement Procedures.

1. Limited International Bidding:

Goods which the Association agrees can only be purchased from a limited number of suppliers may be procured under contracts awarded on the basis of Limited International Bidding.

2. National Competitive Bidding:

(a) Goods estimated to cost less than \$200,000 equivalent per contract; and (b) works estimated to cost less than \$500,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding.

3. Shopping:

(a) Goods estimated to cost less than \$50,000 equivalent per contract; and (b) works estimated to cost less than \$50,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

4. Direct Contracting:

Goods and works which the Association agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection:

Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$200,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Quality-based Selection:

Services for assignments which the Association agrees meet the requirements set forth in paragraph 3.2 of the Consultant Guidelines may be procured under contracts awarded on the basis of Quality-based Selection in accordance with the provisions of paragraphs 3.1 through 3.4 of the Consultant Guidelines.

2. Selection Under a Fixed Budget.

Services for assignments which the Association agrees meet the requirements of paragraph 3.5 of the Consultant Guidelines may be procured under contracts awarded on the basis of a Fixed Budget in accordance with the provisions of paragraphs 3.1 and 3.5 of the Consultant Guidelines.

3. Least-cost Selection:

Services for assignments which the Association agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

4. Selection Based on Consultants' Qualifications:

Services estimated to cost less than \$200,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

5. Single Source Selection:

Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

6. Individual Consultants:

Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

Section IV. Review by the Association of Procurement Decisions

Except as the Association shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Association:

(a) each contract for goods estimated to cost the equivalent of \$200,000 or Direct Contracting;

(b) each contract for works estimated to cost the equivalent of \$200,000 or Direct Contracting;

(c) each contract for consultants' services provided by a firm estimated to cost the equivalent of \$100,000 or more; and

(d) each contract for individual consultants estimated to cost the equivalent of \$50,000 or more.

All other contracts shall be subject to Post Review by the Association.

SCHEDULE 4

Implementation Program

A. Implementation Responsibilities

1. For the purpose of ensuring the proper execution of Parts C and D of the Project, the Borrower shall cause each of the Implementing Agencies, to establish and maintain at all times during the implementation of Parts C and D of the Project, a PIT under terms of reference and with staff and resources satisfactory to the Association.

2. Each PIT, acting under the direction of a Team Leader, shall perform all technical responsibilities for the implementation of the respective Part of the Project, including: (a) the preparation, with the assistance of consultants, of bidding and contract documents; (b) maintenance of Project financial records and accounts and arranging for the audit thereof; (c) preparation of the half-yearly reports referred to in paragraph 11 of this Schedule; and (d) supervision of progress in carrying out of the respective Part of the Project. To this end, MOT-PIT shall be responsible for Part C.4 of the Project, MOT/KRC-PIT shall be responsible for Part D of the Project, MORPW-PIT shall be responsible for Part C.3 of the Project, KRA-PIT shall be responsible for Part C.2 of the Project, and KPA-PIT shall be responsible for Part C.1 of the Project.

3. The Borrower shall establish and maintain at all times during the implementation of Parts C and D of the Project, with composition and terms of reference satisfactory to the Association:

(a) a PCT, comprising of all the PIT Team Leaders of the Implementing Agencies, with the responsibility overall coordination and reporting; and

(b) a PSC, with the responsibility for providing overall oversight and policy guidance. The PSC shall be comprised of, the Permanent Secretary of MOT, Permanent Secretary MORPW, Commissioner General of KRA, the Managing Director of KRC, the Managing Director of KPA, and the National Coordinator, a representative of the Permanent Secretary MOF, KRC Concession Leader and each PIT Team Leader.

4. The Borrower shall, during implementation of the Project, maintain its participation in the RSC, including in the preparation of the agenda, and organizing meetings of the RSC with the other Regional Countries.

B. Execution Covenants

5. Except as the Association shall otherwise agree, the Borrower shall, for the purpose of Parts C and D of the Project: (a) cause MORPW, MOT, KRA and KPA to implement the Project in accordance with procedures, guidelines, timetables and criteria set forth in the Project Implementation Manual; (b) cause MOT in coordination with KRC, to carry out the concession of Kenya Railways in accordance with timetables, criteria, guidelines and procedures set forth in the Project Implementation Manual; (c) cause MOT in coordination with KRC, to carry out the retrenchment of eligible employees of KRC in accordance with the criteria, guidelines, procedures and timetables set forth in the Staff Retrenchment Manual, and in accordance with the relevant laws of the Borrower; and (d) not amend, or abrogate, or waive, or permit to be amended, abrogated or waived, the Project Implementation Manual, and the Staff Retrenchment Manual, or any provision thereof, in a manner which, in the opinion of the Association, may materially and adversely affect the implementation of Parts C and D of the Project, or the achievement of the objectives thereof.

6. The Borrower shall, not later than December 31, 2008, implement a national cargo tracking system for goods transiting its territory along the Northern Corridor and its main trade routes with the United Republic of Tanzania.

C. Execution Covenants for Part D of the Project

7. Retrenchment of the eligible employees of KRC:

(a) Without prejudice to the provisions of the laws of the Borrower, including the Borrower's Employment Act, (CAP 226) of the Laws of the Borrower, the Borrower shall, in a form and substance satisfactory to the Association, through MOT, in coordination with KRC, carry out the retrenchment of eligible employees of KRC in accordance with the Staff Retrenchment Manual, including, *inter alia*, the following provisions:

- (i) the Concessionaire shall identify staff they wish to employ through its own diligence, in accordance with the provisions of the Concession Agreement;
- (ii) the Concessionaire shall, in accordance with the Concession Agreement, define the terms of employment of KRC staff to be employed by the Concessionaire, which shall in any case be no less favorable than those which were applicable immediately prior to the Commencement Date;

- (iii) the Concessionaire shall offer letters of employment to staff selected for employment; and staff not selected shall be retrenched by KRC in accordance with agreed terms of retrenchment satisfactory to the Association; and
- (iv) staff of KRC selected by the Concessionaire for employment may decline any offer of employment made by the Concessionaire pursuant to this paragraph, and such action shall be considered as voluntary retirement on the part of the staff so declining the offer.

(b) KRC agrees that unless otherwise agreed upon between the Borrower and the Association, staff retrenched under the Project shall not, for a period of three (3) years from the date of retrenchment, be re-employed in either the public sector of the Borrower or KRC, and/or the Concessionaire's service; and, to that end, the Borrower, in coordination with KRC, shall employ external auditors, acceptable to the Association, to verify that KRC and the Concessionaire do not employ retrenched staff.

8. The Borrower shall, not later than ninety (90) days from the date of disbursement made from the proceeds of the Credit for retrenchment and pensions, furnish to the Association a report, duly certified by independent auditors satisfactory to the Association, confirming that such payments were indeed made to eligible KRC employees.

D. Execution Covenants for Part C of the Project

9. Subsidiary Financing Agreements:

The terms and conditions of each Subsidiary Financing Agreement shall include the obligation of KRA and KPA, to:

(a) carry out the respective Part of the Project with due diligence and efficiency, in conformity with appropriate administrative, financial, technical and environmental practices and in accordance with the PIM, and provide, or cause to be provided, promptly as needed, the facilities, services and other resources required for the Project;

(b) comply with the procedures for procurement of goods, works and consultants' services set forth in Schedule 3 to this Agreement;

(c) comply with record keeping, auditing and reporting requirements set forth in Section 4.01 of this Agreement with respect to the respective Part of the Project,

including the annual auditing of its records and accounts in respect of the Project (operations, resources and expenditure in respect of the Project);

(d) at the request of the Borrower or the Association, exchange views with the Borrower and the Association with regard to the progress of the respective Parts of the Project and the performance of its obligations under the Subsidiary Financing Agreement;

(e) promptly inform the Borrower and the Association of any condition which interferes or threatens to interfere with the progress of the Project, or the performance of its obligations under the Subsidiary Financing Agreement;

(f) except as the Borrower and the Association shall otherwise agree, neither take nor concur in any action which would have the effect of amending, abrogating, assigning or waiving Subsidiary Financing Agreement or any provision thereof; and

(g) ensure that in the event of conflict between the Subsidiary Financing Agreement and this Agreement, the latter shall prevail.

E. Environmental Covenants and implementation of the RAP under part D.3 of the Project.

10. EMP, EIA and SMP

The Borrower shall:

(a) implement, and cause the Concessionaire to implement in accordance with the Concession Agreement, the provisions of the EIA and the EMP; and

(b) cause the Concessionaire to prepare: (i) the SMP within 12 months of the Commencement Date; and (ii) the Concessionaire's environmental management plan within six months of the Commencement Date; and to subsequently implement such plans, in accordance with the timetables specified in such plans.

11. Implementation of RAP under Part D.3 of the Project

(a) Prior to commencement of any activity which may involve increased speed, frequency or weight of trains, or clearing, construction, rehabilitation or other activity which may involve involuntary acquisition of land, including displacement of existing traders and vendors within the safety corridor as defined in the RAP, the

Borrower through MOT, shall: (a) implement the RAP for involuntary resettlement of Displaced Persons in *Kibera* and *Mukuru* areas in Nairobi, and (b) ensure appropriate compensation, and other compensatory measures as may be necessary, resettlement and rehabilitation of such Displaced Persons in accordance with the RAP.

(b) The Borrower shall at all times during the implementation of the Project, ensure that involuntary resettlement of Displaced Persons in KRC land under Part D of the Project shall be in accordance with the RAP, and only in respect to areas and Displaced Persons covered under said Resettlement Plan. To this end, the Borrower shall not undertake involuntary resettlement of any Displaced Persons from any land currently owned or controlled by KRC, and which is not covered in the RAP.

F. Reporting, Monitoring and Midterm Review

12. Reporting:

The Borrower shall ensure timely preparation by the PITs of the respective Implementing Agencies, and submission to the Association of half yearly progress reports of implementation of Parts C and D of the Project.

13. Monitoring:

The Borrower shall cause each Implementing Agency to:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 5 to this Agreement, the carrying out of Parts C and D of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about September 30 in each Project Year, a report integrating the results of the monitoring evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by October 31 in each Project Year, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of

the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

14. Midterm Review

The Borrower shall not later than twenty four (24) months after the Effective Date, carry out jointly with the Association, and the Implementing Agencies a mid-term review (the Midterm Review) of the progress made in carrying out Parts C and D of the Project. The Midterm Review shall among other things cover:

- (a) an assessment of: (i) work programs prepared as of the date of the Midterm Review and the progress made in carrying out the said programs; (ii) training provided under Parts C and D of the Project; (iii) procurement under Parts C and D of the Project; (iv) the extent to which actions described in the indicators set out in Schedule 5 to this Agreement have been carried out; and (v) plans made or proposed for updating said indicators; and
- (b) a review of the state of maintenance of any works carried out under Parts C and D of the Project.

SCHEDULE 5

Performance Monitoring Indicators

- (1) The EAC Customs Management Law is implemented in Kenya.
- (2) Security in the Port of Mombasa significantly improves in accordance with ISPS code.
- (3) Port of Mombasa makes significant progress in reducing clearing time for cargo.
- (4) Performance along the northern corridor and the main exit points in Kenya improves:
 - (a) Total Transit time through the Northern Corridor from Mombasa to Malaba decreases by 30%.
 - (b) Overall border-crossing time between Kenya and Uganda, and Kenya and Tanzania decreases by 20%.
 - (c) Uncertainty in total transit time along the Kenyan section of the Northern regional main trade corridors decreases by half.
- (5) The net transfers from GoK and GOU to the rail sector become negative.
- (6) The freight traffic carried by railways in Uganda and Kenya and measured in net-ton-kilometres increases by 75% in five years.