

CONFORMED COPY

CREDIT NUMBER 3120 KE

Development Credit Agreement

(El Nino Emergency Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 13, 1998

CREDIT NUMBER 3120 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 13, 1998, between the REPUBLIC OF KENYA (the Borrower) and the INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS 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 of the Project; 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 December 2, 1997), with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) A new paragraph 12 is added to Section 2.01 to read as set forth below, and the existing paragraphs 12 through 14 of said Section are accordingly renumbered as paragraphs 13 through 15:

"12. 'Participating Country' means any country that the Association determines meets the requirements set forth in Section 10 of Resolution No. 183 of the Board of Governors of the Association, adopted on June 26, 1996; and 'Participating Countries' means, collectively, all such countries."

(b) The second sentence of Section 5.01 is modified to read:

"Except as the Borrower and the Association shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a Participating Country or for goods produced in, or services supplied from, such territories; or (b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Association, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(b) "Special Emergency Fund" means the fund established and maintained by the Borrower pursuant to Legal Notice No. 63 dated May 22, 1998 issued under the Exchequer and Audit Act (cap 412) of the laws of the Borrower for the purpose of financing activities under the Project, and which shall contain funds appropriated by the Borrower and contributed by donor governments and agencies and private sector contributors;

(c) "Manual of Procedures" means the comprehensive manual for the implementation of the Project adopted by the Borrower on May 29, 1998 containing, inter alia, guidelines and procedures to be used for the purpose of implementation of the Project, including eligibility criteria for Subprojects, personnel and terms of reference for key positions of the Project Management Unit, contractual and administrative arrangements for the coordination and execution of Part A of the Project and appropriate mechanisms for community participation in the Project;

(d) "Subproject" means an investment project for the repair or rehabilitation of economic and/or social infrastructure facilities in the Project Area (as hereinafter defined) which have been damaged by the floods that have occurred as a result of the El Nino Phenomena (as hereinafter defined);

(e) "PSC" means the Project Steering Committee, established by the Borrower pursuant to Legal Notice No. 63 of May 22, 1998 issued under the Exchequer and Audit Act (Cap 412) of the laws of the Borrower, responsible for providing policy guidance for Project implementation;

(f) "PMU" means the Project Management Unit, established by the Borrower in the Office of the President pursuant to Legal Notice No. 63 of May 22, 1998 issued under the Exchequer and Audit Act (Cap 412) of the laws of the Borrower, responsible for implementing the Project;

(g) "DDC" means any District Disaster Committee, established by the Borrower in each District in the Project Area, responsible for initiating, identifying and vetting Subprojects;

(h) "District" means an administrative geographical area constituted as a district in accordance with the Constitution of Kenya;

(i) "El Nino Phenomena" means the appearance, from time to time, of enormously warm sea surface temperatures in the Central and Eastern Pacific Ocean near to the Equator, which give rise to unusual changes in normal climate patterns around the globe, including East Africa, and "El Nino Phenomenon" means the El Nino Phenomenon of 1997-1998;

(j) "Subproject Agreement" means an agreement entered into or to be entered into by the Borrower through PMU and a Beneficiary other than a ministry of the Borrower's government or public authority for the purpose of carrying out a Subproject;

(k) "Beneficiary" means a community, a District, a ministry in the Borrower's government, or other public or private body, which is determined to be eligible for a Grant in terms of the eligibility criteria specified in paragraph 8 of Schedule 4 to this Agreement and in more detail in the Manual of Procedures, and for whose benefit a Grant is provided or proposed to be provided;

(l) "Project Area" means the land area of the following Districts in the territory of the Borrower affected by the El Nino Phenomena: Kilifi, Malindi, Kwale, Lamu, Mombasa, Taita Taveta, Tana River, Isiolo, Marsabit, Makueni, Moyale, Mwingi, Garissa, Mandera, Wajir, Kisumu, Suba, Rachuonyo, Baringo, Keiyo, Marakwet, Samburu and Busia, or any other District as may be agreed between the Borrower and the Association;

(m) "Grant" means a grant made or proposed to be made by the Borrower through PMU to a Beneficiary to finance a Subproject;

(n) "Indicative Work Program" means the work program in the Project Area proposed by the Borrower containing a list of Subprojects to be carried out under the Project for the 24-month period after the date of this Agreement; and

(o) "Administrative Instructions" means instructions issued by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service in the Office of the President to a Beneficiary which is a ministry or a public authority to delegate to PMU all prerogatives, rights and obligations necessary for the execution of the Subproject.

## ARTICLE II

### The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to twenty-nine million, seven hundred thousand Special Drawing Rights (SDR 29,700,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for:  
(i) expenditures made (or if the Association shall so agree, to be made) in respect of the reasonable cost of works, goods and services required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Credit; and  
(ii) amounts paid (or if the Association shall so agree to be paid) by the Borrower on account of withdrawals made for the benefit of a Beneficiary to meet the reasonable cost of works, goods and services required for a Subproject in respect of which withdrawals from the Credit Account are requested.

(b) The Borrower may, for the purposes of the Project, open and maintain in dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 2000 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 April 1 and October 1 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 April 1 and October 1, commencing October 1, 2008 and ending April 1, 2038. Each installment to, and including the installment payable on, April 1, 2018 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 the 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 the Project with due diligence and efficiency and in conformity with appropriate

administrative, financial, engineering, environmental and technical 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 carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works, and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the 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 maintain or cause to be maintained records and accounts adequate to reflect, in accordance with sound accounting practices, the operations, resources and expenditures in respect of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

(i) have the records and accounts referred to in paragraph (a) of this Section, including those for the Special Account and the Special Emergency Fund, for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association; and

(ii) furnish to the Association as soon as available, but in any case not later than three months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

(i) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures; and

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

#### ARTICLE V

##### Remedies

Section 5.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional event is specified, namely that Legal Notice No. 63 dated May 22, 1998, as amended to the date of this Agreement, shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Borrower to perform any of its obligations arising under this Agreement.

#### 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) the Borrower has recruited auditors in accordance with the provisions of Section II of Schedule 3 of this Agreement to audit the accounts of the Project required under Article IV of this Agreement;

(b) the Project manager, the procurement advisor and the financial advisor referred to in paragraph 4 of Schedule 4 to this Agreement have been recruited, in accordance with Section II of Schedule 3 to this Agreement, and have taken up their positions;

(c) the Borrower has established an adequate financial management, auditing and accounting system and has designed a management information system for the Project, all in form and substance satisfactory to the Association; and

(d) the Borrower has furnished to the Association part of the Indicative Work Program, satisfactory to the Association, to be carried out during the six-month period after the date of this Agreement.

Section 6.02. The following is specified as an additional matter, 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, namely, that the Special Emergency Fund has been established and is operating in accordance with the laws and regulations of the Borrower.

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:

FINANCE  
Nairobi

Telex:

22921  
MINFIN-KE

For the Association:

International Development Association

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

Cable address:

INDEVAS  
Washington, D.C.

Telex:

248423 (MCI) or  
64145 (MCI)

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

THE REPUBLIC OF KENYA

By /s/ Simeon Nyachae

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Harold E. Wackman

Acting Regional Vice President  
Africa

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:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Grants for Sub-projects for:		100% of amounts disbursed
(a) roads and bridges	14,030,000	
(b) water systems	5,610,000	
(c) health facilities	2,810,000	
(2) Consultants' services	3,340,000	100%
(3) Audit	190,000	100%
(4) Goods	560,000	100%
(5) Operating costs	190,000	100%
(6) Unallocated	2,970,000	
TOTAL	29,700,000	

2. For the purposes of this Schedule, the term "operating costs" means the incremental operating costs incurred on account of Project implementation for: (i) travel costs and allowances, (ii) maintenance of vehicles and equipment and provision of fuel; and (iii) office rent, supplies and utilities, excluding salaries of officers of the Borrower's civil service.

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, and (b) payments made for expenditures under Category (1) unless the Borrower furnishes to the Association satisfactory evidence that the Subproject has been processed in accordance with the procedures and on the terms and conditions set forth or referred to in this Agreement and the Manual of Procedures.

4. It is understood that the percentages of expenditures to be financed under the table set forth in paragraph 1 of this Schedule have been calculated on the basis of the provisions of a letter issued by the Borrower's Ministry of Finance pursuant to Legal Notices Number 138 and 145 of 1992 (as amended in 1996) of the Borrower, which provides for an exemption of taxes and customs duties levied in the territory of the Borrower on works, goods and services for this Project. If any change is made to said letter and Legal Notices which has the effect of levying taxes or customs duties on such works, goods and services, the percentages referred to above shall be decreased in accordance with the provisions of Section 5.08 of the General Conditions.

5. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure:

(a) for expenditures for goods and works under contracts not exceeding \$100,000 equivalent; and

(b) for expenditures for consultants' services under contracts not exceeding (i) \$100,000 equivalent for consulting firms, and (ii) \$50,000 equivalent for individuals, under such terms and conditions as the Association shall specify by notice to the Borrower.

## SCHEDULE 2

### Description of the Project

The objective of the Project is to assist the Borrower, on an emergency basis, to repair and rehabilitate economic and social infrastructure damaged by the El Nino Phenomenon in the Project Area.

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: Emergency Rehabilitation of Infrastructure

1. Promotion, appraisal, supervision and evaluation of social and economic infrastructure Subprojects in the Project Area and provision of Grants for financing thereof as follows:

(a) the repair or rehabilitation of rural roads, bridges and other transportation links;

(b) the repair or rehabilitation of rural water systems;

(c) the repair or rehabilitation of rural health and sanitation facilities; and

(d) the repair or rehabilitation of community-owned water, health and sanitation facilities.

#### Part B: Institutional Support

1. Establishment and operation of PMU through the provision of technical advisory services and the acquisition of vehicles, materials and office equipment.



2. Preparation of engineering designs for construction works and the management and quality control of such works.

3. Establishment of an accounting and financial management system and an information management system in PMU.

\* \* \*

The Project is expected to be completed by December 31, 1999.

### SCHEDULE 3

#### Procurement and Consultants' Services

##### Section I. Procurement of Goods and Works

###### Part A: General

1. Goods and works shall be procured in accordance with: (a) the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995, and revised in January and August 1996 and in September 1997, subject to the modifications thereto set forth in paragraph 2 of this Part A (the Guidelines), and (b) the provisions of the following Parts of this Section I.

2. In paragraphs 1.6 and 1.8 of the Guidelines, the references to "Bank member countries" and "member country" shall be deemed to be references, respectively, to "Participating Countries" and "Participating Country."

###### Part B: International Competitive Bidding

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

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

###### (a) Grouping of Contracts

To the extent practicable, contracts for civil works shall be grouped in bid packages estimated to cost \$500,000 equivalent or more each, and contracts for goods shall be grouped in bid packages estimated to cost \$300,000 equivalent or more each.

###### (b) Preference for Domestic Contractors

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to works to be carried out by domestic contractors.

###### (c) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$1,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

###### Part C: Other Procurement Procedures

###### 1. National Competitive Bidding

Works under Part A of the Project estimated to cost less than \$1,000,000 equivalent per contract, up to an aggregate amount not to exceed \$6,000,000 equivalent, and goods under Part B of the Project estimated to cost more than \$150,000 equivalent per contract, but not exceeding \$300,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

## 2. International Shopping

Goods under Part B of the Project estimated to cost more than \$50,000 equivalent per contract, but not exceeding \$150,000 equivalent per contract, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

## 3. National Shopping

Goods under Part B of the Project estimated to cost less than \$50,000 equivalent per contract may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

## 4. Procurement of Small Works

Works required for Part A of the Project, estimated to cost less than US\$50,000 equivalent per contract, may be procured under lump sum, fixed-price contracts awarded on the basis of quotations obtained from at least three (3) qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Association and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work and who has the experience and resources to complete the contract successfully.

### Part D: Review by the Association of Procurement Decisions

#### 1. Procurement Planning

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

#### 2. Prior Review

(a) With respect to each contract estimated to cost the equivalent of \$500,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract estimated to cost the equivalent of \$100,000 or more, the following procedures shall apply:

(i) prior to the selection of any supplier under shopping procedures, the Borrower shall provide to the Association a report on the comparison and evaluation of quotations received; and

(ii) the procedures set forth in paragraphs 2 (f) and 2 (g) and 3 of Appendix 1 to the Guidelines shall apply.

#### 3. Post Review

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

### Section II. Employment of Consultants

#### Part A: General

1. Consultants' services shall be procured in accordance with: (a) the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, subject to the modifications thereto set forth in paragraph 2 of this Part A (the Consultant Guidelines); and (b) the provisions of the following Parts

of this Section II.

2. In paragraph 1.10 of the Consultant Guidelines, the references to "Bank member countries" and "member country" shall be deemed to be references, respectively, to "Participating Countries" and "Participating Country."

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality and cost-based selection of consultants.

2. The following provisions shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph. The shortlist of consultants for services estimated to cost less than \$200,000 equivalent per contract may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Single Source Selection

Services for the repair and improvement of damaged road sections and the repair and replacement of culverts and bridges under Part A of the Project may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Association and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 1, 2 (other than the third subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, but less than the equivalent of \$200,000, the procedures set forth in paragraphs 1, 2 (other than the second subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(c) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after said approval shall have been given.

3. Post Review

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

## Implementation Program

### 1. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators agreed upon between the Borrower and the Association, the carrying out 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 January 31, 1999, a report integrating the results of the monitoring and 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 February 28, 1999 or such later date as the Association shall request, the report referred to in subparagraph (b) of this paragraph 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.

2. The Borrower shall implement the Project, in accordance with the procedures set out in the Manual of Procedures, and, except as the Association shall otherwise agree, the Borrower shall not amend or waive any provision thereof if, in the opinion of the Association, such amendment or waiver may materially or adversely affect the implementation of the Project.

3. (a) The Borrower shall maintain, until completion of the Project, the Project Steering Committee chaired by the Permanent Secretary and Head of Public Service, Office of the President. PSC shall be responsible for providing overall policy guidance for Project implementation. Unless the Association shall otherwise agree, PSC shall include as members the: (i) three Permanent Secretaries of the Office of the President, (ii) Permanent Secretaries of the following ministries: Public Works and Housing, Local Government, Water Development, Health and Finance; (iii) a Project Manager (who shall also be the Secretary of PSC); (iv) a Procurement Advisor; and (v) a Financial Advisor.

(b) PSC shall be responsible for: (i) ensuring that the Manual of Procedures is applied during Project implementation, (ii) approving the operating budget of PMU, (iii) approving the Indicative Work Program, (iv) approving awards for contracts costing more than \$500,000 equivalent, (v) supervising the activities of PMU, (vi) ensuring that budgetary allocations are adequate to cover the anticipated recurrent expenditures required for the carrying out of Project activities, and (vii) ensuring that the technical managerial and financial audits referred to paragraph 6 of this Schedule are carried out.

(c) PSC shall meet as often as is desirable for the monitoring of the Project but, in any event, at least once a month to discuss the progress of the Project and to make policy decisions related to issues arising out of the implementation of the Project.

4. (a) The Borrower shall maintain, until completion of the Project, the Project Management Unit (PMU), with staff in adequate numbers and with qualifications and experience satisfactory to the Association. The Project Manager, whose qualifications and terms of reference shall at all times be acceptable to the Association, shall be the head of PMU. PMU shall include at least two technical advisors from the private sector, one of whom shall be a procurement advisor, and the other a financial advisor, and such other staff in adequate numbers with qualifications and experience satisfactory to the Association as may be required from time to time for Project implementation.

(b) PMU shall be responsible for: (i) receiving and analyzing requests for funding for Subprojects, (ii) recommending the rolling Indicative Work Program of Subprojects for approval by PSC, (iii) preparing bidding documents, (iv) calling for

and evaluating bids, (v) awarding and signing contracts for design, construction and works supervision in accordance with the Manual of Procedures, (vi) supervising consultants and contractors, and (vii) preparing and submitting monthly reports to PSC on contract awards and on the progress of Project implementation.

5. For the purpose of implementing the Project, the Borrower shall maintain, at least until completion of the Project, the Special Emergency Fund under arrangements satisfactory to the Association.

6. Without limitation to the provisions of Section 4.01 of this Agreement, the Borrower shall make: (a) arrangements, satisfactory to the Association, for carrying out financial, managerial and technical audits by independent auditors of the Project every quarter, beginning with the quarter ending December 31, 1998; and (b) furnish to the Association, not later than thirty days after the completion of said audits, the reports of such audits of such scope and in such detail as the Association shall have reasonably requested.

#### 7. District Disaster Committees

In order to involve people whose lives have been affected by the El Nino floods, the Borrower shall, or shall cause, each District in the Project Area to establish and maintain, until completion of the Project, a DDC whose members shall include District officials, local leaders, representatives of nongovernmental organizations and private citizens. The District Commissioner shall be the chairman of DDC. The functions of DDC shall include, inter alia, the identification, prioritization and following up on the implementation of Subprojects in the District concerned. Subprojects identified by DDCs shall form part of the Indicative Work Program.

#### 8. Eligibility Criteria for Subprojects

No Subproject shall be eligible for financing out of the proceeds of the Credit unless the Subproject is included in the Indicative Work Program, and PMU shall have determined, on the basis of an appraisal conducted in accordance with the guidelines set forth in the Manual of Procedures, that the Subproject satisfies the eligibility criteria specified below and in more detail in the Manual of Procedures, which shall include the following:

(a) the Subproject shall be for the repair or rehabilitation of social and economic infrastructure and services, including feeder roads, bridges, other transportation links, rural water supply, primary health and sanitation, and which: (i) involves damage to an existing infrastructure or facility which existed prior to the floods caused by the El Nino Phenomenon, and (ii) has been damaged by the floods resulting from the El Nino Phenomenon;

(b) the proposed Subproject is technically and economically sound in accordance with criteria contained in the Manual of Procedures; and

(c) the proposed Subproject shall be in compliance with the standards set forth in the applicable laws and regulations of the Borrower relating to health, safety and environmental protection.

#### 9. Procedures for Subprojects

(a) Subprojects under Part A of the Project shall be proposed by the Beneficiary from the Indicative Work Program approved from time to time by PSC. Such Subprojects shall be reviewed by PMU to ensure that they are consistent with the objectives of the Project.

(b) PMU shall assist the Beneficiary in the preparation and appraisal of the proposed Subproject and the preparation of the necessary documents in accordance with the Manual of Procedures.

(c) (i) A Beneficiary which is a ministry in the Borrower's government or public authority may delegate to PMU the obligation to implement the Subproject. In this respect, PMU shall, on behalf of such Beneficiary, employ contractors to implement the Subproject in accordance with the Manual of Procedures.

(ii) The Administrative Instructions issued, or to be issued, shall include, inter alia, the provisions specified under paragraph 10 (b) below and those included in the Manual of Procedures.

#### 10. Terms and Conditions of Grants Made for Subprojects

(a) Except in the cases where the Beneficiary has delegated implementation of the Subproject to PMU, as provided in paragraph 9 (c) above, the Borrower shall, in financing Subprojects, through PMU, enter into a Subproject Agreement with a Beneficiary, under terms and conditions which shall include the following:

(i) financing to be on a grant basis;

(ii) the obligation to carry out the Subproject in accordance with the Manual of Procedures, with due diligence and efficiency and in accordance with sound technical, financial, environmental and managerial standards, and to maintain adequate records to reflect, in accordance with sound accounting practices, the operations, resources and expenditures in respect of the Subproject;

(iii) the requirement that: (A) the goods, works and services to be financed from the proceeds of the Credit shall be procured in accordance with the procedures set forth in Schedule 3 to this Agreement; and (B) such goods, works and services shall be used exclusively in the carrying out of the Subproject;

(iv) the right of PMU to inspect by itself, or jointly with the Association, if the Association shall so request, the goods, works, sites, plants and construction included in the Subproject, the operations thereof and any relevant records and documents. In carrying out such inspections, PMU may, where appropriate, involve DDC;

(v) the right of PMU to obtain all information as PMU or the Association shall reasonably request regarding the administration, operation and financial conditions of the Subproject;

(vi) the right of PMU to suspend or terminate the right of the Beneficiary to use the proceeds of the Credit for the Subproject upon failure by the Beneficiary to perform any of its obligations under the Subproject Agreement; and

(vii) the obligation of the Beneficiary to maintain the Subproject in accordance with acceptable engineering and environmental standards.

(b) The Administrative Instructions referred to in paragraph 9 (c) above shall contain terms and conditions which shall include the following:

(i) the right of PMU to carry out the Subproject on behalf of the Beneficiary concerned, including employment of contractors;

(ii) the right of PMU to obtain all information as PMU or the Association shall reasonably request regarding the administration, operation and financial conditions of the Subproject;

(iii) the obligation of the Beneficiary to maintain the Subproject in accordance with acceptable engineering and environmental standards;

(iv) the obligation of PMU to carry out the Subproject in accordance with the Manual of Procedures, with due diligence and efficiency and in accordance with sound technical, financial, environmental and managerial standards and to maintain adequate records to reflect, in accordance with sound accounting

practices, the operations, resources and expenditures in respect of the Subproject; and

(v) the requirement that: (A) the goods, works and services to be financed from the proceeds of the Credit shall be procured in accordance with the procedures set forth in Schedule 3 to this Agreement; and (B) such goods, works and services shall be used exclusively in the carrying out of the Subproject.

#### SCHEDULE 5

##### Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) through (5) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$3,000,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$1,500,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR7,000,000.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the 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 Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) 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 paragraph 4 of this Schedule 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 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. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the 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.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) 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 the records and accounts for the Special Account;

(c) 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 the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, 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 allocated to the eligible Categories 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 the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the 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 shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, 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 the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

