

CONFORMED COPY

CREDIT NUMBER 2696-MAI

Development Credit Agreement
(Railways Restructuring Project)

between

REPUBLIC OF MALAWI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 14, 1995

CREDIT NUMBER 2696-MAI

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 14, 1995, between REPUBLIC OF MALAWI (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Association has received a letter dated November 8, 1994 from the Borrower describing a program of actions, objectives and policies designed to strengthen the transport sector of its economy (hereinafter called the Program) and declaring the Borrower's commitment to the execution of the Program;

(B) the Borrower, having committed itself to the execution of the Program, and as part of the Program, having undertaken to carry out the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(C) the Borrower intends to contract from US Agency for International Development (USAID) two grants (the USAID Grants) in an aggregate amount equivalent to \$25,000,000 of which about \$12,000,000 shall be used to assist in financing the Project on the terms and conditions set forth in agreements (the USAID Grant Agreements) to be entered into between the Borrower and USAID;

(D) Parts A, B and C of the Project will be carried out by Malawi Railways Limited, Malawi Railways (1994) Limited and Malawi Lake Services Limited, respectively, with the Borrower's

assistance; 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 and in the MR Project Agreement, MR(M) Project Agreement and MLS Project Agreement of even date herewith between the Association and MR, MR(M) and MLS, respectively;

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, with the last sentence of Section 3.02 deleted (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) "MOTCA" means the Borrower's Ministry of Transport and Civil Aviation;

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

(c) "MR" means Malawi Railways Limited, a company established and existing under the laws of England;

(d) "MR(M)" means Malawi Railways (1994) Limited, a company established and incorporated under the Borrower's Companies Act, to, inter alia, take over MR's rail transport activities;

(e) "MLS" means Lake Services (Malawi) Limited, a company established and incorporated under the Borrower's Companies Act, to, inter alia, take over MR's lake service activities;

(f) "MR(M) Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and MR(M) pursuant to Section 3.01 (c) of this Agreement;

(g) "MLS Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and MLS pursuant to Section 3.01 (c) of this Agreement;

(h) "MR Project Agreement" means the agreement between the Association and MR, of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the MR Project Agreement;

(i) "MR(M) Project Agreement" means the agreement between the Association and MR(M), of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the MR(M) Project Agreement;

(j) "MLS Project Agreement" means the agreement between the Association and MLS of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the MLS Project Agreement;

(k) "MK" and "Kwacha" mean the Borrower's currency;

(l) "Nacala Rail Route Operations Agreement" means the agreement dated February 24, 1995 between MR and Empresa de Portos e Caminhos de Ferro de Mozambique E.P. (CFM) of Mozambique governing the operation of the Nacala Railway Route; and

(m) "Performance Agreement" means each of the agreements to be entered into by the Borrower and MR(M) and MLS respectively, pursuant to Section 3.04 (b) of this Agreement.

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 eleven million two hundred thousand Special Drawing Rights (SDR 11,200,000).

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 expenditures made (or, if the Association shall so agree, to be made) 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.

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

Section 2.03. The Closing Date shall be December 31, 1998 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 cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or 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 payment 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 per cent (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) and (c) 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, 2005 and ending November 15, 2034. Each installment to and including the installment payable on November 15, 2014 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 gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, 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 terms of repayment of installments under paragraph (a) above by 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. If so requested by the Borrower, the Association may revise such modification 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.

(c) 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:

- (i) shall carry out Part D of the Project through MOTCA with due diligence and efficiency and in conformity with appropriate administrative and financial practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for such Part of the Project; and
- (ii) without limitation or restriction upon any of its other obligations under the Development Credit Agreement, the Borrower shall: (A) cause MR, MR(M) and MLS to perform all their obligations set forth in the MR Project Agreement, MR(M) Project Agreement and MLS Project Agreement, respectively, (B) take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable MR, MR(M) and MLS, respectively, to perform such obligations, and (C) not take or permit to be taken any action which would prevent or interfere with such performance.

(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.

(c) The Borrower shall onlend an amount not exceeding the equivalent of fifteen million four hundred thousand dollars (\$15,400,000) to MR(M) and an amount not exceeding the equivalent of seven hundred sixty thousand dollars (\$760,000) to MLS from the proceeds of the Credit under subsidiary loan agreements to be entered into between the Borrower and MR(M) and MLS, respectively, under terms and conditions which shall have been approved by the Association, including the payment of interest at the rate of 7.1 percent per annum and the repayment of principal in 13 years including five years of grace. The exchange risk shall be borne by MR(M) and MLS, respectively.

(d) The Borrower shall exercise its rights under the MR(M) Subsidiary Loan Agreement and the MLS Subsidiary Loan 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 the MR(M) Subsidiary Loan Agreement or the MLS Subsidiary Loan Agreement.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for Parts B and C of 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. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of Parts A, B and C of the Project shall be carried out by MR, MR(M) and MLS, respectively, pursuant to Section 2.02 of the MR Project Agreement and Section 2.03 of the MR(M) Project Agreement and the MLS Project Agreement, respectively.

Section 3.04. The Borrower shall:

(a) take all measures necessary to provide working capital in the amount of MK 2,500,000 to MR(M) and MK 500,000 to MLS as part of the Borrower's equity contribution to their respective share capitals;

(b) not later than six months from the Effective Date, enter into performance agreements, the terms of which shall have been reviewed by the Association, with MR(M) and MLS; and

(c) ensure that neither MR(M) nor MLS is designated a statutory body under the Borrower's Statutory Bodies (Control of Contract) Act and the Finance and Audit Act.

Section 3.05. The Borrower shall take all measures necessary to: (a) cause MR to duly perform all its obligations under the Nacala Rail Route Operations Agreement; (b) fully reimburse MR(M) and MLS for any losses they may incur on account of passenger and other services rendered in accordance with the terms of the Performance Agreement; and (c) not later than six months after the Effective Date, set up with the Government of Mozambique a joint review board to monitor the performance of the Nacala railway route.

Section 3.06. (a) The Borrower shall, not later than June 30, 1996 conduct, jointly with the Association, MR, MR(M) and MLS a comprehensive review of the Project. Without limitation

upon the generality of the foregoing, the review shall, inter alia, cover the implementation and management aspects of the Project, implementation procedures, progress made by the Project including the implementation of the Nacala Rail Route Operations Agreement, the Performance Agreements and the environment mitigation plan, performance and use of technical assistance personnel, the role of national counterpart staff, the status and results of training, reporting, accounting and audit performance, disbursement procedures and the overall sustainability of the Project.

(b) Not later than thirty days prior to the first yearly review referred to in (a) above, the Borrower shall furnish to the Association, for its comments, a report in such detail as the Association shall reasonably request, including an evaluation of the progress achieved in implementing the various components of the Project.

(c) The Borrower shall, promptly thereafter, carry out the recommendations stemming from the aforementioned review.

Section 3.07. Without limitation upon the provisions of Article IX of the General Conditions, the Borrower shall:

(a) prepare 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, of such scope and in such detail as the Association shall reasonably request, for the future operation of the Project;

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

(c) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Association's comments thereon.

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 Part D 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 Accounts for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association, as soon as available, but in any case not later than six months after the end of each such year, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and the audit thereof as the Association shall 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 statements of expenditure, the Borrower shall:

- (i) maintain, or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) 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 or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit 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 of the Association

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

(a) A situation has arisen which shall make it improbable that the Program or a significant part thereof, will be carried out.

(b) MR, MR(M) or MLS shall have failed to perform any of its obligations under the MR Project Agreement, the MR(M) Project Agreement and MLS Project Agreement, respectively.

(c) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that MR, MR(M) or MLS will be able to perform its obligations under the MR Project Agreement, the MR(M) Project Agreement and MLS Project Agreement, respectively.

(d) The USAID Grant Agreements shall have failed to become effective by March 31, 1995, or such later date as the Association may agree; provided, however, that the provisions of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional event is specified, namely, that any event specified in paragraphs (b) and (d) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty 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) The Association has received evidence that: (i) at least 250 appointment letters have been issued by MR(M); (ii) the assets to be transferred by MR to MR(M) and MLS have been valued; and (iii) a study on the restructuring and privatization of MLS has been completed.

(b) The MR(M) Subsidiary Loan Agreement and the MLS Subsidiary Loan Agreement have been duly executed by the Borrower and MR(M) and MLS, respectively.

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 MR Project Agreement, MR(M) Project Agreement and MLS Project Agreement have been duly authorized or ratified by MR, MR(M) and MLS, respectively, and are legally binding upon MR, MR(M) and MLS, respectively in accordance with their respective terms;

(b) that the MR(M) Subsidiary Loan Agreement and the MLS Subsidiary Loan Agreement have been duly authorized or ratified by the Borrower, MR(M) and MLS, respectively, and are legally binding upon the Borrower, MR(M) and MLS, respectively.

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

Representatives 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 30049
Capital City
Lilongwe 3, Malawi

Cable address:	Telex:
FINANCE Malawi	44407 MI

For the Association:

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

Cable address:	Telex:
INDEVAS Washington, D.C.	248423 (RCA) 82987 (FTCC)

64145 (WUI) or
197688 (TRT)

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

REPUBLIC OF MALAWI

By /s/ W. Chokani
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Kevin Cleaver
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) Civil works:		95%
(a)	780,000	
(b)	1,520,000	
(2) Mechanical works:		95%
(a)	300,000	
(b)	1,140,000	
(3) Equipment for Part B of the Project:		95%
(a)	1,930,000	
(b)	1,610,000	
(4) Equipment for Part C of the Project:		95%
(a)	190,000	
(b)	280,000	
(5) Spare Parts:		95%

(a)	500,000	
(b)	590,000	
(6) Consultants' Services:		95%
(a)	220,000	
(b)	290,000	
(7) Training:		95%
(a)	120,000	
(b)	180,000	
(8) Unallocated	1,550,000	
TOTAL	11,200,000	=====

2. 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) Categories (1) (b), (2) (b), (3) (b), (4) (b), (5) (b), (6) (b) and (7) (b) unless: (i) the midterm review referred to in Section 3.06 of this Agreement confirms that the performance targets and activities specified in the implementation plan referred to in paragraph 1 of Schedule 4 to this Agreement have been completed to the satisfaction of the Association, (ii) draft legislation recommended by the studies for the privatization of railways and lake services has been tabled in the Legislature, and (iii) the process of privatizing MR(M) and MLS has been initiated.

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

(a) for expenditures for civil and mechanical works contracts not exceeding \$200,000 equivalent;

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

(c) for expenditures for services under consultant contracts not exceeding \$50,000 equivalent;

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 contribute to Malawi's economic growth through: (a) revitalizing the much shorter, less expensive, but poorly-operated Nacala rail route and increasing its share of Malawi's overseas traffic, thus, reducing the land cost of exports/imports and enhancing Malawi's competitive advantage; and (b) restructuring, commercializing and privatizing the railways and the lake services, to enable them to operate more efficiently and without depending on government subsidies, thus, reducing the drain on the national economy.

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 objective:

Part A: Restructuring of Malawi Railways Limited

1. Establishment and incorporation of MR(M) and MLS.
2. Selective transfer of assets and staff from MR to MR(M) and MLS, respectively.
3. Retrenchment of surplus staff and assistance in their redeployment through counseling and retraining.
4. Disposal of surplus assets, including land.

Part B: Revitalization of Nacala Rail Route and Privatization of MR(M)

1. Track rehabilitation works and services and repairs to key mechanical equipment on the Malawi side of the Nacala rail route.
2. Acquisition of essential equipment, including safety, environment-related and testing equipment; spare parts; and computers.
3. Institutional development of MR(M) through technical assistance, studies, consultants' services and training.
4. Privatization of MR(M).

Part C: Commercialization and Privatization of MLS

1. Institutional development of MLS through: (a) technical assistance in corporate, organizational, business and capital assets restructuring, (b) studies, and (c) staff training.
2. Acquisition of essential equipment, including computers and safety, environment-related and testing equipment.
3. Privatization of MLS.

Part D: Formulation of Transport Policy

1. Development and implementation of a comprehensive transport policy.
2. Strengthening MOTCA's capacity for: (a) data collection, including the acquisition of computer hardware and software, and (b) evaluation and policy analysis and formulation.

* * *

The Project is expected to be completed by June 30, 1998.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part C hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

(a) When contract award is delayed beyond the original bid validity period, such period may be extended once, subject to

and in accordance with the provisions of paragraph 2.59 of the Guidelines, by the minimum amount of time required to complete the evaluation, obtain necessary approvals and clearances and award the contract. The bid validity period may be extended a second time only if the bidding documents or the request for extension shall provide for appropriate adjustment of the bid price to reflect changes in the cost of inputs for the contract over the period of extension. Such an increase in the bid price shall not be taken into account in the bid evaluation. With respect to each contract made subject to the Association's prior review in accordance with the provisions of Part D.1 (a) of this Section, the Association's prior approval will be required for: (i) a first extension of the bid validity period if the period of extension exceeds sixty (60) days, and (ii) any subsequent extension of the bid validity period.

(b) In the procurement of goods and works in accordance with this Part A, the Borrower shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Association shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, the Borrower shall use bidding documents based on other internationally recognized standard forms agreed with the Association.

2. Goods procured under international competitive bidding procedures will not be subject to price verification under pre-shipment inspection.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in Malawi may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

1. Items, or groups of items, for civil works, up to an aggregate amount equivalent to \$500,000, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

2. Items, or groups of items, for: (a) power supply to quarry up to an aggregate amount equivalent to \$50,000; (b) equipment and spare parts estimated to cost the equivalent of \$100,000 or less per contract, up to an aggregate amount equivalent to \$1,050,000, may be procured under contracts awarded on the basis of: (i) comparison of price quotations obtained from at least three suppliers from at least three different countries eligible under the Guidelines, in accordance with procedures acceptable to the Association, or (ii) procedures of the Inter-Agency Procurement Services Office of the United Nations Development Programme for service vehicles and computers only.

3. Contracts for repair to concrete sleeper plant and rehabilitation of wheel lathe may be awarded after direct negotiations with suppliers, in accordance with procedures acceptable to the Association.

Part D: Review by the Association of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for goods estimated to cost the equivalent of \$100,000 or more, and civil and mechanical works estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to

be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Association pursuant to said paragraph 3 shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 5 to this Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Credit Account are to be made on the basis of statements of expenditure.

2. The figure of 10% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist the Borrower, MR, MR(M) and MLS in the carrying out of the Project, the Borrower, shall employ, and cause MR, MR(M) and MLS to employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, the Borrower shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Association. Where no relevant standard contract documents have been issued by the Bank, the Borrower shall use other standard forms agreed with the Association.

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

SCHEDULE 4

Implementation Program

General

1. The Borrower shall ensure that the Project is carried out in accordance with an implementation plan, satisfactory to the

Association, (the Implementation Plan) including an environment mitigation plan, and performance indicators specified in the Annexes to this Schedule. Accordingly, MR shall be responsible for implementing Part A of the Project, MR(M) Part B of the Project, and MLS Part C of the Project. The Borrower shall carry out Part D of the Project through MOTCA.

2. In order to ensure the expeditious and efficient implementation of the various components of the Project, the Borrower shall take all measures necessary to delegate to the implementing agencies the necessary authority with respect to procurement of goods and works, the hiring of consultants, the implementation of the restructuring plan and the management of the Special Accounts.

3. The Borrower shall take all measures necessary to ensure: (a) that the various Project implementing agencies shall: (i) appoint and maintain duly qualified key management staff at least for the duration of the Project, and (ii) adopt Project reporting, auditing and monitoring procedures, satisfactory to the Association, including the preparation of quarterly and annual reports, and (b) that the supplies department of MR(M) and MLS are adequately strengthened to enable MR(M) and MLS respectively, to carry out procurement in accordance with the procedures specified in Schedule 3 to this Agreement, including the use of standard bidding documents for all items to be procured under international competitive bidding procedures and consultants' standard forms of contract for complex consultant assignments.

4. The Borrower shall, on February 1 of each year of Project implementation, conduct an annual review to assess progress achieved in Project implementation.

5. The Borrower shall take all measures necessary to ensure that: (a) not later than six months after the Effective Date, the boards of directors of MR(M) and MLS are duly constituted with adequate private sector representation, (b) MR(M) and MLS shall not undertake: (i) any investment estimated to cost more than the equivalent of \$200,000, without prior consultation with, and the concurrence of, the Association, and (ii) any investment in alternative international routes that adversely affect the economic viability of the Nacala Rail Route, without prior consultation with the Association, and (c) the process of privatizing MR(M) and MLS is initiated promptly after the completion of an appropriate privatization study.

SCHEDULE 5

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1), (2), (3), (5), (6) and (7) with respect to Special Account "A", and Category (4) with respect to Special Account "B" in the table set forth in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of works, goods and services required for Parts B and C of 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 \$500,000 for Special Account "A" and \$100,000 for Special Account "B" 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 \$250,000 for Special Account

"A" and \$50,000 for Special Account "B" 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 SDR 6,000,000 and SDR 300,000, respectively.

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 a deposit or deposits 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 Bank, 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 Bank 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 for Parts B and C of the Project, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to Parts B and C of 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 for Parts B and C of the Project 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.

