

CONFORMED COPY

CREDIT NUMBER 3490 KE

Development Credit Agreement  
(Regional Trade Facilitation Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 6, 2001

CREDIT NUMBER 3490 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 6, 2001, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) 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;

(B) the Project will be carried out by the African Trade Insurance Agency (ATI) with the Borrower's assistance and, as part of such assistance, the Borrower will make the proceeds of the credit provided for in Article II of this Agreement (the Credit) available to ATI, as set forth in this Agreement and in that certain participation agreement to be entered into between the Borrower and ATI (as such participation agreement may be amended from time to time, the Participation Agreement);

(C) the Borrower may contract donor funds from bilateral funding agencies (Donor Funds) for co-financing the Project on terms and conditions consistent with those in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the project agreement of even date herewith between the Association and ATI (the Project 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 October 6, 1999), 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 11 of Resolution No. 194 of the Board of Governors of the Association, adopted on April 8, 1999; and 'Participating Countries' means, collectively, all such countries.";

(b) The following sentence is added at the end of Section 4.01:

"For the purposes of the Project, except as the Borrower and the Association shall otherwise agree, withdrawals from the Credit Account shall be made in the currency of the Security Trust Account specified in Section 1.02 (dd) of the Development Credit Agreement.";

(c) 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 person 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.";

(d) At the end of Section 6.01, following the words "Section 5.02" the words "or in respect of which an Insurance Contract (as such term is defined in the Development Credit Agreement) has been issued and remains outstanding" are added;

(e) In Section 6.02, at the end of the first phrase which precedes sub-paragraph (a), ending with the word "Account", the words "with respect to any amount of the Credit which has not been committed under an Insurance Contract (as such term is defined in the Development Credit Agreement)" are added;

(f) The following sentence is added at the end of Section 6.03:

"Furthermore, any Unwithdrawn Credit Amount (as such term is defined in the Development Credit Agreement) shall be canceled by the Association after the Insurance Facility First Closing Date and the right of the Borrower to make withdrawals with respect to such Amount shall be terminated."; and

(g) Section 9.06 (c) is modified to read:

"(c) Not later than six months after the expiry of the Insurance Facility Second Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the implementation of the Project, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement, as well as the performance by the Borrower and ATI of their respective obligations under the Participation Agreement, and the accomplishment of the purposes of the Credit."

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) "Agreement Establishing ATI" means that certain Agreement Establishing the African Trade Insurance Agency adopted by the Fifth Summit of Heads of State and Government of the Common Market for Eastern and Southern Africa in Grand Baie, Republic of Mauritius on May 18, 2000, as such Agreement may be amended from time to time;

(b) "ATI Development Credit Agreement" means the development credit agreement between ATI and the Association of even date herewith, as such agreement may be amended from time to time, and such term includes all schedules and agreements supplemental to the ATI Development Credit Agreement;

(c) "Civil Commotion" has the meaning given to such expression in the general conditions of insurance included in the Standard Form of Insurance Contract;

(d) "Claim" means the amount claimed by an Insured (as hereinafter defined) as payable by ATI or by the Insurers (as hereinafter defined), as the case may be, pursuant to an Insurance Contract;

(e) "COMESA" means the Common Market for Eastern and Southern Africa;

(f) "Committed Insurance Facility Amounts" means, as at any date, the amount equal to the aggregate of the Maximum Amount of Insurance (as such term is defined in the general conditions of insurance included in the Standard Form of Insurance Contract) under all the Insurance Contracts (as hereinafter defined) outstanding and in effect at such date;

(g) "Corrupt Practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of: (i) a public official of the Borrower, including, without limiting the generality of the foregoing, any official of any organ of executive, legislative or judicial power or function of the Borrower; and (ii) a director (or equivalent position), officer, employee, agent or representative of ATI, as the case may be;

(h) "Covered Risks" means the risks specified in Chapter 3 of Part 1 (The Imports Facility) and Part 2 (The Exports Facility) of the Operations Manual (as hereinafter defined) and defined in the general conditions of insurance included in the Standard Form of Insurance Contract (as hereinafter defined), and includes such other risks as may be agreed upon by the Association and ATI at any time;

(i) "Eligible Investments" has the meaning given to such expression in paragraph 7 of Part A of Schedule 3 of this Agreement;

(j) "Embargo" has the meaning given to such expression in the general conditions of insurance included in the Standard Form of Insurance Contract (as hereinafter defined);

(k) "Fraudulent Practice" means a misrepresentation of facts in order to influence a process, the execution of a contract, or the provision of funds, including, without limiting, the generality of the foregoing: (i) the assessment of any application for an Insurance Contract (as hereinafter defined), (ii) the provision of any Insurance Contract (as hereinafter defined), (iii) the assessment of any Claim, or (iv) the making of any Payment (as hereinafter defined), in any case to the detriment of the Borrower or ATI, as the case may be;

(l) "Headquarters Agreement" means the agreement between ATI and the Republic of Kenya dated June 8, 2001 regarding the headquarters of ATI, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Headquarters Agreement;

(m) "Income Account" means an account referred to in paragraph 5 of Part A of Schedule 3 to this Agreement;

(n) "Income Amounts" means the amounts generated as interest and other earnings from the deposits in the Security Trust Account(s) (as hereinafter defined) and includes interest and other earnings generated from the deposits in an Income Account;

(o) "Insurance Contract" means any contract for the provision of insurance against Covered Risks issued under the Insurance Facility (as hereinafter defined) to an Insured (as hereinafter defined) by ATI or the Insurers (as hereinafter defined), as the case may be, and which contains terms and conditions substantially similar to

those specified in the Standard Form of Insurance Contract;

(p) "Insurance Facility" and "Insurance" mean, respectively, the insurance facility specified in Schedule 2 to this Agreement and the insurance provided thereunder;

(q) "Insurance Facility Agreement" and "Insurance Facility Agreements" mean, respectively, the insurance facility agreement in form and substance satisfactory to the Association, between the Insurers (as hereinafter defined) and ATI, as such agreement may be amended with the approval of the Insurers, ATI and the Association, and, collectively, the Insurance Facility Agreement and the Security Trust Agreement(s) (as hereinafter defined);

(r) "Insurance Facility First Closing Date" means June 30, 2011, or such later date as the Association shall establish pursuant to paragraph 2 of Part B of Schedule 3 to this Agreement;

(s) "Insurance Facility Second Closing Date" means the date 180 days following the last expiry or termination date of any Insurance Contract issued prior to the Insurance Facility First Closing Date;

(t) "Insured" means a natural or juridical person to whom ATI or the Insurers, as the case may be, has issued an Insurance Contract in accordance with the Operations Manual (as hereinafter defined);

(u) "Insurers" means, collectively, the insurers, whether acting alone or participating in a syndicate of insurers, that subscribe to the Insurance Facility from time to time, and includes any other insurer approved by ATI and the Association at any time;

(v) "Loss" means the amount payable to an Insured by ATI or the Insurers, as the case may be, pursuant to an Insurance Contract, including, without limitation, any amount in respect of legal costs in the circumstances permitted under the Insurance Facility Agreement;

(w) "Operations Manual" means the manual, dated February 22, 2001 for purposes of identification, approved by ATI, the Insurers and the Association, which, collectively, consists of Part 1: The Imports Facility, Part 2: The Exports Facility, Part 3: The Environment Operations Manual and Part 4: The Financial Management Manual, and which sets out the operating policies, rules and procedures to be applied and observed by ATI in connection with the operation of the Insurance Facility and related matters, as said manual may be amended by ATI with the approval of the Association and the Insurers;

(x) "Payment" means any payment on account of a Loss made to an Insured by the Insurers or ATI, as the case may be;

(y) "Project Agreement" means the agreement between the Association and ATI 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 Project Agreement;

(z) "Project Documents" means, collectively, this Development Credit Agreement, the Project Agreement, the Participation Agreement, the Insurance Facility Agreements, the Agreement Establishing ATI, the Insurance Contracts, and the Operations Manual;

(aa) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to the letter agreement signed on behalf of the Association on May 2, 2000 and on behalf of the Borrower on May 12, 2000;

(bb) "Protocol on Transit Trade and Trade Facilities" means the COMESA Protocol on Transit Trade and Trade Facilities annexed to the Treaty Establishing COMESA as Annex I;

(cc) "Revolving Insurance Facility Amounts" means, as at any date, the Unpaid Insurance Facility Amounts (as hereinafter defined) at such date that are retained in the Security Trust Account(s) (as hereinafter defined) following the expiry or termination of the relevant Insurance Contracts and, before the Insurance Facility First Closing Date, that are used on a revolving basis for the purpose of providing new Insurance under the Insurance Facility pursuant to paragraph 3 of Part B of Schedule 3 to this Agreement;

(dd) "Security Trust Account" means an interest-bearing, Dollar denominated trust account opened at a Security Trust Account Trustee (as hereinafter defined), on terms and conditions satisfactory to the Association, by ATI in the name of the Borrower, into which all or a part only of the proceeds of the Credit withdrawn by ATI in accordance with the terms and conditions of this Agreement and the Participation Agreement shall be deposited and thereafter to be managed in accordance with the terms and conditions of the relevant Security Trust Agreement;

(ee) "Security Trust Account Trustee" means a commercial bank of recognized standing, approved by the Association, acting as trustee pursuant to a Security Trust Agreement (as hereinafter defined) in respect of the funds held in the relevant Security Trust Account, and includes any successor thereto or assignee thereof acceptable to the Insurers and the Association;

(ff) "Security Trust Agreement" means a security agreement, in form and substance satisfactory to the Association, among ATI, the Insurers and a Security Trust Account Trustee, pursuant to which, inter alia, the legal title in the funds held in the relevant Security Trust Account is declared to be held by the relevant Security Trust Account Trustee on trust for the Insurers for application in the manner set out therein, as such agreement may be amended from time to time with the approval of the Insurers, ATI, the relevant Security Trust Account Trustee and the Association;

(gg) "Standard Form of Insurance Contract" means the standard form of Insurance Contract, dated February 22, 2001 for purposes of identification, approved by the Association, the Insurers and ATI for purposes of the Insurance Facility, and which, collectively, includes: (i) an application form, (ii) an insurance offer letter, (iii) general conditions of insurance, which general conditions contain the standard terms and conditions of the Insurance Contracts, and (iv) a commitment letter, as said standard form may be amended from time to time with the approval of the Association, the Insurers and ATI;

(hh) "Unpaid Insurance Facility Amounts" means, as at any date, the Committed Insurance Facility Amounts at such date that remain unpaid at the expiry or termination of the relevant Insurance Contracts;

(ii) "Unwithdrawn Credit Amount" means the amount, if any, of the Credit remaining unwithdrawn from the Credit Account after the Insurance Facility First Closing Date; and

(jj) "War or Civil Disturbance" has the meaning given to such expression in the general conditions of insurance included in the Standard Form of Insurance Contract.

## 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 nineteen million four hundred thousand Special Drawing Rights (SDR 19,400,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account for the purposes of and in accordance with the provisions of Part B of Schedule 3 to this Agreement.

(b) For the purposes of the Project, the Borrower shall cause ATI, pursuant to the Participation Agreement and promptly following the signature of this Agreement, to open one Security Trust Account and one Income Account on behalf of the Borrower and, promptly following receipt thereof from ATI, shall provide to the Association one copy of all account-related documentation. Deposits into and payments out of the Security Trust Account(s) and the Income Account(s) shall be made in accordance with the provisions of Schedule 3 to this Agreement.

(c) Any Unwithdrawn Credit Amount shall be cancelled by the Association after the Insurance Facility First Closing Date.

(d) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and

outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance, if any, of the authorized amount of the Project Preparation Advance shall thereupon be canceled.

Section 2.03. The Closing Date shall be June 30, 2011, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on March 15 and September 15 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each March 15 and September 15 commencing September 15, 2011 and ending March 15, 2041. Each installment to and including the installment payable on March 15, 2021 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 semi-annual 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.

Section 2.09. (a) The Managing Director of ATI and any person or persons whom he or she shall designate in writing is or are designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 (a) of this Agreement, Article V of the General Conditions and Section 3.02 of the Participation Agreement.

(b) Without limitation or restriction to the foregoing, the Borrower hereby entrusts ATI with responsibility for the preparation and delivery of withdrawal applications under the Credit and for the collection of the documents and other evidence to be furnished to the Association in support of such applications.

### ARTICLE III

#### Execution of the Project

Section 3.01. The Borrower declares its commitment to the objective of the Project as set forth in Schedule 2 to this Agreement. To this end, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, the Borrower:

(a) shall duly and punctually perform, in accordance with the provisions of the Agreement Establishing ATI, the Participation Agreement, and the Headquarters Agreement, all its obligations therein set forth and shall exercise its rights thereunder in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit;

(b) shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable ATI to realize the purposes for which it was created under the Agreement Establishing ATI, and shall not take or permit to be taken any action which would prevent or interfere with such realization or the fulfillment of the objectives of the Project; and

(c) if a member of COMESA, shall at all times comply with the provisions of the COMESA Protocol on Transit Trade and Trade Facilities and, whether or not a member of COMESA, undertakes to grant all transitors and transit traffic freedom to traverse its territory by any means of transport suitable for that purpose.

Section 3.02. For the purposes of Section 9.06 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 Insurance Facility First Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan designed to ensure the continued achievement of the Project; and

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

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 the Project shall be carried out by ATI, as applicable under the circumstances, pursuant to Section 2.03 of the Project Agreement.

Section 3.04. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an on-going basis, in accordance with the performance indicators included in Schedule 4 to this Agreement and any others that may be satisfactory to 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 the third anniversary of the Effective Date, 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 the third anniversary of the Effective Date, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter. Without limiting the generality of the foregoing, in the event that by the third anniversary of the Effective Date:

- (i) at least fifty per cent (50%) of the Credit has not been withdrawn from the Credit Account in accordance with the provisions of Schedule 3 to this Agreement; or
- (ii) the operations of ATI are not self-financing;

then the Borrower shall take all corrective measures necessary under the circumstances, based on the Association's views on the matter.

#### ARTICLE IV

##### Financial Covenants

Section 4.01. To the limit of its ability pursuant to the Agreement Establishing ATI and the Participation Agreement, the Borrower shall cause ATI to:

(a) maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Association, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to the Project;

(b) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;

(c) 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 copies of the financial statements referred to in paragraph (a) of this Section for such year as so audited, and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Association shall have reasonably requested;

(d) perform its obligations in respect of the audit of each Security Trust Account and each Income Account in accordance with the provisions of Section 5.01 of the Participation Agreement; and

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

## ARTICLE V

### Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional events are specified:

(a) promptly following notice from the Association and, in any event, within ten business days of its receipt of such notice from the Association, the Borrower shall have failed to remedy a default under Section 4.02 of the Participation Agreement to deposit into the relevant Security Trust Account, within the delay therein provided, an amount equal to the amount set forth by ATI in the notice delivered by ATI to the Borrower pursuant to said Section 4.02 regarding Payment of a Claim resulting from the action or omission of the Borrower.

For the purposes of this paragraph (a), "business day" shall mean a day on which banks are normally open for business in Nairobi;

(b) the Borrower shall have failed to perform any of its obligations under the Agreement Establishing ATI, or any of its obligations under the Headquarters Agreement, or any of its obligations under the Participation Agreement other than under Section 4.02;

(c) ATI, the Insurers, or the Security Trust Account Trustee shall have failed to perform any of their respective obligations under any of the Project Documents to which they are respectively a party or by which they are respectively bound;

(d) in the opinion of the Association, the Agreement Establishing ATI or the Headquarters Agreement shall have been amended, suspended, abrogated, repealed or waived so as to materially and adversely affect the ability of ATI to perform any of its obligations under any of the Project Documents to which it is a party or by which it is bound, or under the ATI Development Credit Agreement;

(e) 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 ATI, the Insurer, or the Security Trust Account Trustee will be able to perform their respective obligations under any of the Project Documents to which they are respectively a party or by which they are respectively bound, or which shall make it improbable that the Insurance Facility will be able to continue operating in a manner satisfactory to the Association;

(f) the occurrence of War or Civil Disturbance, Civil Commotion or Embargo;

(g) the Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of ATI, or for the suspension or termination of its operations insofar as they relate to the Insurance Facility;

(h) in the opinion of the Association, any material provision of the Operations Manual shall have been amended, or ATI shall have failed to apply or observe any of its provisions, in either case without the prior written consent of the Association;

(i) any provision of the Standard Form of Insurance Contract shall have been amended without the prior written consent of the Association;

(j) any provision of the Insurance Facility Agreements shall have been amended, assigned, suspended, abrogated, terminated or waived without the prior written consent of the Association;

(k) a Payment shall have been made to an Insured, or an amount shall have been withdrawn from a Security Trust Account by a Security Trust Account Trustee or by an Insurer, as the case may be, pursuant to the Insurance Facility Agreements for the purpose of making a Payment or reimbursing the Insurer or ATI, as the case may be, the amount of a Payment;

(l) in the opinion of the Association, the Borrower shall have introduced a material reversal of its foreign exchange and trade policies in effect as at the date

of this Development Credit Agreement, or there shall have been a material deterioration in the implementation of such policies;

(m) at any time, the Association determines, with respect to the issuance of any Insurance Contract, or the making of any Payment, that a Corrupt Practice or a Fraudulent Practice occurred without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation following receipt of written notice from the Association to such effect; or

(n) the Borrower shall have been suspended from membership in or ceased to be a member of ATI.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional events are specified:

(a) any event specified in paragraphs (b), (c), (e) and (m) of Section 5.01 of this Agreement shall occur and shall continue for a period of 60 days after notice thereof shall have been given by the Association to the Borrower; and

(b) any of the events specified in paragraphs (a), (d), (f), (g), (h), (i), (j), (k), (l) or (n) of Section 5.01 of this Agreement shall occur.

#### 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 ratified the Agreement Establishing ATI and has paid to ATI its initial contribution to the capital stock of ATI in the amount of one hundred thousand Dollars (\$100,000);

(b) a Participation Agreement, in form and substance acceptable to the Association, has been executed and delivered on behalf of the Borrower and ATI, and all conditions precedent to the effectiveness thereof, if any, have been fulfilled or waived;

(c) ATI shall have opened one Security Trust Account and one Income Account on behalf of the Borrower and provided the Association with one copy of the account-related documentation; and

(d) the Headquarters Agreement, in form and substance acceptable to the Association, has been executed and delivered, on behalf of the Borrower and ATI, and all conditions precedent to the effectiveness thereof, if any, have been fulfilled.

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 Agreement Establishing ATI has been duly ratified by the Borrower by all necessary action, and is legally binding upon the Borrower in accordance with its terms;

(b) that the execution and delivery of the Project Agreement has been duly authorized or ratified by ATI by all necessary action, and is legally binding upon ATI in accordance with its terms;

(c) that the execution and delivery of the Participation Agreement and the Headquarters Agreement have been duly authorized or ratified by the Borrower and ATI by all necessary action and are legally binding upon the Borrower and ATI in accordance with their respective terms;

(d) that the Insurance Contracts, when executed and delivered by the

respective parties thereto based on the Standard Form of Insurance Contract, will be legally valid and binding upon the respective parties thereto in accordance with their respective terms; and

(e) that the execution and delivery of the Insurance Facility Agreements have been duly authorized or ratified by ATI, the Insurer and the Security Trust Account Trustee, respectively, and are legally valid and binding upon ATI, the Insurer and the Security Trust Account Trustee, respectively, in accordance with their respective terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. The obligations of the Borrower under Article III of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on the date 20 years after the date of this Agreement, whichever shall be the earlier.

#### ARTICLE VII

##### Representative of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 of this Agreement, the Minister responsible for 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 and Planning  
P.O. Box 30007  
Nairobi  
Kenya

Cable address:	Telex:	Facsimile:
FINANCE Nairobi	22921 MINFIN-KE	(254) (2) 330426

For the Association:

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

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

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

REPUBLIC OF KENYA

By /s/ Yusuf Abdulrahman Nzibo

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Theodore Ahlers

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) Insurance Facility Funding	19,295,000	100%
(2) Refunding of Project Preparation Advance	105,000	Amount due pursuant to Section 2.02 (d) of this Agreement
TOTAL	19,400,000	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

SCHEDULE 2

Description of the Project

The objective of the Project is to assist the Borrower to implement poverty alleviation through private sector led growth in the region by improving access to financing for productive transactions and cross-border trade.

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

Insurance Facility

Provision of support for an insurance facility against Covered Risks that will be implemented by ATI in accordance with the Agreement Establishing ATI, with the approval of its Board of Directors.

\* \* \*

The Project is expected to be completed by June 30, 2011.

SCHEDULE 3

Withdrawals; Security Trust Account(s); Income Account(s)

Part A: General

1. Security Trust Accounts shall each be interest-bearing, Dollar denominated trust accounts opened by ATI in the name of the Borrower for purposes of the Insurance Facility and the provision of Insurance Contracts in the manner contemplated by this Development Credit Agreement.

2. If, at any time prior to the Insurance Facility Second Closing Date, the Insurer either terminates or suspends the Insurance Facility provided under the Insurance Facility Agreement or such Insurance Facility expires in accordance with its terms, then, subject to Article V of this Agreement and Section 6.02 of the General Conditions, ATI and the Borrower shall in good faith, as expeditiously as possible, seek to put in place an alternative structure for the Insurance Facility, subject to the Association's prior written consent.

3. Subject to paragraph 7 of Part A of this Schedule, the Committed Insurance Facility Amounts shall be used exclusively to make Payments in accordance with the provisions of Part B of this Schedule.

4. Subject to the terms of the Insurance Facility Agreements, the Unpaid Insurance Facility Amounts shall be used exclusively to finance a new Insurance facility established by the Borrower or ATI, subject to the terms and conditions and in accordance with the procedures specified in Part C of this Schedule.

5. All Income Amounts shall be deposited and kept separately in one or more additional interest-bearing, Dollar denominated trust accounts opened by ATI in the name of the Borrower at a Security Trust Account Trustee, on terms and conditions satisfactory to the Association, into which the relevant Security Trust Account Trustee shall deposit the interest payable by it under the relevant Security Trust Agreement in respect of that part of the proceeds of the Credit held from time to time in such Security Trust Account.

6. Subject to paragraph 7 of Part A of this Schedule, the Income Amounts shall be used exclusively for the purposes of the Project as specified in Part D of this Schedule.

7. Subject to the terms of the Insurance Facility Agreements in this respect, if any, the Committed Insurance Facility Amounts and the Income Amounts, respectively, may from time to time, pending utilization as specified in paragraphs 3 and 6 hereof, be used to make Eligible Investments.

For the purposes of this paragraph 7, "Eligible Investments" means investments made with the prior written approval of the Association by ATI on behalf of the Borrower, which investments shall: (i) not be speculative in nature, (ii) be such that the capital thereof not be susceptible to depreciation or otherwise at risk of loss, and (iii) be liquid in nature so as to ensure that funds are available for the purpose of making Payments, which investments shall be held in one or more segregated accounts on terms and conditions acceptable to the Association.

8. To the limit of its ability pursuant to the Agreement Establishing ATI and the Participation Agreement, the Borrower shall cause ATI to:

(a) have the Security Trust Account(s) and the Income Account(s) for each fiscal year audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association who shall be employed by the Borrower, on terms and conditions satisfactory to the Association;

(b) furnish to the Association as soon as available, but in any case not later than six (6) 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; and

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

Part B: Insurance Facility

1. (a) Deposits into the Security Trust Account(s) shall be made from the Credit Account in accordance with the procedures set forth below, after the Association has received evidence satisfactory to it that one Security Trust Account and one Income Account have been duly opened.

(b) Subject to the provisions of paragraphs 1 (c), (d) and (e) below, ATI shall submit applications for withdrawal of the Credit on behalf of the Borrower pursuant to the designation provided in paragraph (a) of Section 2.09 of this Agreement and request transfer of the proceeds to the Security Trust Account(s), and shall cause any Donor Funds also to be deposited in the Security Trust Account(s).

(c) Applications for withdrawal of the Credit made on behalf of the Borrower by the Managing Director of ATI and any person or persons whom he or she shall designate in writing, pursuant to paragraph (a) of Section 2.09 of this Agreement:

(i) shall each be in an amount equivalent to twenty-five per cent (25%) of the Credit;

(ii) shall include the documentation required pursuant to Article V of the General Conditions;

(iii) where only one Security Trust Account has been opened at the relevant date, shall each request that the Association transfer to the Security Trust Account the entire proceeds of the amount of the Credit applied to be withdrawn thereunder or, in the event that there is more than one Security Trust Account at the relevant date, the proportion of such proceeds that is to be deposited into each one of the Security Trust Accounts;

(iv) shall, with respect to the first such application for withdrawal, be delivered to the Association promptly following confirmation by the Association that the conditions of effectiveness specified or referred to in the Development Credit Agreement have been fulfilled; and

(v) shall, with respect to the second and subsequent applications for withdrawal, be delivered to the Association promptly once the aggregate principal amount of new Insurance Contracts issued by ATI since the date of delivery of the immediately preceding application for withdrawal is equal to two hundred per cent (200%) of the amount specified in clause (i) of this paragraph (c), unless the Insurance Facility Agreement stipulates a leverage ratio in respect of the Borrower which is less than 2.00 to 1.00, in which latter case the percentage aforementioned shall be equal to one hundred per cent (100%) of the amount specified in said clause (i) of this paragraph (c).

(d) With the exception of funds to be released to the Borrower following the winding up of the trust created by the Security Trust Agreement(s), and subject to paragraph 7 of Part A of this Schedule, funds in the Security Trust Account(s) shall be released by the Security Trust Account Trustee(s) only for the purpose of making Payments.

(e) For each withdrawal made from a Security Trust Account for the purpose of making a Payment, the Borrower shall request ATI under the Participation Agreement, at such time as the Association shall reasonably request, to furnish to the Borrower and provide copies to the Association of such documents and other evidence showing that such Payment was made exclusively on account of a Loss.

(f) (i) If the Association shall have determined at any time that any withdrawal out of a Security Trust Account: (A) was made for other than making an eligible Payment or an Eligible Investment; or (B) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (I) provide such additional evidence as the Association may request; or (II) refund to the Association an amount equal to the amount of such withdrawal or the portion thereof not so eligible or justified.

(ii) Refunds to the Association made pursuant to sub-paragraph

(f)(i)(B)(II) of this paragraph 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.

(g) (i) If the Association shall have determined at any time that any withdrawal out of an Income Account: (A) was made for other than a purpose eligible under Part D of this Schedule or making an Eligible Investment; or (B) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (I) provide such additional evidence as the Association may request; or (II) refund to the Association an amount equal to the amount of such withdrawal or the portion thereof not so eligible or justified.

(ii) Refunds to the Association made pursuant to sub-paragraph (g)(i)(B)(II) of this paragraph 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.

2. No withdrawals from the Credit Account for deposit into a Security Trust Account shall be made after June 30, 2011, or such later date as the Association shall establish. The Association shall promptly notify the Borrower and ATI of such later date.

3. Unpaid Insurance Facility Amounts shall be retained in the Security Trust Account(s) and, before the Insurance Facility First Closing Date, shall be used on a revolving basis for the purpose of providing new Insurance Contracts under the Insurance Facility.

Part C: Financing of New Insurance Facility and Other Activities

1. Subject to the Insurance Facility Agreements and paragraph 4 of Part C of this Schedule, following: (i) the Insurance Facility First Closing Date, or (ii) the termination of the Insurance Facility for a reason acceptable to the Association, or (iii) the mid-term review of the Project, the Borrower shall be entitled to obtain the release of any remaining balance of the Revolving Insurance Facility Amounts for their use in any activity or to finance any other purpose agreed between the Borrower and the Association.

2. Subject to the Insurance Facility Agreements and paragraph 4 of Part C of this Schedule, any balance of the Revolving Insurance Facility Amounts remaining after the Second Closing Date shall be released to the Borrower.

3. In the event that pursuant to paragraph 1 of Part C of this Schedule the Borrower and the Association agree to the establishment of a new Insurance facility, then except as the Association shall otherwise agree, funds made available pursuant hereto for that purpose shall be used in accordance with the procedures acceptable to the Association, including the procedures outlined in paragraph 1 of Schedule 2 to the Project Agreement and the Operations Manual.

4. If: (i) the Borrower at any time has failed to pay the Association any amount owing under a Development Credit Agreement or under any guarantee of any sums advanced by the Association to a third party at the request of the Borrower, or (ii) an event specified in paragraph 5.01 (a), in paragraph 5.01 (f) or in paragraph 5.01 (k) of this Agreement has occurred at any time, then the Borrower shall not have the right to obtain the release of any part of the Revolving Insurance Facility Amounts.

Part D: Income Amounts

1. The Income Amounts or part thereof shall, until the expiry of the Insurance Facility First Closing Date, be used only for the following purposes and in the following order of priority:

(a) first, to pay any commitment charges and any service charges due and payable to the Association pursuant to this Agreement; and, if and to the extent only that there is any available balance remaining of said Income Amounts after having been applied as provided in this paragraph (a), then

(b) second, if and to the extent that the Board of Directors of ATI shall have adopted a resolution to such effect and, thereafter, the Managing Director of ATI

shall have provided written notice to the Borrower requesting payment of same, to pay the Borrower's proportional share of ATI's operational costs, based on the Borrower's contribution to the business of ATI (or based on such other formula as may be adopted by ATI at any time with the approval of its Board of Directors), in the event that such operations are not self-financing; and, if and to the extent only that there is any available balance remaining of said Income Amounts after having been applied as provided in paragraph (a) above and this paragraph (b), then

(c) third, to contribute to the reserves of ATI in addition to the amounts allocated thereto in accordance with paragraph 1 (b) of Article 9 of the Agreement Establishing ATI; and, if and to the extent only that there is any available balance remaining of said Income Amounts after having been applied as provided in paragraphs (a) and (b) above and this paragraph (c), then

(d) fourth, to make any reimbursement to a Security Trust Account due and payable by the Borrower pursuant to Section 4.02 of the Participation Agreement.

After the Insurance Facility First Closing Date, the Income Amounts or remaining balance thereof shall be released to the Borrower at the request of the Borrower.

#### SCHEDULE 4

##### Performance Indicators

###### Primary Indicators

1. Issuance of Insurance Contracts in an aggregate principal amount of thirty-five million Dollars (\$35,000,000) or equivalent by the third anniversary of the Effective Date and issuance of Insurance Contracts in an aggregate principal amount of three hundred and fifty million Dollars (\$350,000,000) or equivalent by the tenth anniversary of the Effective Date, all in respect of transactions pertaining to the Borrower.
2. The operations of ATI are self-financing after three years following the commencement of its operations.
3. On average, in any twelve-month period commencing on the Effective Date, fewer than one Claim per year resulting from Covered Risks other than War or Civil Disturbance, Civil Commotion or Embargo has been made, which Claim, in the opinion of the Association, would have arisen as a result of the action or omission of the Government of Kenya, including any department, agency or political or administrative subdivision thereof.
4. Signature and delivery of the Insurance Facility Agreements.

###### Secondary Indicators

1. The Project has catalyzed the introduction of comprehensive trade credit insurance available within the Borrower's territory.
2. On average, in any twelve-month period commencing on the Effective Date, there has been a ten per cent (10%) increase per annum in the volume of bank lending for trade transactions pertaining to the Borrower (including both local and foreign banks).
3. A decreasing trend in cost and an increasing trend in maturity of trade finance available for transactions pertaining to the Borrower - to be measured by surveying users of the Insurance Facility.
4. An increasing number of States participate in the Insurance Facility over the life of the Project.
5. A broadening of ATI's client base within the Borrower's territory over the life of the Project.

