

CONFORMED COPY

GRANT NUMBER H011 MAI

Development Grant Agreement

(Emergency Drought Recovery Project)

between

REPUBLIC OF MALAWI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 19, 2002

GRANT NUMBER H011 MAI

DEVELOPMENT GRANT AGREEMENT

AGREEMENT, dated December 19, 2002, between REPUBLIC OF MALAWI (the Recipient) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) by an agreement of even date herewith between the Recipient and the Association (the "Development Credit Agreement"), the Association is agreeing to provide a development credit to the Recipient in the amount of twenty two million Special Drawing Rights (SDR 22,000,000) (the "Credit") towards the financing of a project (the "Project") as described in Schedule 2 to the Development Credit Agreement;

(B) the Recipient has also requested the Association to provide non-reimbursable assistance towards the financing of the Project;

(C) the Association was authorized, under Resolution No. 549 adopted on September 29, 2002, by the Board of Governors of the International Bank for Reconstruction and Development (the "Bank"), to use the funds transferred to the Association out of the Bank's fiscal year 2002 net income to provide financing in the form of grants as well as loans, and the Executive Directors of the Association have determined that the development grant set forth in Section 2.01 of this agreement (the "Grant") is consistent with such policies; and

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

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The following provisions of 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) (i) Article I;
- (ii) Sections 2.01 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13) and (14), 2.02 and 2.03;

- (iii) Section 3.01;
- (iv) Sections 4.01 and 4.05;
- (v) Article V;
- (vi) Sections 6.01, 6.02, 6.03, 6.04 and 6.06;
- (vii) Section 8.01 (b);
- (viii) Article IX;
- (ix) Article X;
- (x) Article XI; and
- (xi) Article XII.

(b) The General Conditions shall be modified as follows:

- (i) the terms “Borrower”, “Credit”, “Credit Account” and “Development Credit Agreement”, wherever they appear in the General Conditions, are replaced by “the Recipient”, “the Grant”, “the Grant Account” and “the Development Grant Agreement”, respectively; and
- (ii) the terms “Development Credit Agreement” and “development credit”, where used in Article I of the General Conditions, mean “Development Grant Agreement” and “development grant”, respectively.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions, in the Preamble to this Agreement and in the Development Credit Agreement have the respective meanings therein set forth and the following additional term has the following meaning, namely, “Special Grant Account” means the account referred to in Section 2.02 (b) of this Agreement.

ARTICLE II

The Grant

Section 2.01. The Association agrees to grant to the Recipient, on the terms and conditions set forth or referred to in the Development Grant Agreement, an amount in various currencies equivalent to fifteen million nine hundred thousand Special Drawing Rights (SDR 15,900,000).

Section 2.02. (a) The amount of the Grant may be withdrawn from the Grant 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 eligible imports required for Part A of the Project described in Schedule 2 to the Development Credit Agreement and to be financed out of the proceeds of the Grant.

(b) The Recipient may, for the purposes of Parts A the Project open and maintain in Dollars one separate special deposit account (Special Grant Account) 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 Grant Account shall be made in accordance with the provisions of Schedule 2 to this Agreement.

Section 2.03. The Closing Date shall be November 30, 2004 or such later date as the Association shall establish. The Association shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Recipient declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end shall carry out Part A of the Project with due diligence and efficiency and in conformity with appropriate financial, technical, administrative, engineering and environmental practices, and shall provide promptly as needed the funds, facilities, services and other resources required for the Project;

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient and the Association shall otherwise agree, the Recipient shall carry out Parts A of the Project in accordance with the Implementation Program set forth in Schedule 4 to the Development Credit Agreement.

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

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Recipient shall establish and maintain for Part A of the Project a financial management system, including records and accounts, and prepare financial statements in a format acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the respective part of Project.

(b) The Recipient shall:

- (i) have the records, accounts and financial statements referred to in paragraph (a) of this Section and the records and accounts for the Special Grant Account for each Fiscal Year semiannually audited, in accordance with auditing standards acceptable to the Association, 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 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, records and accounts and 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 such records and accounts, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

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

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and separate 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 Grant 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 semiannual 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.

Section 4.02. (a) Without limitation upon the Recipient's progress reporting obligations the Recipient shall prepare for Parts A of the Project and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Grant, and explains variances between the actual and planned uses of such funds;

- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation ; and

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

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

ARTICLE V

Remedies of the Association

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

(a) that the Development Credit Agreement shall have failed to become effective by the date of the effectiveness of this Development Grant Agreement, or such later date as the Association may agree;

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

(c) (i) subject to subparagraph (ii) of this paragraph: (A) the right of the Recipient to withdraw the proceeds of the Development Credit Agreement made to the Recipient for the financing of the Project shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of the Development Credit Agreement; or (B) the Development Credit Agreement shall have become due and payable prior to the agreed maturity thereof; and

(ii) Subparagraph (i) of this paragraph shall not apply if the Recipient establishes to the satisfaction of the Association that: such suspension, cancellation, termination or pre-maturing is not caused by the failure of the Recipient to perform any of its obligations under such agreement.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following event is specified as additional condition to the effectiveness of the Development Grant Agreement within the meaning of Section 12.01 (b) of the General Conditions, namely that the Development Credit Agreement has been executed and delivered and all conditions precedent to its effectiveness or to the right of the Recipient to make withdrawals thereunder, except only the effectiveness of the Development Grant Agreement, have been fulfilled.

Section 6.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Recipient; Addresses

Section 7.01. The Minister of Finance of the Recipient is designated as representative of the Recipient 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 Recipient:

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

Cable address:	Telex:	Facsimile:
FINANCE Lilongwe	44407 MI	(265) 1 789173

For the Association:

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

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

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

REPUBLIC OF MALAWI

By /s/ Tony Kandiero

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Yaw Ansu

(Acting) Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Grant

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

<u>Category</u>	<u>Amount of the Grant Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Eligible imports required for Part A of the Project as specified in Schedule 6 to the Development Credit Agreement		100% of foreign expenditures
(a) Petroleum and fuel	5,310,000	
(b) Agricultural inputs and equipment, construction equipment, spare parts, livestock, animal products and veterinary supplies, school supplies, medical supplies and equipment	10,590,000	
TOTAL	<u>15,900,000</u> =====	

2. For the purposes of this Schedule:

the term "foreign expenditures" means expenditures in the currency of any country other than that of the Recipient for goods or services supplied from the territory of any country other than that of the Recipient;

3. 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, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR

3,200,000 may be made on account of payments made under Category 1 for expenditures before that date but after May 31, 2002.

4. The Association may require withdrawals from the Grant Account to be made on the basis of statements of expenditure for expenditures for: (i) eligible imports of petroleum and fuel products under contracts costing less than \$3,000,000 equivalent; and (ii) all other eligible imports under contracts costing less than \$500,000 equivalent under such terms and conditions as the Association shall specify by notice to the Recipient.

SCHEDULE 2

Special Accounts

1. For the purposes of this Schedule:
 - (a) the term “eligible Category” means Category (1) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
 - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods required for the Project and to be financed out of the proceeds of the Grant allocated from time to time to the eligible Category in accordance with the provisions of Schedule 1 to this Agreement; and
 - (c) the term “Authorized Allocation” means an amount equivalent to \$3,500,000 in respect of Parts A of the Project to be withdrawn from the Grant Account and deposited into the Special Grant Account pursuant to paragraph 3(a) of this Schedule.
2. Payments out of the Special Grant 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 Grant Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Grant Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Association a request or requests for deposit into the Special Grant Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Recipient, withdraw from the Grant Account and deposit into the Special Grant Account such amount or amounts as the Recipient shall have requested.
 - (b)
 - (i) For replenishment of the Special Grant Account, the Recipient shall furnish to the Association requests for deposits into the Special Grant Account at such intervals as the Association shall specify; and
 - (ii) Prior to or at the time of each such request, the Recipient 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 Recipient, withdraw from the Grant Account and deposit into the Special Grant Account such amount as the Recipient shall have requested and as shall have

been shown by said documents and other evidence to have been paid out of the Special Grant Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Grant Account under the eligible Category, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Recipient out of the Special Grant Account, the Recipient 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 Grant Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Recipient directly from the Grant 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 Recipient shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Grant Account;

(c) if, at any time, the Association shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the Grant Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Grant allocated to the eligible Category for the Special Grant Account for the Project, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Grant Account of the remaining unwithdrawn amount of the Grant allocated to the eligible Category shall follow such procedures as the Association shall specify by notice to the Recipient. 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 Grant 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 Grant 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 Recipient shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Grant 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 Grant Account shall be made until the Recipient 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 Grant Account will not be required to cover further payments for eligible expenditures, the Recipient shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

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

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