

CONFORMED COPY

CREDIT NUMBER 4284-KE

Financing Agreement

(Transparency and Communications Infrastructure Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated May 23, 2007

CREDIT NUMBER 4284-KE

FINANCING AGREEMENT

AGREEMENT dated May 23, 2007, entered into between REPUBLIC OF KENYA (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”). The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a credit in an amount equivalent to seventy-six million and two hundred and ten thousand Special Drawing Rights (SDR 76,210,000) (variously, “Credit” and “Financing”) to assist in financing the project described in Schedule 1 to this Agreement (“Project”).
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.
- 2.05. The Payment Dates are February 15 and August 15 in each year.
- 2.06. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.
- 2.07. The Payment Currency is Dollar.

ARTICLE III — PROJECT

- 3.01. The Recipient declares its commitment to the objectives of the Project and the Program. To this end, the Recipient shall carry out the Project in accordance with the provisions of Article IV of the General Conditions.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

- 4.01. The Additional Event of Suspension is that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.
- 4.02. The Additional Event of Acceleration is the event specified in Section 4.01 of this Agreement.

ARTICLE V — EFFECTIVENESS; TERMINATION

- 5.01. The Additional Conditions of Effectiveness consist of the following:
 - (a) The Recipient has developed and adopted the Project Implementation Manual in a form and substance satisfactory to the Association.
 - (b) The Recipient has recruited to the ICT Board: (i) a Deputy Managing Director in charge of the Project's overall coordination; (ii) a procurement specialist; (iii) a financial management specialist; all with qualifications, experience, and terms of reference satisfactory to the Association and in accordance with the provisions of Section III of Schedule 2 to this Agreement.
 - (c) The Recipient has established a financial management system, in form and substance satisfactory to the Association.
 - (d) The Recipient has opened the Project Account and deposited therein the initial deposit referred to in Section V.B of Schedule 2 to this Agreement.

- (e) The recipient has established an institutional risk management policy framework satisfactory to the Association.

5.02. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. The Recipient's Representative is the Minister for Finance.

6.02. The Recipient's Address is:
Ministry of Finance
P.O Box 30007
Nairobi, Kenya

| | |
|----------------|----------------|
| Cable address: | Facsimile: |
| FINANCE | 254 20 330 426 |
| NAIROBI | 254 20 218 475 |

6.03. The Association's Address is:

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

| | | |
|-----------------------------|--------------|----------------|
| Cable: | Telex: | Facsimile: |
| INDEVAS Washington, D.C. | 248423 (MCI) | 1-202-477-6391 |

AGREED at Nairobi, Republic of Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By: */s/ Amos Kimunya*
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: */s/ Colin Bruce*
Authorized Representative

SCHEDULE 1

Project Description

The objectives of the Project are to: (i) contribute to lower prices for international capacity and extend the geographic reach of broadband networks, and (ii) contribute to improved Government efficiency and transparency through e-government applications.

The Project consists of the following parts:

Part 1. Enabling Environment

Provision of technical assistance to:

- a. Promote liberalization of and regulatory reforms in telecommunications infrastructure and related infrastructure and services, including: (i) telecommunications law and regulation (including competition law and policy), and (ii) legal and regulatory aspects regarding e-transactions, privacy and data protection, access to information, network security and interoperability, intellectual property rights, cybercrime, public private partnerships and standards.
- b. Support capacity of MoIC, CCK, Kenet, eGovernment Office, Public Procurement Oversight Authority to implement the reforms, including training.
- c. Establish a Government Information Portal including establishment and operation of a grant facility to develop content.
- d. Formulate disbursement and governance mechanisms to enable the capacity purchase schemes, to be provided under Part 2 of the Project, and formulate the Grant Operations Manual for the purpose of operating the grant program to generate content on the Government Information Portal to be provided under Part 1(c) of the Project, and support the Digital Village Initiative and SMS/IVR e-Service initiative to be provided under Part 2(c) and Part 2(d) of the Project.
- e. Carry out the classification of government data and collection and posting of statutory information.
- f. Increase capacity of the Recipient to monitor and evaluate the results of the Program as well as to communicate about the program and related activities.

Part 2. Connectivity

- a. Purchase international capacity from international capacity resellers on a competitive basis for targeted users (including universities and technical colleges, hospitals, Government use, and the Business Process Outsourcing industry and the digital village initiative), and support the university virtual private network.
- b. Support for the establishment of a government virtual private network to enable and support governmental communications needs.
- c. Support the digital village initiative, including the establishment and operation of a grant facility to support digital village entrepreneurs.
- d. Support the SMS/IVR e-Services initiative, including the establishment of a grant facility to generate SMS/IVR eServices.

Part 3. Transparency

- a. Implementation of e-Government initiatives in 4 to 8 Government services areas including Pension Administration, Drivers' License Registration, Wealth Declaration Form, High Court Registry, Company Registration, Support to the Integrated Population Registration System (IPRS), Land Title Registration or other areas following due diligence deemed satisfactory to the Association.
- b. Introduction of E-Procurement in selected public institutions, including the Supplies Branch of the Ministry of Roads and Public Works.

Part 4. Project Management

Support for the ICT Board to carry out all activities pertaining to the management of this project, including audit.

SCHEDULE 2**Project Execution****Section I. Implementation Arrangements****A. Institutional Arrangements***Ministry of Information and Communications*

The Ministry of Information and Communications shall provide overall orientation and oversight of Project implementation.

The Governance Oversight Committee

- (a) The Recipient shall maintain, throughout Project implementation, the Governance Oversight Committee, in form and substance and with functions and resources satisfactory to the Association, and comprising the Permanent Secretary of the Ministry of Information and Communications and representatives from the Ministry of Finance, the Attorney General's Office and from the private sector.
- (b) Without limitation upon the provisions of subparagraph (a) of this Section, the Governance Oversight Committee shall be responsible for: (i) supervision of overall orientation, coordination, and monitoring and evaluation of Project implementation; (ii) approval of Project annual work programs and budgets; and (iii) overall governance and fiduciary oversight of the Project, including monitoring the implementation of the institutional risk management policy framework.

ICT Board

- (c) The Recipient shall maintain, under the Ministry of Information and Communications, throughout Project implementation, the ICT Board, in form and substance and with functions and resources satisfactory to the Association, including staff with qualifications, experience, and terms of reference satisfactory to the Association, including the persons referred to in Section 5.01 (b) of this Agreement.
- (d) Without limitation upon the provisions of subparagraph (c) of this Section, the ICT Board shall be responsible for: (i) oversight, in collaboration with the technical directorates of the Ministry of Information and Communications, of all technical, social, and

environmental matters relating to Project implementation; (ii) planning of Project activities and preparation of Project annual work programs, both jointly with the said directorates; (iii) monitoring and evaluation of Project activities jointly with the said directorates; and (iv) financial management, procurement, and audit.

B. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

C. Grant Facilities

The Recipient shall ensure that the beneficiaries of the grant facilities under Part 1(c), 2(c) and 2(d) of the Project are selected in accordance with qualifying criteria, procedures, and on terms and conditions as shall be included in the Grants Operational Manual.

D. Manual

Except as the Association shall otherwise agree, the Recipient shall: (i) carry out, through the Ministry of Information and Communications, the Project in accordance with the Project Implementation Manual, referred to in Section 5.01 (a) of this Agreement; and (ii) except as the Association shall otherwise agree, not amend, abrogate, or waive, or permit to be amended, abrogated, or waived, the aforementioned, or any provision thereof, in a manner which, in the opinion of the Association, may materially or adversely affect Project implementation or achievement of the objective thereof.

E. Environmental and Social Safeguards

1. The Recipient shall ensure that the Project is implemented in accordance with the provisions of the Environmental and Social Management Framework, and Resettlement Policy Framework, and, except as the Association shall otherwise agree, the Recipient shall not amend, abrogate, or waive, or permit to be amended, abrogated, or waived, any provision of the aforementioned if such amendment or waiver may, in the opinion of the Association, materially or adversely affect Project implementation or achievement of the objective thereof.
2. The Recipient shall ensure that activities under Grants likely to have an adverse environmental or social impact shall be appraised, approved, and monitored in accordance with the provisions of the Environmental and Social Management Framework, and Resettlement Policy Framework, and specific procedures set out in the aforementioned.

3. The Recipient shall maintain, throughout Project implementation, provision for an environmental management officer who shall be responsible for implementation of the Environmental and Social Management Framework, and Resettlement Policy Framework.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators agreed with the Association. Each Project Report shall cover the period of one calendar quarter, and shall be furnished to the Association not later than forty five (45) days after the end of the period covered by such report.
2. On or about the date twenty-four (24) months after the Effective Date, the Recipient shall undertake in conjunction with the Association a comprehensive midterm review of the Project during which it shall exchange views generally on all matters relating to the progress of the Project, and the performance by the Recipient of its obligations under the Financing Agreement, having regard to the performance indicators referred to in paragraph 1 (b) of this Part A.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association not later than forty five (45) days after the end of each calendar quarter, interim un-audited financial reports for the Project covering the calendar quarter, in form and substance satisfactory to the Association.
3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six months after the end of such period.

Section III. Procurement

A. General

1. **Goods, Works, and Telecom Services.** All goods, works and Telecom Services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods, Works, and Telecom Services

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods, and Telecom Services shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods, Works and Telecom Services.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods, works and Telecom Services. The Procurement Plan shall specify the circumstances under which such methods may be used:

| Procurement Method |
|---|
| (a) National Competitive Bidding |
| (b) Direct Contracting |
| (c) Shopping |
| (d) Established Private or Commercial Practices which have been found acceptable to the Association |
| (e) Limited International Bidding |

C. Particular Methods of Procurement of Consultants' Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.

2. **Other Methods of Procurement of Consultants' Services.** The following table specifies methods of procurement, other than Quality and Cost-based Selection, which may be used for consultants' services. The Procurement Plan shall specify the circumstances under which such methods may be used.

| Procurement Method |
|---|
| (a) Quality-Based Selection |
| (b) Selection under a Fixed Budget |
| (c) Least Cost Selection |
| (d) Selection based on the Consultants' Qualifications |
| (e) Single-Source Selection |
| (f) Individual Consultants |
| (g) Established Private or Commercial Practices which have been found acceptable to the Association |

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of this Section and such additional instructions as the Bank may specify by notice to the Recipient, to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing (“Category”), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

| Category | Amount of the Credit Allocated (expressed in SDR) | Percentage of Expenditures to be Financed |
|---|--|--|
| (1) Telecom Services in respect of purchase of telecommunications capacity under Part 2(a) of the Project | 23,315,000 | 100% of foreign expenditures and 90% of local expenditures |
| (2) Goods | 16,180,000 | 100% of foreign expenditures and 90% of local expenditures |
| (3) Consultants’ Services | 25,735,000 | 100% of foreign expenditures and 94% of local expenditures |
| (4) Works | 65,000 | 90% |
| (5) Grants under Part 1(c), 2(c) and 2(d) of the Project | 5,330,000 | 100% |
| (6) Trainings | 2,165,000 | 100% |
| (7) Operating Costs | 90,000 | 90% |
| (8) Unallocated | 3,330,000 | |
| TOTAL AMOUNT | 76,210,000 | |

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made:
 - (a) for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed 134,000 SDR equivalent may be made for payments made prior to this date but on or after February 23, 2007, for Eligible Expenditures; nor
 - (b) under Category (5) for any grant under Part 1(c), 2(c) and 2(d) of the Project unless the disbursement and governance mechanisms are in place and satisfactory to the Association and the grants concerned shall have been made according to the procedures set in the Grants Operational Manual; nor
 - (c) under Category (1) for purchase of capacity under Part 2(a) of the Project unless the parameters and expenditures for such support have been defined and approved by the Association.
2. The Closing Date is July 31, 2012.

Section V. Other Undertakings**A. Appointment of Independent Auditors**

The Recipient shall, not later than six months after the Effective Date, appoint the independent auditors referred to in Section 4.09 (b) of the General Conditions, in accordance with the provisions of Section III of this Schedule.

B. Project Account

1. Except as the Recipient and the Association shall otherwise agree, the Recipient shall open an account in Kenya Shillings in a commercial bank acceptable to the Association (the Project Account), and thereafter maintain the Project Account under terms and conditions acceptable to the Association until the completion of the Project, to finance exclusively the Recipient's contribution for expenditures under the Project other than those financed from the proceeds of the Financing, as shall be agreed upon between the Recipient and the Association
2. The Recipient shall deposit into the Project Account: (a) an initial amount of Kenya Shillings 1,400,000; and (b) thereafter, at quarterly intervals, replenish the Project Account by the amounts required to finance the Recipient's contribution for

expenditures under the Project as shall be agreed upon between the Recipient and the Association.

SCHEDULE 3**Repayment Schedule**

| Date Payment Due | Principal Amount of the Credit repayable (expressed as a percentage)* |
|---|--|
| On each August 15 and February 15: | |
| Commencing August 15, 2017 to and including February 15, 2027 | 1% |
| Commencing August 15, 2027 to and including February 15, 2047 | 2% |

* The percentages represent the percentage of the principal amount of the Credit to be repaid, except as the Association may otherwise specify pursuant to Section 3.03 (b) of the General Conditions.

APPENDIX**Section I. Definitions**

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006.
2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
3. “CCK” means Communications Commission of Kenya.
4. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the Bank in May 2004, amended in October 2006.
5. “e-Government” means use of ICT to enhance the delivery of Government services.
6. “Environmental and Social Management Framework” or “ESMF” means the framework developed in February 2007 in the context of the Regional Communications Infrastructure Program and which has been disclosed by the Recipient in Kenya on February 13, 2007, to outline the process for management of environmental and social aspects of the Project, and referred to in paragraph E, Section I of Schedule 2 to of this Agreement as the same may be amended from time to time with the agreement of the Association.
7. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005.
8. “Governance Oversight Committee” means the board of directors of the ICT Board.
9. “Grants Operational Manual” means the manual describing eligible activities and qualifications for recipients, other policies and procedures for activities to be carried out under Part 1(c), 2(c), 2(d) of the Project, as adopted and approved by the Recipient, and as the same shall be amended from time to time acceptable to the Association.
10. “ICT” means Information and Communications Technologies.

11. “Institutional risk management policy framework” in this context means a financial management system that includes the following: (i) establishment of a Governance Oversight Committee, including Audit and Finance sub-committees with clear terms of reference consistent with the Recipient’s Government’s financial management guidelines; (ii) updated financial management and procurement manuals setting out operational policies, procedures and fiduciary oversight methods; (iii) arrangements for public disclosure of information and complaint handling mechanisms; and (iv) an effective system of internal and external audits.
12. Integrated Population Registration System (IPRS).
13. “Kenet” means Kenya Education Network Trust.
14. “Kenya Shillings” or “Shs” means the lawful currency of the Recipient.
15. “MoIC” means the Recipient’s Ministry of Information and Communications, which is the Ministry responsible for the ICT sector.
16. Operating costs means expenditures incurred for the purpose of financing the reasonable and necessary expenses for providing equipment and vehicle maintenance, cost for fuel, office utilities, office equipment, supplies, literature, field trips, meetings and travel costs related to Project, ICT board compensation (excluding civil servants), communication costs, reasonable banking charges and media advertisement.
17. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004, amended in October 2006.
18. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated March 2, 2007 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.
19. “Program” means the Recipients Information and Communication’s Technology Sector Policy Guidelines, published in Gazette Vol. CVIII – No. 24 (March 31, 2006).
20. “Project Account” means a bank account opened by the Recipient for the purpose of depositing the Financing and the Recipient’s counterpart contribution to the costs of the Project.

21. “Project Implementation Manual” means the manual referred to in Section I.D of Schedule 2 to this Agreement and adopted by the Recipient pursuant to the provisions of Section 5.01 of this Agreement, including an Administrative, Financial, and Accounting Procedures Manual and a Procurement Procedures Manual, as well as the Monitoring and Evaluation Manual, setting forth, all procedures and arrangements governing the implementation of the Project, such as procurement and disbursement procedures, as the same may be amended from time to time, and such terms shall include any schedules, tables and annexes to the manual.
22. “Resettlement Policy Framework” or “RPF” means the framework developed in February 2007 in the context of the Regional Communications Infrastructure Program and which has been disclosed by the Recipient in Kenya on February 13, 2007, to outline the principles and procedures to be followed in the event that any activity leads to land acquisition and/or the loss of livelihoods under the Project as the same may be amended from time to time with the agreement of the Association.
23. “SMS/IVR eServices” means services which make use of the mobile networks’ short messaging systems (SMS) capability and/or are based on interactive voice response (IVR).
24. “Telecom Services” in this context means the purchase of telecommunications capacity.