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LOAN NUMBER 1388 MAI

**GUARANTEE AGREEMENT**

**(Third Power Project)**

**between**

**REPUBLIC OF MALAWI**

**and**

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

**Dated April 28, 1977**

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GUARANTEE AGREEMENT

AGREEMENT, dated April 28, 1977, between REPUBLIC OF MALAWI (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith between the Bank and Electricity Supply Commission of Malawi (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to nine million dollars (\$9,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated March 15, 1974, with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan and Guarantee Agreements being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

ARTICLE II

Guarantee; Provision of Funds

Section 2.01. Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan, and the premium, if any, on the prepayment of the Loan and the punctual performance of all the other obligations of the Borrower, all as set forth in the Loan Agreement.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

ARTICLE III

Other Covenants

Section 3.01. (a) It is the policy of the Bank, in making loans to, or with the guarantee of, its members not to seek, in normal circumstances, specific security from the member concerned but to ensure that no other external debt shall have priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member. To that end, if any lien shall be created on any public assets (as hereinafter defined), as security for any external debt, which will or might result in a priority for the benefit of the creditor of such external debt in the allocation, realization or distribution of foreign exchange, such lien shall, unless the Bank shall otherwise agree, ipso facto and at no cost to the Bank, equally and ratably secure the principal of, and interest and other charges on, the Loan, and the Guarantor, in creating or permitting the creation of such lien, shall make express provision to that effect; provided, however, that, if for any constitutional or other legal reason such provision cannot be made with respect to any lien created on assets of any of its political or administrative subdivisions, the Guarantor shall promptly and at no cost to the Bank secure the principal of, and interest and other charges on, the Loan by an equivalent lien on other public assets satisfactory to the Bank.

(b) The foregoing undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(c) As used in this Section, the term "public assets" means assets of the Guarantor, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, the Guarantor or any such subdivision, including gold and other foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Guarantor.

Section 3.02. The guarantor shall from time to time take all action required on its part to enable the Borrower to obtain the revenues referred to in Section 5.03 of the Loan Agreement.

Section 3.03. The Guarantor shall:

(a) not permit any abstraction of water in its territory upstream of the dam included in the Project, including from the Shire River and its tributaries, if such abstraction would reduce the potential generating capacity of the hydrostation included in the Project to less than 90MW, unless the Guarantor and the Bank

agree that such abstraction would be economically justified;  
and

(b) enable the Borrower to divert water from the Shire River in such amounts as shall be necessary (but in any case not less than 170 cubic meters per second) for the purpose of power generation at the said hydrostation.

Section 3.04. The Guarantor shall exchange views with the Bank on the recommendations of the study referred to in Section 3.03 of the Loan Agreement regarding the avoidance or mitigation of any undesirable effect that the construction of the facilities included in the Project may cause, and shall take all reasonable action required on its part to avoid or mitigate any such effect, if any.

ARTICLE IV

Representative of the Guarantor; Addresses

Section 4.01. The Minister of Finance of the Guarantor is designated as representative of the Guarantor for the purposes of Section 11.03 of the General Conditions.

Section 4.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Guarantor:

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

Cable address:

FINANCE  
Lilongwe

For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

INTBAFRAD  
Washington, D.C.

Telex:

440098 (ITT)  
248423 (RCA) or  
64145 (WUI)



IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, 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/ D.Y.J. Kalilangwe  
Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Willi A. Wapenhans  
Regional Vice President  
Eastern Africa