

Public Disclosure Authorized

**CONFORMED COPY**

**CREDIT NUMBER 3930 KE**

# **Development Credit Agreement**

**(Northern Corridor Transport Improvement Project)**

**between**

**REPUBLIC OF KENYA**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated June 25, 2004**

Public Disclosure Authorized

**CREDIT NUMBER 3930 KE**

**DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated June 25, 2004, 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 (the Project), has requested the Association to assist in the financing of the Project;

(B) the Borrower intends to contract from the Nordic Development Fund (NDF) a loan in an amount of Euro 12,000,000 (the NDF Loan) to assist in financing Parts A and E.2 of the Project on the terms and conditions set forth in an agreement to be entered into between the Borrower and NDF (the NDF Loan Agreement);

(C) Part F of the Project will be carried out by Kenya Airports Authority (KAA) with the Borrower's assistance and, as part of such assistance, the Borrower shall make part of the proceeds of the credit provided for in Article II of this Agreement (the Credit) available to KAA, as set forth in this Agreement;

(D) Part G of the Project will be carried out by Kenya Civil Aviation Authority (KCAA) with the Borrower's assistance and, as part of such assistance, the Borrower shall make part of the proceeds of the credit provided for in Article II of this Agreement (the Credit) available to KCAA, as set forth 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 agreements of even dates herewith between the Association and KAA; and the Association and KCAA (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) (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

- (a) “Bandari College” is the training institute established and operating within MOTC “as hereinafter defined”;
- (b) “Environmental Impact Assessment” or “EIA” means the Environmental Impact Assessment referred to in paragraph 13 (a) of Schedule 4 to this Agreement
- (c) “EASA” means East African School of Aviation, the school established and operating within KCAA (as hereinafter defined);
- (d) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;
- (e) “GNSS” means global navigation satellite system;
- (f) “GPS” means global positioning system;
- (g) “HIV/AIDS” means human immuno-deficiency virus/ acquired immune deficiency syndrome;
- (h) “Initial Deposit” means the initial amount to be deposited into the Project Account “as hereinafter defined” and referred to in Section 3.03 (b) of this Agreement;
- (i) “KAA” means Kenya Airports Authority, the Borrower’s airports authority established and operating pursuant to the Borrower’s Airports Authority Act, 1991 (CAP 395);
- (j) “KAA-PTT” means the Project Technical Team established within KAA and referred to in paragraph 6 of Schedule 4 to this Agreement;
- (k) “KAA Subsidiary Loan Agreement” means the agreement to be entered into between the Borrower and KAA pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement;
- (l) “KCAA” means Kenya Civil Aviation Authority, the Borrower’s civil aviation authority established and operating pursuant to the Borrower’s Civil Aviation (Amendment) Act, 2002 (CAP 394);
- (m) “KCAA-PTT” means the Project Technical Team established within KCAA and referred to in paragraph 8 of Schedule 4 to this Agreement;
- (n) “KCAA Subsidiary Loan Agreement” means the agreement to be entered into between the Borrower and KCAA pursuant to Section 3.01 (d) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement;

- (o) “Kenya Shilling” or “KES” means the currency of the Borrower;
- (p) “KRB” means Kenya Roads Board, the Borrower’s body responsible for management of the road maintenance levy, established and operating pursuant to the Borrower’s Roads Board Act, 1999;
- (q) “Maritime Authority” means the authority to be established within MOTC “as hereinafter defined” and to be supported under Part H of the Project;
- (r) “MORPWH” means the Borrower’s Ministry of Roads Public Works and Housing;
- (s) “MORPWH-PTT” means the Project Technical Team established within MORPWH and referred to in paragraph 4 of Schedule 4 to this Agreement;
- (t) “MOTC” means the Borrower’s Ministry of Transport and Communications;
- (w) “MOTC-PTT” means the Project Technical Team established within MOTC and referred to in paragraph 11 of Schedule 4 to this Agreement;
- (x) “NHA” means the National Highway Authority to be established by the Borrower and to be supported under Part E of the Project;
- (y) “Northern Corridor” means the transport corridor between the seaport of Mombasa and the Borrower’s border with the Republic of Uganda;
- (z) “Northern Corridor Transit Agreement” means the 1985 Northern Corridor Transit Agreement between the Borrower, Burundi, Rwanda, Uganda and the Democratic Republic of Congo;
- (aa) “Operating Account” means each of the accounts referred to in Section 2.02 (c) of this Agreement;
- (bb) “Project Account” means the account referred to in Section 3.03 (a) of this Agreement;
- (cc) “Project Agreements” means the agreement between the Association and KAA and KCAA 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;
- (dd) “Project Affected Person” or “PAP” means any person who owns or occupies land, property or other assets or structures which are adversely affected by the Project, or whose livelihood, business, trade or other occupation is adversely affected as a

result of the Project, and who is declared accordingly eligible to compensation or other assistance under the relevant RAP (as hereinafter defined);

(ee) "Project Coordination Team" means the team established by the Borrower and referred to in paragraph 3 of Schedule 4 to this Agreement;

(ff) "Project Oversight Committee" means the committee established by the Borrower and referred to in paragraph 1 of Schedule 4 to this Agreement;

(gg) "Resettlement Action Plan" or "RAP" means a Resettlement Action Plan referred to in paragraph 13 (b) of Schedule 4 to this Agreement;

(hh) "Resettlement Policy Framework" or "RPF" means the Resettlement Policy Framework, dated November 2003 issued by the Borrower, and describing a program of actions, measures and policies designed to avoid or minimize any adverse impact or hardship to PAPs as a result of the Project or, if such adverse impact or hardship cannot be avoided altogether, provide for the compensation and resettlement of such PAPs as may be appropriate;

(ii) "Special Account A" means the Special Account "as hereinafter defined" for MORPWH and referred to in Section 2.02 (b) of this Agreement;

(jj) "Special Account B" means the Special Account "as hereinafter defined" for KAA, KCAA, and MOTC and referred to in Section 2.02 (b) of this Agreement; and

(kk) "Special Accounts" means the accounts referred to in Section 2.02(b) of this Agreement.

## **ARTICLE II**

### **The Credit**

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to one hundred thirty eight million four hundred forty thousand Special Drawing Rights (SDR 138,440,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works, and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower shall open and maintain, in Dollars, two separate special deposit accounts (Special Account A and Special Account B) in one or more commercial banks on terms and conditions satisfactory to the Association, including appropriate

protection against set-off, seizure or attachment. Deposits into, and payments out of each respective Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

- (c) (i) The Borrower shall open or cause to be opened and maintain or cause to be maintained in Kenya Shilling an Operating Account for each of MORPWH, KAA, KCAA, and MOTC, in one or more commercial banks, on terms and conditions satisfactory to the Association (including appropriate protection against set-off, seizure or attachment).
- (ii) The Borrower shall, in accordance with procedures acceptable to the Association, withdraw from time to time from the respective Special Account and deposit into each Operating Account, an amount required to finance eligible expenditures for a period of 90 days of Project implementation.
- (iii) Payments out of the respective Operating Account shall only be made for eligible expenditures.
- (iv) In the event that the Association, after consultation with the Borrower, determines that any outstanding amount in any Operating Account is not further required to cover payments for eligible expenditures, the Borrower, upon notice from the Association shall promptly refund such outstanding amount to the respective Special Account.

Section 2.03. The Closing Date shall be December 31, 2009 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 May 15 and November 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 May 15 and November 15 commencing November 15, 2014 and ending May 15, 2044. Each installment to and including the installment payable on May 15, 2024 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 semiannual 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 is hereby specified for the purposes of Section 4.02 of the General Conditions.

### **ARTICLE III**

#### **Execution of the Project**

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end:

- (i) shall carry out Parts A, B, C, D, and E of the Project through MORPWH, and Part H through MOTC with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, and environmental practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project;
- (ii) without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall cause KAA to perform in accordance with the provisions of the KAA Project Agreement all the obligations of KAA therein set forth, shall take and cause to be taken all actions, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KAA to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance; and
- (iii) without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall cause KCAA to perform in accordance with the provisions of the KCAA Project Agreement all the obligations of KCAA therein set forth, shall take and cause to be taken all actions, including the provision of funds, facilities, services and other resources,



necessary or appropriate to enable KCAA to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance

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

(c) The Borrower shall relend part of the proceeds of the Credit to KAA under a subsidiary loan agreement to be entered into between the Borrower and KAA (KAA Subsidiary Loan Agreement), under terms and conditions which shall have been approved by the Association which shall include: (i) repayment of principal in 23 years including a grace period of 8 years; (ii) the payment of interest at the rate of 7% per annum; and (iii) the foreign exchange risk to be borne by the Borrower.

(d) The Borrower shall relend part of the proceeds of the Credit to KCAA under a subsidiary loan agreement to be entered into between the Borrower and KCAA (KCAA Subsidiary Loan Agreement), under terms and conditions which shall have been approved by the Association which shall include: (i) repayment of principal in 23 years including a grace period of 8 years; (ii) the payment of interest at the rate of 7% per annum; and (iii) the foreign exchange risk to be borne by the Borrower.

(e) The Borrower shall exercise its rights under KAA Subsidiary Loan Agreement, and KCAA Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the KAA Subsidiary Loan Agreement, KCAA Subsidiary Loan Agreement or any provision thereof.

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

Section 3.03. Without limitation upon the provisions of paragraph (a) of Section 3.01 of this Agreement, and except as the Borrower and the Association shall otherwise agree, the Borrower shall:

(a) 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;

(b) deposit into the Project Account: (i) an initial amount of KES 90,000,000 (the Initial Deposit); and (ii) thereafter, at quarterly intervals, replenish the Project Account by the amounts required to finance the Borrower's contribution for expenditures under the Project other than those financed from the proceeds of the Credit, as shall be agreed upon between the Borrower and the Association; and

(c) ensure that funds deposited into the Project Account in accordance with paragraph (b) of this Section shall be used exclusively to finance expenditures under Parts A through E of the Project other than those financed from the proceeds of the Credit.

Section 3.04. 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 Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project; and

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

Section 3.05. 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): (i) in respect of Part F of the Project shall be carried out by KAA; and (ii) in respect of Part G of the Project shall be carried out by KCAA pursuant to Section 2.03 of the Project Agreements.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) The Borrower shall maintain and cause to be maintained a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall:

(i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, 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 (or such other period agreed to by the Association), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
  - (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, 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 Credit Account were made on the basis of statements of expenditure, the Borrower shall:
- (i) retain, until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
  - (ii) enable the Association's representatives to examine such records; and
  - (iii) ensure that such statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 17 of Schedule 4 to this Agreement, the Borrower shall prepare 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 Credit, 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 (1) of the General Conditions, the following additional events are specified:

(a) KAA shall have failed to perform any of its obligations under the KAA Project Agreement.

(b) KCAA shall have failed to perform any of its obligations under the KCAA Project Agreement.

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

(d) 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 KCAA will be able to perform its obligations under the Project Agreement.

(e) The Borrower's Airports Authority Act, 1991 (CAP 395) shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KAA to perform any of its obligations under the Project Agreement.

(f) The Borrower's Civil Aviation Authority (Amendment) Act, 2002 (CAP 394) shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KCAA to perform any of its obligations under the Project Agreement.

(g) The NDF Loan Agreement shall have failed to become effective by December 31, 2004 or such later date as the Association may agree; provided, however, that the provisions of this paragraph shall not apply if the Borrower establishes to the

satisfaction of the Association that adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

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

(a) any event specified in paragraphs (a) and (b) 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) the events specified in paragraphs (c), (d), (e) and (f) 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 KAA Subsidiary Loan Agreement has been executed on behalf of the Borrower and KAA;

(b) the KCAA Subsidiary Loan Agreement has been executed on behalf of the Borrower and KCAA;

(c) The Borrower has opened the Project Account and has deposited therein the Initial Deposit referred to in Section 3.03 of this Agreement; and

(d) The Borrower has established a financial management system for the Project in form and substance satisfactory to the Association.

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 KAA Project Agreement has been duly authorized or ratified by KAA, and is legally binding upon KAA in accordance with its terms;

(b) that the KAA Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KAA and is legally binding upon the Borrower and KAA in accordance with its terms;

(c) that the KCAA Project Agreement has been duly authorized or ratified by KCAA, and is legally binding upon KCAA in accordance with its terms; and

(d) that the KCAA Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KCAA and is legally binding upon the Borrower and KCAA in accordance with its 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.

## ARTICLE VII

### Representative of the Borrower; Addresses

Section 7.01. The Borrower's Minister for Finance 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  
Treasury Building  
P.O Box 30007-00100  
Nairobi, Kenya

Cable address:	Telex:	Facsimile:
FINANCEnairobi	22921minfin-ke	+ (254) 20 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) 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 Nairobi, Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By /s/ David Mwiraria

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Makhtar Diop

Authorized Representative

**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:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Works		75%
(a) under Parts A through E of the Project	76,640,000	
(b) under Part F of the Project	11,150,000	
(2) Goods		100% of foreign expenditures and 90% of local expenditures
(a) under Parts A through E of the Project	450,000	
(b)(i) under Part F of the Project	8,800,000	
(ii) under Part G of the Project	2,550,000	
(iii) under Part H of the Project	500,000	
(3) Consultants' services including audits		100% of foreign expenditures and 94% of local expenditures
(a) under Parts A through E of the Project	15,900,000	
(b)(i) under Part F of the Project	350,000	
(ii) under Part G of the Project	3,000,000	
(iii) under Part H of the Project	350,000	



<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(4) Training		100%
(a) under Parts A through E of the Project	650,000	
(b)(i) under Part F of the Project	250,000	
(ii) under Part G of the Project	500,000	
(iii) under Part H of the Project	500,000	
(5) Unallocated		
(a) under Parts A through E of the Project	13,300,000	
(b)(i) under Part F of the Project	2,700,000	
(ii) under Part G of the Project	700,000	
(iii) under Part H of the Project	150,000	
	=====	
TOTAL	<u>138,440,000</u>	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower; and

(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures: (a) prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 5,000,000, may be made on account of payments made for expenditures before that date but after December 31, 2003; and (b) under categories (2)

(b) (ii), (3) (b) (ii), and (4) (b) (ii), until the KCAA has appointed staff to its office of aviation security oversight in accordance with paragraph 12 of Schedule 4 to this Agreement.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$250,000 equivalent per contract; (b) works costing less than \$1,000,000 equivalent per contract; (c) services of individual consultants costing less than \$50,000 equivalent per contract; (d) services of consulting firms under contracts costing less than \$100,000 equivalent per contract; and (e) training, all under such terms and conditions as the Association shall specify by notice to the Borrower.

## **SCHEDULE 2**

### **Description of the Project**

The objective of the Project is to enhance the efficiency and effectiveness of the Borrower's transport sector through: (a) increasing the efficiency of road transport; (b) enhancing aviation safety and security to meet international standards; and (c) promoting private sector participation in the management, financing, and maintenance of road assets.

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

#### Part A: Rehabilitation of the Northern Corridor

1. Rehabilitation of infrastructure and provision of services for the improvement of approximately 373 kilometers of roads in selected sections along the Northern Corridor, including construction of approximately 8-kilometers of roads connecting the old Embakasi Airport terminal to Nairobi-Mombasa highway.
2. Implementation of the mitigation measures specified in the EIA and provision of support to PAPs including provision of support for resettlement activities and compensation.

#### Part B: Roadside Amenities and Mitigation of HIV/AIDS

1. Construction of facilities to enhance the socioeconomic impact on local communities and improve safety of road users, including bus and truck stops, parking areas, utilities, merchandise booths for use by local communities, bicycle paths, and pedestrian sidewalks.
2. Development and implementation of measures to mitigate effects of HIV/AIDS, including awareness and information dissemination, distribution of condoms, strengthening of local health centers, facilitation of voluntary testing and counseling including construction of kiosks for these purposes, and provision of support to infected and affected people.

#### Part C: Private Sector Participation in Road Management and Maintenance

Provision of technical advisory services for the preparation of bid documents for and facilitation of the concessioning of selected road sections of the Northern Corridor; and performance-based maintenance of approximately 300 kilometers of selected roads by the private sector.

Part D: Road Safety Improvement

Improvement of safety conditions in selected locations along the Northern Corridor, including carrying out of a road safety and awareness campaign, construction of approximately 5 children's traffic safety parks, rehabilitation of about 5 existing children's traffic safety parks, and improvement of safety conditions of hazardous locations.

Part E: Institutional Strengthening

Development and implementation of institutional and policy reforms through provision of technical advisory services, carrying out of studies, and training, including:

1. Establishment and strengthening of NHA through provision of technical advisory services.
2. Strengthening KRB including reforming its mandate through carrying out of studies and reviews and provision of technical advisory services and training.
3. Designing Kibwezi-Kitui-Mwingi-Maua-Isiolo road corridor.
4. Designing alternative route linking northern Tanzania to Narok in the territory of the Borrower, and designing the widening of the access road to the Moi International Airport in Mombasa.
5. Preparation of a ten-year national transportation development plan.
6. Strengthening the Department of Materials Research and Development at MORPWH and External Resources Department of the Borrower's Ministry of Finance.
7. Capacity building for MORPWH, NHA, the External Resources Department of the Borrower's Ministry of Finance and KRB in management and financing of roads including axle load monitoring and control.
8. Monitoring, evaluation and impact assessment of the Project.
9. Carrying out of feasibility and sector studies for the transport sector including Mombasa bypass study.

Part F: Support to the Kenya Airports Authority

Provision of support to KAA to improve aviation security, safety, and operations at major airports through acquisition of equipment and vehicles; carrying out of civil works; provision of technical advisory service, and training, including:

1. Rehabilitation and reconfiguration of old Embakasi Airport terminal and the main terminal at Jomo Kenyatta International Airport and construction of the road linking the two terminals.
2. Installation of fencing, lighting, and surveillance systems at Jomo Kenyatta International Airport, Moi International Airport, Wilson Airport, Kisumu Airport, Malindi Airport, and Ukunda Airport.
3. Rehabilitation of and reconfiguration of terminal buildings at Kisumu and Wilson Airports, and rehabilitation and extension of the runway at Kisumu Airport.
4. Enhancing aviation security and safety, flight information system, search and rescue capacity, communications, and emergency operations centers at Jomo Kenyatta International Airport, Moi International Airport, Wilson Airport, and Kisumu Airport.
5. Capacity building for staff in airports operations, security and management.

Part G: Support to Kenya Civil Aviation Authority

1. Development and implementation of reforms at KCAA aimed at enhancing aviation safety and security oversight, and safety inspection through provision of technical advisory services and training.
2. Provision of support to KCAA and EASA through acquisition of training and operations equipment including equipment for accident investigation laboratory.
3. Implementation of GNSS-GPS enroute and approach procedures through provision of technical advisory services.
4. Carrying out of training of trainers in airworthiness inspection, flight operations inspection, personnel licensing and security oversight.

Part H: Support to the Ministry of Transport and Communications

Capacity building for MOTC in procurement, Project management, financial management; implementation of the national transportation policy and maritime law; and compliance with conventions of the International Maritime Organization; establishment and strengthening of the Maritime Authority; assisting the Borrower to comply with the Northern Corridor Transit Agreement; and provision of support to Bandari College, through provision of technical advisory services and training, and acquisition of equipment.

\* \* \*

The Project is expected to be completed by June 30, 2009.

### **SCHEDULE 3**

#### **Procurement**

Section I.        Procurement of Goods and Works

Part A:         General

Goods and works shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of Section I of this Schedule.

Part B:         International Competitive Bidding

1        Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2.       The provisions of paragraphs 2.54 and 2.55 of the Guidelines (Domestic Preference) and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

Part C:         Other Procurement Procedures

1.       Limited International Bidding

Goods which the Association agrees can only be purchased from a limited number of suppliers, regardless of the cost thereof, may be procured under contracts awarded in accordance with the provisions of paragraph 3.2 of the Guidelines.

2.       National Competitive Bidding

(a) Goods estimated to cost less than \$150,000 equivalent per contract; and (b) works estimated to cost less than \$2,000,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

3.       International or National Shopping

Goods estimated to cost less than \$50,000 equivalent per contract may be procured under contracts awarded on the basis of international or national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to: (i) each contract for works estimated to cost the equivalent of \$1,000,000 or more; and (ii) the first two contracts for works estimated to cost less than \$1,000,000 equivalent, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract for goods estimated to cost the equivalent of \$250,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (the Consultant Guidelines), paragraph 1 of Appendix 1 thereto, Appendix 2 thereto and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

1. Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

2. The following provision shall apply to consultants' services to be procured under contracts awarded in accordance with the provisions of the preceding paragraph: the short list of consultants for services, estimated to cost less than \$200,000 equivalent per contract, may comprise entirely national consultants in accordance with the provisions of paragraph 2.7 and footnote 8 of the Consultant Guidelines.

Part C: Other Procedures for the Selection of Consultants

1. Least-cost Selection

Audit services and services estimated to cost less than \$50,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. Selection Based on Consultants' Qualifications

Services estimated to cost less than \$200,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

3. Single Source Selection

Services for monitoring and evaluation, HIV/AIDS mitigation, and training, may, with the Association's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

4. Individual Consultants

Services of individual consultants shall be procured under contracts awarded in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

5. Training

Training shall be carried out on the basis of annual work programs which shall have been approved by the Association, and which shall identify: (a) the training envisaged; (b) the personnel to be trained; (c) the selection methods of institutions or individuals conducting such training; (d) the institutions which will conduct the training, if already selected; (e) the duration of proposed training; and (f) the cost estimate of the training.



Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

A plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection criteria and procedures, shall be furnished to the Association for its review and approval prior to the issuance to consultants of any requests for proposals. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Association.

2. Prior Review

(a) With respect to: (i) all terms of reference for each contract for services; (ii) each contract under single source selection; and (iii) each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the report on the comparison of the qualifications and experience of candidates, and terms of employment of the consultants shall be furnished to the Association for its prior review and approval. The contract shall be awarded only after the said approval shall have been given. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall also apply to such contracts.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.

## **SCHEDULE 4**

### **Implementation Program**

#### **I. Overall Project Oversight**

1. The Borrower shall maintain at all times during the implementation of the Project, a Project Oversight Committee which shall be chaired by the Permanent Secretary of MORPWH, co-chaired by the Permanent Secretary of MOTC, and include a representative from the Ministry of Finance, the Managing Director of KAA, the Director General of KCAA, and the Chief Engineer “Roads” of MORPWH.

2. The Project Oversight Committee shall: (a) provide strategic guidance for Project implementation; (b) review and approve annual work plan for the Project; and (c) review financial reports of Project implementation.

3. The Borrower shall maintain at all times during the implementation of the Project, a Project Coordination Team which shall be chaired by the team leader of MORPWH-PTT and co-chaired by the team leader of MOTC-PTT and include the team leaders of KAA-PTT and KCAA-PTT and which shall be responsible for the overall Project coordination and reporting.

#### **II. Project Administration and Management**

4. The Borrower shall maintain at all times during the implementation of the Project, a MORPWH-PTT to oversee the day-to-day implementation of Parts A through E of the Project, and appoint thereto, staff having qualifications and experience satisfactory to the Association, including a team leader, a pavement/materials specialist, a construction specialist, an economist/social development specialist, a design engineer, an environmental specialist, a procurement specialist and a financial management specialist.

5. Notwithstanding its overall reporting obligations to the Project Oversight Committee, MORPWH-PTT shall report on its day-to-day operations directly, in consultation with the Chief Engineer “Roads” of MORPWH with regard to technical matters, to the Permanent Secretary of MORPWH in his or her capacity as a member of the Project Oversight Committee.

6. The Borrower shall cause KAA to maintain at all times during the implementation of the Project, a KAA-PTT to oversee the day-to-day implementation of Part F of the Project, and appoint thereto, staff having qualifications and experience satisfactory to the Association, including a team leader, a construction engineer, an electrical engineer, airport operations specialist, an architectural specialist, an airport security specialist, a procurement specialist and a financial management specialist.

7. Notwithstanding its overall reporting obligations to the Project Oversight Committee, KAA-PTT shall report on its day-to-day operations directly to the Managing Director of KAA in his or her capacity as a member of the Project Oversight Committee.

8. The Borrower shall cause KCAA to maintain at all times during the implementation of the Project, a KCAA-PTT to oversee the day-to-day implementation of Part G of the Project, and appoint thereto, staff having qualifications and experience satisfactory to the Association, including a team leader, the principal of EASA, a procurement specialist and a financial management specialist.

9. Notwithstanding its overall reporting obligations to the Project Oversight Committee, KCAA-PTT shall report on its day-to-day operations directly to the Director General of KCAA in his or her capacity as a member of the Project Oversight Committee.

10. The Borrower shall maintain at all times during the implementation of the Project, a MOTC-PTT to oversee the day-to-day implementation of Part H of the Project, and appoint thereto, staff having qualifications and experience satisfactory to the Association, including a team leader, a procurement specialist and a financial management specialist.

11. Notwithstanding its overall reporting obligations to the Project Oversight Committee, MOTC-PTT shall report on its day-to-day operations directly to the Permanent Secretary of MOTC in his or her capacity as a member of the Project Oversight Committee.

12. The Borrower shall cause KCAA to appoint and thereafter retain at all times during the implementation of the Project staff with adequate experience and qualifications satisfactory to the Association to manage and operate KCAA's office of aviation security oversight.

13. For purposes of Parts A and C of the Project, the Borrower shall prior to the approval of bid documents, prepare and submit to the Association:

(a) an Environmental Impact Assessment (EIA), acceptable to the Association, giving details of the social and environmental status, and potential environmental risks and adverse impacts, which are specific to Parts A and C of the Project, along with proposed mitigation measures; and

(b) wherever applicable, a Resettlement Action Plan (RAP), acceptable to the Association, giving details of measures consistent with the RPF, and designed to facilitate the compensation and resettlement of PAPs, including the magnitude of displacement, proposed compensation and resettlement arrangements, and budget and cost estimates, together with adequate institutional, monitoring and reporting

arrangements capable of ensuring proper implementation of, and regular feedback on compliance with, the RAP; and

14. The Borrower shall implement: (a) the applicable RAP in accordance with the guidelines, timetable, and other specifications set forth in the RAP; and (b) the mitigation measures specified in the EIA in accordance of the guidelines, timetable, and other specifications set forth in the EIA.

15. Without limitation upon the Borrower's other reporting obligations under Section 4.02 of this Agreement, the Borrower shall submit quarterly consolidated reports on compliance with social and environmental safeguard measures under the Project, giving details of measures taken in furtherance of the RAP and the mitigation measures specified in the EIA, conditions, if any, which interfere or threaten implementation of the RAP or the mitigation measures specified in the EIA, and remedial measures taken or required to be taken to address such conditions.

16. The Borrower shall take all measures necessary to establish NHA on or about June 30, 2007.

### III. Project Monitoring and Evaluation

17. The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators 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 July 15, 2006, 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 January 15, 2007, 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.

## **SCHEDULE 5**

### **Special Accounts**

1. For the purposes of this Schedule:

(a) the term “eligible Categories” means: (i) Categories (1)(a), (2)(a), (3)(a), and (4) (a) set forth in the table in paragraph 1 of Schedule 1 to this Agreement for Special Account A in respect of Parts A through E of the Project; (ii) Categories (1)(b), (2)(b), (3)(b), and (4) (b) set forth in said table for Special Account B in respect of Parts F through H of the Project;

(b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods, works, and services required for Parts A through H of the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term “Authorized Allocation” means an amount equivalent to \$8,000,000 in respect of Special Account A for Parts A through E of the Project; and an amount equivalent to \$5,000,000 in respect of Special Account B for Parts F through H of the Project; to be withdrawn from the Credit Account and deposited into the Special Accounts pursuant to paragraph 3(a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$4,000,000 in respect of Special Account A; and an amount equivalent to \$2,500,000 in respect of Special Account B, until (i) in respect of the Special Account A, the aggregate amount of withdrawals from the Credit Account allocated to Categories (1)(a), (2)(a), (3)(a), and (4) (a) plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions for Parts A through E of the Project shall be equal to or exceed the equivalent of SDR 30,000,000; and (ii) in respect of Special Account B, the aggregate amount of withdrawals from the Credit Account allocated to Categories (1)(b), (2)(b), (3)(b), and (4)(b) plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions for Parts F through H of the Project shall be equal to or exceed the equivalent of SDR 10,000,000.

2. Payments out of the respective Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the respective Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special 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 Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposits into the respective Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the respective Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the respective Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into any Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the 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 Accounts;

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

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories for the respective Special Account, 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 Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of any Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in any Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

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

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

## **SCHEDULE 6**

### **Performance Indicators**

The performance indicators for the Project shall include the following, said indicators being subject to modifications by agreement between the Borrower and the Association:

1. Travel time by road from Mombasa to Malaba and Busia reduced by 25%.
2. KCAA is cleared as category 1 safety status under the International Aviation Safety Assessment of the United States Federal Aviation Administration.
3. Jomo Kenyatta International Airport in Nairobi is cleared by the United States Transportation Security Agency for direct flights to and from United States airports.
4. One long term performance based road management and maintenance contract awarded to the private sector and is effectively under implementation.
5. One road segment along the Northern Corridor is offered for concession to the private sector.