

CONFORMED COPY

**CREDIT NUMBER 3916 TA**

# **Development Credit Agreement**

**(Emergency Power Supply Project)**

**between**

**THE UNITED REPUBLIC OF TANZANIA**

**and**

**INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Dated July 5th, 2004**

**CREDIT NUMBER 3916 TA**

**DEVELOPMENT CREDIT AGREEMENT**

AGREEMENT, dated July 5, 2004, between THE UNITED REPUBLIC OF TANZANIA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received a letter from the Borrower, dated May 4, 2004, describing a program of actions designed to address the Emergency (as hereinafter defined) (the Program) and declaring the Borrower's commitment to the execution of such program;

(B) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(C) the Project will be carried out by Tanzania Electric Supply Company Limited (TANESCO) (as hereinafter defined) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to TANESCO the proceeds of the Credit, as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Project Agreement of even date herewith between the Association and TANESCO;

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) “Emergency” means the extraordinary drought of limited duration which occurred in 2003, and which has caused the water level in the Mtera dam to be below 696.5 meters above sea level;

(b) “Environmental Audit” means the environmental audit dated April 2004 and referred to in Part D of Schedule 3 to this Agreement;

(c) “IPP” means “Independent Power Producer”, namely, Independent Power Tanzania Limited (IPTL), which is a company contracted by the Borrower to provide generating capacity;

(d) “Kilowatt hour” or KWh” means the energy obtained by the power output of one kilowatt for the duration of one hour;

(e) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of the Project Agreement;

(f) “Project Agreement” means the agreement between the Association and TANESCO 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;

(g) “Project Month” means the thirty-day period beginning from the Effective Date and ending thirty days thereafter (the First Project Month), and any thirty-day period beginning at the end of the First Project Month, or at the end of subsequent Project Months;

(h) “Special Account” means the account referred to in Section 2.02 (b) of this Agreement;

(i) “Subsidiary Grant Agreement” means the agreement to be entered into between the Borrower and TANESCO, pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Grant Agreement; and

(j) “TANESCO” means “Tanzania Electric Supply Company Limited”, a limited liability company incorporated and operating under the laws of the Borrower.

## 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 thirty million two hundred thousand Special Drawing Rights (SDR 30,200,000).

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 and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in United States Dollars a separate special deposit account in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be August 31, 2005, or (i) such later date as the Association shall establish, or (ii) such earlier date as the Association shall establish as the date that the Emergency shall have terminated. The Association shall promptly notify the Borrower of such later or earlier 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 of America 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, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall cause TANESCO to perform in accordance with the provisions of the Project Agreement all the obligations of TANESCO therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable TANESCO to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall make the proceeds of the Credit available to TANESCO under a subsidiary grant agreement to be entered into between the Borrower and TANESCO, under terms and conditions which shall have been approved by the Association (Subsidiary Grant Agreement).

(c) The Borrower shall exercise its rights under the Subsidiary Grant 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 Subsidiary Grant Agreement or any provision thereof.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.03. 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 designed to ensure the sustainability of the Project; and

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

Section 3.04. 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) shall be carried out by TANESCO pursuant to Section 2.03 of the Project Agreement.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) The Borrower shall maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect its 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 audited for: (i) the interim reporting period (which interim reporting period covers the 4 months starting on the Effective Date); and (ii) the period covering the whole of the Project (or other period agreed to by the Association), 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 45 days after the end of each above-mentioned period (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 period (or such 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, accounts and the audit of such financial statements, 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) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained 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; and
- (ii) enable the Association's representatives to examine such records.

## **ARTICLE V**

### **Remedies of the Association**

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

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

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

(c) The Memorandum and Articles of Association governing the operations of TANESCO shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of TANESCO to perform any of its obligations under the Project Agreement.

(d) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that the Program or a significant part thereof shall be carried out.

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

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower; and



(b) the event specified in paragraph (c) of Section 5.01 of this Agreement shall occur.

## **ARTICLE VI**

### **Effective Date; Termination**

Section 6.01. The following event is specified as an additional condition to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions namely, that the Subsidiary Grant Agreement has been executed on behalf of the Borrower and TANESCO.

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

(b) that the Subsidiary Grant Agreement has been duly authorized or ratified by the Borrower and TANESCO and is legally binding upon the Borrower and TANESCO 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.

Section 6.04. The obligations of the Borrower under Section 4.01 of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on the date fifteen years after the date of this Agreement, whichever shall be the earlier.

## ARTICLE VII

### Representative of the Borrower; Addresses

Section 7.01. The minister responsible for finance of the Borrower is designated as the 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  
P.O. Box 9111  
Dar es Salaam  
Tanzania

Cable address:	Telex:	Facsimile:
TREASURY Dar es Salaam	41329	(255) 222 11 77 90

For the Association:

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

Cable address:	Telex:	Facsimile:
INDEVAS	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 Dar es Salaam, The United Republic of Tanzania, as of the day and year first above written.

THE UNITED REPUBLIC OF TANZANIA

By /s/ Grey Mgonja

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Judy M. O'Connor

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) Electric Energy purchases (KWh) from the IPP required for the Project	23,200,000	100%
(2) Fuel required for the Project	7,000,000	100%
	_____	
TOTAL	30,200,000	
	=====	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals for an aggregate amount not exceeding the equivalent of SDR 6,100,000, may be made on account of payments made for eligible expenditures before that date but after March 1, 2004.

3. It is understood that the percentages of expenditures to be financed under the table set forth in paragraph 1 of this Schedule have been calculated on the basis of the provisions of a letter issued by the Borrower's Ministry of Finance pursuant to Legal Notice of the Borrower, which provides for an exemption of taxes and customs duties levied in the territory of the Borrower on works, goods and services for this Project. If any change is made to said letter and Legal Notices which has the effect of levying taxes or customs duties on such works, goods and services, the percentages referred to above shall be decreased in accordance with the provisions of Section 5.08 of the General Conditions.

## **SCHEDULE 2**

### **Description of the Project**

The objective of the Project is to assist the Borrower in implementing its emergency measures to avert a prolonged period of severe load-shedding and address the current power crisis through the financing of electric power purchases and fuel needed to maintain power supply at a level sufficient to prevent a severe contraction of the economy and sustain provision of social services during the Emergency.

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: Emergency Electric Power

During the Emergency, assisting the Borrower in acquiring emergency electric energy from the IPP.

#### Part B: Emergency Fuel

During the Emergency, financing utilization of productive capacity through the acquisition of fuel for TANESCO.

\* \* \*

The Project is expected to be completed by February 28, 2005.

### **SCHEDULE 3**

#### **Implementation Program**

A. Main Provisions of the Subsidiary Grant Agreement

The Subsidiary Grant Agreement shall include, but without being limited to, provisions to the following effect:

(a) the obligation of TANESCO to perform all of its obligations under the Project Agreement; and

(b) products required for the Project shall be procured in accordance with the Association's procedures as set forth in Schedule 1 to the Project Agreement.

B. General

The Borrower shall maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, the carrying out of the Project and the achievement of the objectives thereof.

C. Monthly Reports

The Borrower shall cause TANESCO:

(a) at the end of the First Project Month and thereafter not later than 30 days following the end of each Project Month, to submit a report on all matters relating to the progress of the Project; and

(b) to act promptly and diligently in order to take any corrective action deemed necessary to remedy any shortcoming identified in the implementation of the Project, or to implement such measures as may have been agreed upon between the parties in furtherance of the objectives of the Project.

D. Environmental Audit

The Borrower shall cause the IPP and TANESCO to implement the Project in accordance with the recommendations of the Environmental Audit.

## **SCHEDULE 4**

### **Special Account**

1. For the purposes of this Schedule:
  - (a) the term “eligible Categories” means all Categories set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
  - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of works, goods and services required for 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 US\$4,500,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.
2. Payments out of the 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 Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the 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 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 Special Account such amount or amounts as the Borrower shall have requested.
  - (b)
    - (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the 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 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 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 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 the 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, 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 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 the 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 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 the 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 the 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.