Development Credit Agreement

(Fiscal Management and Accelerating Growth Adjustment Credit)

between

REPUBLIC OF MALAWI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated September 3, 2004
DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated September 3, 2004, between REPUBLIC OF MALAWI (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Association has received from the Borrower a letter dated January 15, 2004 (the “LDP”), describing a program of actions, objectives and policies designed to achieve structural adjustment of the Borrower’s economy (hereinafter called the Program), declaring the Borrower’s commitment to the execution of the Program, and requesting assistance from the Association in support of the Program during the execution thereof; and

(B) on the basis, inter alia, of the foregoing, the Association has decided in support of the Program to provide such assistance to the Borrower by making the Credit available in two tranches as hereinafter provided;

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) with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 12, is modified to read:

"Project' means the Program, referred to in paragraph A of the preamble to the Development Credit Agreement, in support of which the Credit is made.”;

(b) Section 4.01 is modified to read:
“Except as the Borrower and the Association shall otherwise agree, withdrawals from the Credit Account shall be made in the currency of the deposit account specified in Section 2.02 of the Development Credit Agreement.”;

(c) Section 5.01 is modified to read:

“The Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in accordance with the provisions of the Development Credit Agreement and of these General Conditions”;

(d) The last sentence of Section 5.03 is deleted;

(e) Section 9.06 (c) is modified to read:

“(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution of the Program referred to in paragraph A of the preamble to the Development Credit Agreement, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement and the accomplishment of the purposes of the Credit.”; and

(f) Section 9.04 is deleted and Sections 9.05, 9.06 (as modified above), 9.07 and 9.08 are renumbered, respectively, Sections 9.04, 9.05, 9.06 and 9.07.

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) “ADMARC” means the Agricultural Development and Marketing Corporation, a statutory corporation established under the Agricultural Development and Marketing Corporation Act, Chapter 67:03 of the laws of the Borrower, dated April 1, 1971;

(b) “ADMARC Restructuring Plan” means the plan to be prepared by the Borrower and approved by the Borrower’s cabinet, setting forth the framework for the
restructuring of both ADMARC’s commercial and social operations addressing issues including but not limited to the appointment of a new Board of Directors, staff retrenchment and the separation of ADMARC’s commercial and social operations;

(c) “AHL” means Auction Holdings Limited, a company established under the Borrower’s Companies Act, Chapter 46:03 of the laws of the Borrower;

(d) “ARET” means the Agricultural Research and Extension Trust established under the Trustees Incorporation Act, Chapter 5:03 of the laws of the Borrower;

(e) “Cabinet Paper on Sector Devolution” means the paper approved by the cabinet in January 2003, setting out the Borrower’s strategy for the devolution of defined functions from the central government to the local government;

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

(g) “District” means a local government area established pursuant to the Local Government Act, Chapter 22:01 of the laws of the Borrower;

(h) “District Assembly” means a local authority constituted pursuant to the Local Government Act, Chapter 22:01 of the laws of the Borrower, with jurisdiction over a District;

(i) “Fiscal Year” or “FY” means the Borrower’s fiscal year beginning on July 1 and ending on June 30 of the following year;

(j) “HIV/AIDS” means the Human Immuno-Deficiency Virus/Acquired Immune Deficiency Syndrome;

(k) “LDP” means the Letter of Development Policy dated January 15, 2004, referred to in paragraph A of the preamble to this Agreement;

(l) “Malawi Kwacha” or “MK” means the currency of the Borrower;

(m) “MOAIFS” means the Borrower’s Ministry of Agriculture, Irrigation and Food Security;
(n) "MOF" means the Borrower's Ministry of Finance;

(o) "NAC" means the National Aids Commission of Malawi, established within the Office of the President and Cabinet and operating pursuant to Trust Deed TR/INC.NO.1400, dated March 16, 2002;

(p) "NASFAM" means the National Association of Smallholder Farmers of Malawi, established under the Trustees Incorporation Act, Chapter 5:03 of the laws of the Borrower;

(q) "Reserve Bank of Malawi" means the Borrower's central bank;

(r) "TCC" means the Tobacco Control Commission established under the Tobacco Act, Chapter 65:03 of the laws of the Borrower;

(s) "TAMA" means the Tobacco Association of Malawi, established under the Trustees Incorporation Act, Chapter 5:03 of the laws of the Borrower; and

(t) "Tobacco Sector Institutions" means the AHL, ARET, MOAIFS, NASFAM, TAMA and TCC.

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-three million, eight hundred thousand Special Drawing Rights (SDR 33,800,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c) and (d) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Association the first request for withdrawal from the Credit Account, and thereafter maintain in the Reserve Bank of Malawi, a Deposit Account in Dollars on terms and conditions satisfactory to the Association. All withdrawals from the Credit Account shall be deposited by the Association into the Deposit Account.
(c) The Borrower undertakes that the proceeds of the Credit shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the Credit shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Association: (i) deposit into the Deposit Account an amount equal to the amount of said payment, or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be credited to the Credit Account for cancellation.

(d) No withdrawals shall be made from the Credit Account after the aggregate of the proceeds of the Credit withdrawn from the Credit Account shall have reached the equivalent of sixteen million, nine hundred thousand Special Drawing Rights (SDR16,900,000), unless the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association:

(i) with the progress achieved by the Borrower in the carrying out of the Program;

(ii) that the macroeconomic policy framework of the Borrower is satisfactory, as measured on the basis of indicators agreed between the Borrower and the Association; and

(iii) that the actions described in Schedule 2 to this Agreement have been taken.

If, after said exchange of views, the Association is not so satisfied, the Association may give notice to the Borrower to that effect and, if within 90 days after such notice, the Borrower shall not have taken steps satisfactory to the Association, in respect of (i), (ii) and (iii) above, as the case may be, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit or any part thereof.

Section 2.03. The Closing Date shall be December 31, 2005, 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 cancelled; 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 February 15 and August 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 February 15 and August 15 commencing August 15, 2014 and ending February 15, 2044. Each installment to and including the installment payable on February 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 the Association 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

Particular Covenants

Section 3.01. (a) The Borrower and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 2 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.
(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Association on any proposed action to be taken after the disbursement of the Credit which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedule 2 to this Agreement.

Section 3.02. Upon the Association’s request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(b) furnish to the Association as soon as available, but in any case not later than four months after the date of the Association’s request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Deposit Account and the audit thereof as the Association shall have reasonably requested.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Termination

Section 5.01. 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 VI

Representative of the Borrower; Addresses

Section 6.01. The Minister of Finance of the Borrower is designated as the representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Minister of Finance
Ministry of Finance
P.O. Box 30049
Lilongwe 3
Malawi

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

Lilongwe

For the Association:

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

Cable address: INDEVA
Telex: 248423 (MCI) or
Facsimile: (202) 477-6391

Washington, D.C. 64145 (MCI)
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in _______________________, as of the day and year first above written.

REPUBLIC OF MALAWI

By

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative
SCHEDULE 1

Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Credit shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Association or the Bank shall have financed or agreed to finance under another credit or a loan;

3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

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<th>Subgroup</th>
<th>Description of Items</th>
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<td>Alcoholic beverages</td>
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<tr>
<td>121</td>
<td>-</td>
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<td></td>
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<td>667</td>
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<td>Pearls, precious and</td>
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<td>unworked</td>
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4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term “environmentally hazardous goods” means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party;

6. expenditures: (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

7. expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower

<table>
<thead>
<tr>
<th>Code</th>
<th>Value</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>718</td>
<td>718.7</td>
<td>Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors</td>
</tr>
<tr>
<td>728</td>
<td>728.43</td>
<td>Tobacco processing machinery</td>
</tr>
<tr>
<td>897</td>
<td>897.3</td>
<td>Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths’ or silversmiths’ wares (including set gems)</td>
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<tr>
<td>971</td>
<td>-</td>
<td>Gold, non-monetary (excluding gold ores and concentrates);</td>
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</table>
or of a beneficiary of the Credit during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation.
SCHEDULE 2

Actions Referred to in Section 2.02 (d) of this Agreement

The Borrower has furnished to the Association evidence in form and substance satisfactory to the Association that it has taken the following actions:

1. Improving Fiscal Management

   (i) standardized and consolidated the salary and allowance structure of its civil service to form a uniform salary structure, as set forth in paragraph 14 of the LDP.

   (ii) decentralized to the District Assemblies the responsibility for primary education, primary health care centers and land rent collection, in accordance with the Cabinet Paper on Sector Devolution, and transferred the associated budgetary allocation reflected in the “other recurrent transactions” budgetary line item from the MOF to the said Assemblies, as set forth in paragraph 15 of the LDP.

2. Parastatal Reform:

   (iii) completed the implementation of the ADMARC Restructuring Plan, as set forth in paragraph 19 of the LDP.

3. Land Policy:

   (iv) published in the Borrower’s official gazette a notice setting forth the new rate of leasehold land rent of one thousand Malawi Kwacha (MK1,000) per hectare and publicized this new rate to members of the public by carrying out a public awareness campaign in the local newspapers and the radio, as set forth in paragraph 21 of the LDP.

4. Agriculture:

   (v) received cabinet approval of an operational strategy to restructure the Tobacco Sector Institutions and improve tobacco marketing, prepared in line with the recommendations of the institutional
review of the tobacco sector carried out by the Borrower, and amended, as necessary, the governing legislative and regulatory framework to put into effect the said restructuring, as set forth in paragraph 24 of the LDP.

5. **Framework for Combating HIV/AIDS:**

   (vi) allocated the amount of two million Dollars ($2,000,000) in the FY2004/05 budget for HIV/AIDS interventions, to be disbursed to the NAC in the amount of five hundred thousand Dollars ($500,000) for each quarter of the said Fiscal Year, as set forth in paragraph 27 of the LDP.