Financing Agreement

(Governance for Private Sector Development Project)

between

REPUBLIC OF DJIBOUTI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated November 6, 2014
AGREEMENT dated November 6, 2014, entered into between REPUBLIC OF DJIBOUTI ("Recipient") and INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association"). The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.

1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a credit in an amount equivalent to one million three hundred thousand Special Drawing Rights (SDR 1,300,000) (variously, "Credit" and "Financing"), to assist in financing the project described in Schedule I to this Agreement ("Project").

2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.

2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.

2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%).

2.05. The Interest Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to one and a quarter percent (1.25%) per annum.

2.06. The Payment Dates are March 15 and September 15 in each year.

2.07. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.

2.08. The Payment Currency is US Dollar.
ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objective of the Project. To this end, the Recipient shall cause the Project to be carried out by the Project Implementing Entity in accordance with the provisions of Article IV of the General Conditions.

3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

4.01. The Additional Event of Suspension consists of the following:

(a) The Project Implementing Entity’s Legislation has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Recipient to perform any of its obligations under this Agreement.

(b) The Co-financing Agreement has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Recipient to implement the Project or to perform any of its obligations under the Agreement.

4.02. The Additional Events of Acceleration consists of the following, namely that the event specified in paragraph (a) of Section 4.01 of this Agreement occurs and is continuing for a period of sixty (60) days after notice of the event has been given by the Association to the Recipient.

ARTICLE V — EFFECTIVENESS; TERMINATION

5.01. The Additional Condition of Effectiveness consists of the following, namely that the Subsidiary Agreement has been executed on behalf of the Recipient and the Project Implementing Entity.

5.02. The Additional Legal Matters consist of the following, namely the Subsidiary Agreement has been duly authorized or ratified by the Recipient and the Project Implementing Entity and is legally binding upon the Recipient and the Project Implementing Entity in accordance with its terms.

5.03. The Effectiveness Deadline is the date one hundred twenty (120) days after the date of this Agreement.

5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for
payment obligations) shall terminate is ten (10) years after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. The Recipient’s Representative is the Minister of Economy and Finance in charge of Industry.

6.02. The Recipient’s Address is:

Ministry of Economy and Finance in charge of Industry
BP 13
Djibouti City
Republic of Djibouti

Facsimile:
(253) 21 35 6501/ (253) 21 35 5085

6.03. The Association’s Address is:

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

Cable: Telex: Facsimile:
INDEVAS 248423 (MCI) 1-202-477-6391
AGREED at Djibouti, Republic of Djibouti, as of the day and year first above written.

REP JBLIC OF DJIBOUTI

By

Authorized Representative

Name: Ilyas Moussa Dawaleh
Title: Minister of Economy, Finance, In charge of Industry and Planning

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: Hartwig Schafer
Title: Country Director for Djibouti
SCHEDULE 1

Project Description

The objective of the Project is to help improve Djibouti’s business environment.

The Project consists of the following parts:

Part A. Investment Climate Reform

1. Provision of goods and consultants’ services to support the improvement of commercial chamber of the civil courts through:

   (a) Revision of the main functions of the commercial chambers including: (i) organizational structure and staffing plans; (ii) case management techniques; (iii) providing support to develop a system for monitoring and evaluating performance of judges and court administration staff; (iv) collection and analysis of case-related data; (v) publication and dissemination of court procedures, forms and judicial decisions; and (vi) strengthening of the office of the registrar.

   (b) Upgrading of the Ministry of Justice website to cover publication of decisions of the commercial chambers, information on procedures and forms of the chambers.

   (c) Developing training curricula for civil and commercial matters and conducting training for judges and court staff in accordance with the said curricula.

   (d) Reviewing the key relevant legislation including: (i) civil and civil procedure codes; and (ii) the commercial code.

   (e) Purchasing publications on commercial law, online access to legal information and IT equipment for the commercial law library of MoJ.

   (f) Acquiring information systems to modernize the Registre du Commerce et des Sociétés and to have key information required in business transactions readily accessible to the public.

2. Carrying out works and provision of goods, consultants’ services and non-consultants’s services to:

   (a) provide support to the start-up and relocation of the related services of the One Stop Shop, including provision of IT equipment for the One Stop Shop building; and
(b) provide support to the investment climate reforms through: (i) technical assistance to the Directorate of the Habitat and Urbanism and the Central Laboratory for Building and Equipment of Ministry of Health to streamline and simplify the procedure for delivering construction permits; (ii) technical assistance to the Directorate of Land Management of the Ministry of Budget to revamp and streamline the procedures for property transfer.

Part B. Project Management

Provision of goods, consultants’ services, Training and Operating Costs for: (i) the Project management, implementation, monitoring and evaluation, including audits; and (ii) the meetings of the Project Steering Committee.
SCHEDULE 2

Project Execution

Section 1. Implementation Arrangements

A. Institutional Arrangements.

1. The Recipient shall maintain, during the Project implementation, a Project Steering Committee (the “Project Steering Committee” or “PSC”) to provide oversight to the Project implementation. The PSC shall be chaired by the General Secretary of the Ministry of Finance and consists of representatives from the public and the private sector including: (i) the general secretary of the Chamber of Commerce; (ii) two (2) representatives from the public sector; and (iii) two (2) representatives from the private sector.

2. The Recipient shall cause, during the implementation of the Project, the Project Implementing Entity to maintain a Project Implementation Unit responsible for procurement, disbursement, accounting, financial reporting and monitoring and evaluation of the Project, and for ensuring the auditing of Project accounts. The Project Implementing Entity’s General Manager shall be the Project coordinator. The Recipient shall cause the Project Implementing Entity to recruit not later than one (1) month after Effective Date: (i) a procurement specialist; and (ii) a financial management specialist, in accordance with the provisions of Section III of this Schedule and on terms of reference acceptable to the Association.

3. Without limitation upon the provisions of Section I.A.1 of this Schedule 2, the Recipient shall, or cause the Project Implementing Entity to ensure the designation of Project focal points within: (i) the MoJ; (ii) the MoH; and (iii) the Central Bank, to coordinate the implementation of activities related to activities under Part A.1 of the Project.

4. The Recipient shall: (i) adopt not later than one (1) month after Effective Date the POM in form and substance acceptable to the Association; (ii) implement and cause to the Project Implementing Entity to implement the Project in accordance with the provisions of the POM; and (iii) not amend, suspend, abrogate, repeal or waive any of its provisions without the prior consent of the Association.

B. Subsidiary Agreement

1. To facilitate the carrying out of the Project, the Recipient shall make the proceeds of the Financing available to the Project Implementing Entity under a Subsidiary Agreement between the Recipient and the Project Implementing Entity, under terms and conditions approved by the Association.

2. The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to
accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreement or any of its provisions.

C. Anti-Corruption

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

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Recipient shall, or cause the PIE to, monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators acceptable to the Association. Each Project Report shall cover the period of one calendar semester, and shall be furnished to the Association not later than one month after the end of the period covered by such report.

2. For purposes of Section 4.08 of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Association not later than three (3) months after the Closing Date.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.

2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association not later than forty-five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.

3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

4. The Recipient shall ensure, or cause the Project Implementing Entity to ensure, that no later than three (3) months after the Effective Date, the Project Implementing Entity has: (i) purchased an accounting software acceptable to the
Association; and (ii) recruited an external auditor under terms of reference, and with qualifications and experience satisfactory to the Association in accordance with the provisions of Section III of this Schedule.

Section III.  **Procurement**

A.  **General**

1. **Goods, Works and Non-consulting Services.** All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.

2. **Consultants’ Services.** All consultants’ services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.

3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.

B. **Particular Methods of Procurement of Goods, Works and Non-consulting Services**

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods, works and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.

2. **Other Methods of Procurement of Goods, Works and Non-consulting Services.** The following methods, other than International Competitive Bidding, may be used for procurement of goods, works and non-consulting services for those contracts specified in the Procurement Plan: (a) Limited International Bidding; (b) National Competitive Bidding (NCB) subject to the additional procedures set forth in paragraph 3 below and to the use of bidding documents acceptable to the Association; (c) Shopping; (d) procurement under Framework Agreements in accordance with procedures which have been found acceptable to the Association; (e) Direct Contracting; (f) Force Account; (g) Procurement from UN Agencies; (h) Well-established Private Sector Procurement Methods or Commercial Practices which have been found acceptable to the Association; and (i) Community Participation procedures which have been found acceptable to the Association.
3. **Requirements for the National Competitive Bidding.**

   (a) In the Standard Bidding Documents, as enacted by the Law no. 2010-349/PRE, dated May 8, 2010, the “Fraud and Corruption” clause shall be revised to read as follows for all contracts financed by the present Financing Agreement:

   “It is the Association’s policy to require that Recipients (including beneficiaries of Association administered Financing Agreements), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Association-financed contracts. In pursuance of this policy, the Association:

   (a) defines, for the purposes of this provision, the terms set forth below as follows:

   (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

   (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

   (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

   (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

   (v) “obstructive practice” is:

   (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an Association investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
acts intended to materially impede the exercise of the Association’s inspection and audit rights provided for under paragraph (e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, subcontractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the loan/agreement allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan/agreement engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Association to address such practices when they occur, including by failing to inform the Association in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded an Association-financed contract; and (ii) to be a nominated subcontractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded an Association-financed contract;

(e) hereby requires that a clause be included in bidding documents and in contracts financed by an Association loan/agreement, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Association to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Association; and

(f) will require that, when a Borrower procures goods, works or non-consulting services directly from a United Nations (UN) agency under an agreement signed between the Borrower and the UN agency, the above provisions regarding sanctions on fraud or corruption shall apply in their entirety to all suppliers, contractors, service providers, consultants, sub-contractors or sub-consultants, and their employees that signed contracts with the UN agency.

(g) As an exception to the foregoing, (d) and (e) will not apply to the UN agency and its employees, and paragraph I will not apply to the contracts between the UN agency and its suppliers and service providers. In such cases, the UN agencies will apply their own rules and regulations for investigating allegations of fraud or corruption subject to such terms and conditions as the Association and the UN
agency may agree, including an obligation to periodically inform the Association of the decisions and actions taken. The Association retains the right to require the Borrower to invoke remedies such as suspension or termination. UN agencies shall consult the Association’s list of firms and individuals suspended or debarred. In the event a UN agency signs a contract or purchase order with a firm or an individual suspended or debarred by the Bank, the Association will not finance the related expenditures and will apply other remedies as appropriate.”

(b) Bidders shall sign, as part of their bids, the ethical charter Form enacted as Annex 3 by the Decree # 2010-0085PRE dated May 8, 2010;

(c) No preference shall be granted for domestic bids;

(d) The NCB procedures shall include, further to public opening of bids, publication of results of evaluation and of the award of contract as per paragraph 7 of Appendix 1 of the Procurement Guidelines; and

(e) The Recipient shall have an effective and independent protest mechanism in place allowing bidders to protest and have their protests handled in a timely manner.

C. Particular Methods of Procurement of Consultants’ Services

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

2. Other Methods of Procurement of Consultants’ Services. The following methods, other than Quality and Cost-based Selection, may be used for procurement of consultants’ services for those contracts which are specified in the Procurement Plan: (a) Quality-based Selection; (b) Selection under a Fixed Budget; (c) Least Cost Selection; (d) Selection based on Consultants’ Qualifications; (e) Single-source Selection of consulting firms; (f) Well-established Private Sector Procurement Methods or Commercial Practices which have been found acceptable to the Association; (g) Selection of UN Agencies; (h) Selection of consultants under Indefinite Delivery Contract or Price Agreement; (i) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants; and (j) Single-source procedures for the Selection of Individual Consultants.
D. Review by the Association of Procurement Decisions

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

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.

2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing (“Category”), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Financing Allocated (expressed in SDR)</th>
<th>Percentage of Expenditures to be Financed (inclusive of Taxes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Goods, works, non-consulting services, consultants’ services, Training and Operating Costs for the Project</td>
<td>1,300,000</td>
<td>100%</td>
</tr>
<tr>
<td>TOTAL AMOUNT</td>
<td>1,300,000</td>
<td></td>
</tr>
</tbody>
</table>

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed twenty thousand US Dollars (US$20,000) equivalent may be made for payments made prior to this date but on or after June 1, 2014, for Eligible Expenditures under Category (1).

2. The Closing Date is December 31, 2019.
SCHEDULE 3

Repayment Schedule

<table>
<thead>
<tr>
<th>Date Payment Due</th>
<th>Principal Amount of the Credit repayable (expressed as a percentage)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>On each September 15 and March 15:</td>
<td></td>
</tr>
<tr>
<td>Commencing September 15, 2019 to and including March 15, 2029</td>
<td>1.65%</td>
</tr>
<tr>
<td>commencing September 15, 2029 to and including March 15, 2039</td>
<td>3.35%</td>
</tr>
</tbody>
</table>

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

Section I. Definitions


2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.

3. “Chamber of Commerce” means the Recipient’s chamber of commerce established through Law No.179/AN/02/4th L dated August 24, 2002.


5. “Co-financing” means, for purposes of paragraph 11 of the Appendix to the General Conditions, an amount of three hundred thousand Dollars (USD 300,000), to be provided as a parallel co-financing by the Co-financier to assist in financing the Project.

6. “Co-financing Agreement” means the financial commitment of the Co-financier to the Recipient providing for the Co-financing.


9. “MoJ” means the Recipient’s ministry of justice, or any successor thereto.

10. “MoH” means the Recipient’s ministry of health, or any successor thereto.


12. “Operating Costs” means the incremental expenses incurred by the Recipient on account of Project implementation, management, and monitoring and evaluation, including the reasonable costs for utilities and supplies, bank charges, communications, vehicle operation, maintenance, repair and insurance, office space rental, building and equipment maintenance, domestic travel (including per diem) and supervision, but excluding salaries, fees, honoraria, and bonuses of members of the Recipient’s civil service.

14. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated May 17, 2014 and referred to in paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

15. “Project Implementing Entity” means the Recipient’s Agence Nationale de Promotion des Investissements.


17. “Project Implementation Unit” or “PIU” means implementation unit referred to and to be established pursuant to Section I.A.2 of Schedule 2 to this Agreement, satisfactory to the Association, at the level of the Project Implementing Entity for purposes of Project coordination and management.

18. “Project Operational Manual” or “POM” means the Recipient’s Project Implementing Entity’s manual to be adopted pursuant to Section I.A.4 of Schedule 2 to this Agreement describing procedures for implementation of the Project, including, inter alia: the procedures governing administrative, procurement, accounting, financial management, including adequate measures for procurement and audits, and monitoring and evaluation arrangements.


20. “Subsidiary Agreement” means the agreement referred to in Section 1.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make the proceeds of the Financing available to the Project Implementing Entity.

21. “Training” means training activities (other than consultants’ services) to be carried out under the Project, as approved by the Association, on the basis of annual training, workshop and study tour plans acceptable to the Association, including transport and accommodation costs and per diem for trainee, trainers and workshop attendees, trainer fees, rental of facilities and equipment, training materials and related supplies.