Financing Agreement

(Judicial Performance Improvement Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated December 5, 2012

As amended and restated on 16 May, 2016
FINANCING AGREEMENT

AGREEMENT dated December 5, 2012, as amended and restated on ______________, 2016 entered into between REPUBLIC OF KENYA ("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 seventy eight million nine hundred thousand Special Drawing Rights (SDR 78,900,000) (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 The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.

2.05. The Payment Dates are February 15 and August 15 in each year.

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

2.07. The Payment Currency is Dollar.
ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objective of the Project. To this end, the Recipient shall carry out the Project through the Judiciary 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 — EFFECTIVENESS; TERMINATION

4.01. The Additional Condition of Effectiveness consists of the following, namely, that the Recipient has appointed the Integrated Fiduciary Agent, in accordance with the provisions of Section I.A.5 of Schedule 2 to this Agreement.

4.02. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.

4.03. 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 twenty (20) years after the date of this Agreement.

ARTICLE V — REPRESENTATIVE; ADDRESSES

5.01. The Recipient’s Representative is its minister responsible for finance.

5.02. The Recipient’s Address is:

Ministry of Finance
Treasury Building
P.O. BOX 30007-00100
Nairobi
Kenya

Cable: FINANCE Nairobi
Telex: 22921 minfin-ke
Facsimile: 254 20 330426
5.03. 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
Washington, D.C.

AGREED at Nairobi, Republic of Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By

[Signature]

Authorized Representative

Name: Henry Rotich
Title: Cabinet Secretary

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

[Signature]

Authorized Representative

Name: Diamitu Gaye
Title: Country Director for Kenya, Rwanda, Uganda, Eritrea
SCHEDULE 1

Project Description

The objective of the Project is to improve the performance of the Judiciary to provide its services in the Project areas in a more effective and accountable manner.

The Project consists of the following Parts:

Part 1: Enhance Access to Courts and Legal Information

A. Reduce geographical distance to courts through:

(a) Supporting the construction of 10 new court buildings in priority areas.
(b) Providing support for mobile and circuit courts for remote locations without physical courts.
(c) Purchase of vehicles to assist in delivering court services to the public.

B. Improve links to existing and potential court users to facilitate their use of the courts through:

(a) Supporting the establishment of Court User Committees ("CUCs") and the development and implementation of said CUCs' implementation plans, through: (i) the implementation of Sub-Projects; and (ii) the provision of technical advisory services, training and goods;
(b) Supporting the Alternative Justice Systems program of research, dialogue and action that seeks to improve links between state and non-state dispute resolvers.

C. Reduce knowledge barriers for existing and potential court users and the general public through:

(a) Strengthening the capacity of the National Council for Law Reporting ("NCLR"), through the provision of technical advisory services, training, goods and operating costs.
(b) Supporting the production of public awareness campaigns in multiple media, including television and radio.
(c) Developing improved physical signage, noticeboards and customer care material to facilitate public access.
(d) Supporting the establishment of customer care desks and court counsel offices in selected court stations, through the provision of technical advisory services, training and goods.
Part 2: **Improve Timeliness of Judiciary Services**

A. Implement a program of activities to reduce blockages in the registries, including:

   (a) Supporting the review and standardization of registry processes, including the development of, and training on, registry policies, manuals, checklists and handbooks.

   (b) Supporting the upgrade of registry infrastructure, including for filing, to improve efficiency and integrity of processes.

B. Increase efficiencies with improved facilities, including:

   (a) Upgrading approximately 20 selected courts.

   (b) Enhancing efficiency with improved furniture and equipment.

   (c) Supporting the extension of IFMIS to court stations in Project areas, including, inter alia, local area networks, intranet, end-user equipment, last mile connectivity from the Recipient’s wide area network and a systems integrator (court administration ICT module).

C. Increase the speed of case resolution through:

   (a) Developing and implementing court-annexed mediation programs in selected courts and provision of related training to Judiciary staff.

   (b) Supporting the Active Case Management criminal cases pilot.

   (c) Supporting the Justice@Last initiative to address backlogged cases.

   (d) Developing and implementing an ICT transformation program in the Judiciary consisting of: (A) Supply and installation of ICT, including, hardware/infrastructure, internet connectivity, local area networks, voice communication systems, closed-circuit television, mobile technology support for mobile courts and power outage back-up in priority courts; and (B) Provision of training on IT skills to users.

   (e) Supply and installation of fully equipped container data centers for the Judiciary and appropriate back-up systems.

Part 3: **Enhance Performance and Quality of Decisions**

A. Increase the use of data and standards in decision making:

   (a) Strengthening the capacity of the Judicial Service Commission (“JSC”), through the provision of technical advisory services, training and goods.

   (b) Supporting the design and implementation of the Judiciary’s data systems, including the Daily Court Return’s Template, user and employee surveys, legal needs surveys, and case audits, as well as analysis and use of such data for managerial decision making.
(c) Developing and implementing an integrated performance management and accountability system for the Judiciary, as well as the work of the Performance Management and Measurement Steering Committee.

B. Improve the consistency and clarity of decision making:

(a) Conducting a comprehensive review of the Judiciary's organizational structure and capacity (including, inter alia, management structures, roles of magistrates and judges, change management, supervisory and accountability structures, performance management and human resources' management and development) to identify gaps and make recommendations for improvement.

(b) Conducting a training and development needs assessment for all Judiciary staff and designing and delivering appropriate training programs with a particular focus on Magistrates, Registry and Customer Care personnel, and other service providers who interact with the general public (including, inter alia, induction programs, continuing judicial education programs, programs for court-accredited mediators and other court personnel, mentorship programs and training of trainers programs).

(c) Strengthening the capacity of the JTI, through the provision of technical advisory services, training, goods and operating costs.

(d) Supporting the development of the e-sentencing database and bench books to improve consistency of decision making and sentencing.

(e) Providing a standard package of legal texts to court stations and judicial officers to guide decision making.

(f) Establishing a unit to be responsible for, inter alia, design, supervision, maintenance and management of judicial buildings, through provision of technical advisory services, goods and operating costs.

C. Strengthen the integrity of decision making:

(a) Undertaking an analysis of sites and sources of corruption and developing and implementing a governance and anti-corruption strategy for the Judiciary.

(b) Enhancing complaints capacity, including through support to the Office of the Judiciary Ombudsman.

(c) Supporting the audio recording and transcription of proceedings.

Part 4: Project Management

(a) Establishing and strengthening the capacity of the Project Management Unit for implementation of Project activities (including fiduciary and safeguards aspects, monitoring and evaluation and reporting), all through the provision of technical advisory services, training and goods.

(b) Providing technical advisory services for procurement and financial management functions under the Project.
(c) Developing and implementing an information, education and communications strategy for the Project.

(d) Carrying out monitoring and evaluation ("M&E") under the Project, including undertaking M&E studies where necessary.
SCHEDULE 2

Project Execution

Section I. Institutional and Implementation Arrangements

A. Institutional Arrangements

1. Project Steering Committee ("PSC")

(a) The Recipient shall ensure that the Project Steering Committee ("PSC") is maintained at all times during the implementation of the Project, with a composition, mandate, terms of reference and resources satisfactory to the Association. Without limitation upon the generality of the foregoing, the PSC shall be chaired by the Chief Justice or his designate, and shall include, inter alia, the Deputy Chief Justice, the Chief Registrar, the director of the JTI, the head of the Judiciary Transformation Secretariat, a representative of the Directorates, a representative of the Law Society of Kenya, a representative of the Ministry of Justice and Constitutional Affairs, a representative of the Ministry of Finance, the Chairman of the Kenya Magistrates and Judges Association, a representative from the Office of Attorney-General, two (2) representatives of the Kenya Judiciary Staff Association and a representative of the Kenya Women Judges Association.

(b) The PSC shall meet at least biannually and shall be responsible for providing oversight on Project implementation, including, inter alia: (i) providing strategic and policy guidance on matters relating to judicial reforms; (ii) facilitating coordination of Project activities and ensuring synergies with other projects and programs in the sector, and making recommendations for removal of any obstacles to the implementation of the Project; and (iii) reviewing progress made towards achieving the Project's objective.

2. Project Technical Committee ("PTC")

(a) Without limitation upon the provisions of paragraph 1 of this Section I.A, the Recipient shall ensure that the Project Technical Committee ("PTC") is maintained at all times during the implementation of the Project, with a composition, mandate, terms of reference and resources satisfactory to the Association. The PTC shall be chaired by an official designated by the Chief Registrar in consultation with the Chief Justice, and shall include, inter alia, directors in charge of Directorates involved in Project implementation, the executive director of the National Council for Law Reporting (NCLR), a representative of the National Council on Administration of Justice (NCAJ), the director or representative of the
JTI, the head of the Judiciary transformation secretariat and the Project coordinator.

(b) The PTC shall meet on a quarterly basis (at least) and shall be responsible for, *inter alia*: (i) providing quality assurance on technical aspects of the Project; (ii) approving the proposed annual work plan and budget for onward transmission to the Association; and (iii) overseeing the implementation of the Project.

3. **Chief Registrar of the Judiciary**

The Recipient shall designate, at all times during the implementation of the Project, the Chief Registrar of the Judiciary to be responsible for fiduciary aspects of Project implementation (including supervision of the Integrated Fiduciary Agent referred to in paragraph 5 below) and the Project Management Unit (“PMU”), and shall take all actions including the provision of funding, personnel and other resources necessary to enable said Chief Registrar to perform said function.

4. **Project Management Unit (“PMU”)**

(a) Without limitation upon the provisions of paragraphs 1, 2 and 3 of this Section I.A, the Recipient shall establish and thereafter maintain, at all times during the implementation of the Project, a Project Management Unit, with functions, staffing and resources satisfactory to the Association for the purpose of ensuring prompt and efficient overall coordination, day to day implementation of, and communication relating to Project activities and results. To this end, the Recipient shall appoint staff (including, *inter alia*, a Project coordinator, a court construction/civil engineer specialist, a communications specialist and an M&E specialist) all with qualifications, experience and terms of reference acceptable to the Association.

(b) The PMU shall be responsible for: (i) ensuring compliance with environmental and social safeguards; (ii) preparing the proposed annual work plans and budgets for onward transmission to the PTC; (iii) consolidating periodic progress reports for onward submission to the PTC; (iv) monitoring and evaluation of Project activities; (v) liaising with the Integrated Fiduciary Agent on all fiduciary aspects of Project implementation; and (vi) liaising with other implementing agencies on other issues related to Project implementation, all in accordance with the Project Implementation Manual.

5. **Integrated Fiduciary Agent (“IFA”)**

(a) Without limitation upon the provisions of paragraphs 1, 2, 3 and 4 of this Section I.A, the Recipient shall, in accordance with the provisions of
Section III of this Schedule 2, appoint and thereafter maintain, during the initial two years of Project implementation, an Integrated Fiduciary Agent (IFA) with qualifications, experience and terms and conditions of employment satisfactory to the Association ("Integrated Fiduciary Agent").

(b) The IFA shall be responsible for: (i) prompt and efficient coordination, day to day implementation of, communication and reporting on all fiduciary (financial management and procurement) aspects of Project implementation; and (ii) strengthening the capacity of selected Judiciary staff, and to this end, shall liaise with the PMU.

B. Implementation Arrangements


(a) The Recipient shall prepare, in accordance with terms of reference acceptable to the Association, a Project implementation manual consisting of: (i) a Project manual, providing details of arrangements and procedures for the implementation of the Project, including: (A) capacity building activities for sustained achievement of the Project’s objectives; (B) institutional administration, coordination and day to day execution of Project activities; (C) eligibility criteria and procedures for the Sub-Projects; (D) monitoring and evaluation, reporting, information, education and communication of Project activities; and (E) such other technical and organizational arrangements and procedures as shall be required for the Project; (ii) a procurement management manual; and (iii) a financial management manual, setting forth the detailed policies and procedures for financial management and disbursement under the Project.

(b) The Recipient shall afford the Association a reasonable opportunity to exchange views with the Recipient on said Project implementation manual, and thereafter, shall adopt such Project implementation manual, as shall have been approved by the Association ("Project Implementation Manual").

(c) The Recipient shall ensure that the Project is carried out in accordance with the Project Implementation Manual; provided, however, that in case of any conflict between the provisions of the Project Implementation Manual and the provisions of this Agreement, the provisions of this Agreement shall prevail.

(d) The Recipient shall not amend, abrogate or waive any provision of the Project Implementation Manual without the Association’s prior written agreement.
2. **Sub-Projects**

A. For the purpose of carrying out the Sub-Projects under Part 1 B. (a) (i) of the Project, the Recipient shall make a Sub-Grant available to each CUC, in accordance with eligibility criteria and procedures elaborated in the Project Implementation Manual.

B. In financing any Sub-Project, the Recipient shall enter into a Sub-Grant Agreement with a CUC under terms and conditions satisfactory to the Association, and elaborated in the Project Implementation Manual, which shall include the following terms and conditions, *inter alia*:

1. The Sub-Grant shall be made on a non-reimbursable grant basis.

2. The Recipient shall obtain rights adequate to protect its interests and those of the Association, including the right to:

   (i) suspend or terminate the right of the CUC to use the proceeds of the Sub-Grant, or obtain a refund of all or any part of the amount of the Sub-Grant then withdrawn, upon the CUC’s failure to perform any of its obligations under the Sub-Grant Agreement; and

   (ii) require the CUC to:

       (1) carry out the Sub-Project with due diligence and efficiency and in accordance with sound technical, economic, financial, managerial standards and practices satisfactory to the Association and the Anti-Corruption Guidelines applicable to recipients of proceeds other than the Recipient;

       (2) carry out the Sub-Project in accordance with the Safeguard Instrument;

       (3) provide, promptly as needed, the resources required for the purpose;

       (4) procure the services to be financed out of the Sub-Grant in accordance with the provisions of Section III of this Schedule;

       (5) maintain policies and procedures adequate to enable it to monitor and evaluate in accordance with indicators acceptable to the Association, the progress of the Sub-Project and the achievement of its objectives;
(6) enable the Recipient and the Association to inspect the Sub-Project, its operation and any relevant records and documents;

(7) maintain a financial management system and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, both in a manner adequate to reflect the operations, resources and expenditures related to the Sub-Project; and

(8) prepare and furnish to the Recipient and the Association all such further information as the Recipient or the Association shall reasonably request relating to the foregoing.

3. The Recipient shall exercise its rights under each Sub-Grant 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 any Sub-Grant Agreement or any of its provisions.

3. Annual Work Plan and Budget

(a) The Recipient shall prepare and furnish to the Association not later than March 30 of each Fiscal Year during the implementation of the Project, a work plan and budget containing all activities proposed to be included in the Project during the following Fiscal Year (including Safeguard Frameworks and Safeguard Instruments required for said activities prepared in accordance with the provisions of Section I.D of this Schedule 2), and a proposed financing plan for expenditures required for such activities, setting forth the proposed amounts and sources of financing therefor.

(b) Each such proposed work plan and budget shall specify any training activities that may be required under the Project, including: (i) the type of training; (ii) the purpose of the training; (iii) the personnel to be trained; (iv) the institution or individual who will conduct the training; (v) the location and duration of the training; and (vi) the cost of the training.

(c) The Recipient shall afford the Association a reasonable opportunity to exchange views with the Recipient on each such proposed work plan and budget and shall thereafter ensure that the Project is implemented with due diligence during said following Fiscal Year in accordance with such work plan and budget as shall have been approved by the Association ("Annual Work Plan and Budget").
(d) The Recipient shall not make or allow to be made any change to the approved Annual Work Plan and Budget without prior approval in writing by the Association.

C. Anti-Corruption

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

D. Safeguards

1. The Recipient shall ensure that the Project is carried out in accordance with the Safeguard Frameworks and Safeguard Instruments. To that end, the Recipient shall ensure that the following actions are taken in a manner acceptable to the Association:

   (a) if any Project activity would, pursuant to the Environmental and Social Management Framework ("ESMF"): (i) require the carrying out of an Environmental and Social Impact Assessment ("ESIA"), the Recipient shall ensure that an ESIA for such activity is: (A) carried out, in accordance with the requirements of the ESMF and furnished to the Association for review and approval; and (B) disclosed as required by the ESMF and approved by the Association; and (ii) require the preparation of an Environmental and Social Management Plan ("ESMP"), such ESMP is prepared in accordance with the ESMF and furnished to the Association for review and approval, and is disclosed as required by the ESMF and approved by the Association; and

   (b) if a Resettlement Action Plan ("RAP") would be required for any Project activity on the basis of the Resettlement Policy Framework ("RPF"): (i) said RAP shall be prepared in accordance with the requirements of the RPF, disclosed locally and furnished to the Association; and (ii) no works under said activity shall be commenced until all measures required to be taken under said RAP prior to the initiation of said works have been taken.

2. Without limitation upon its other reporting obligations under this Agreement and under Section 4.08 of the General Conditions, the Recipient shall include in the Project Reports referred to in Section II.A of this Schedule, adequate information on the implementation of the Safeguard Frameworks and Safeguard Instruments, giving details of: (a) measures taken in furtherance of such Safeguard Frameworks and Safeguard Instruments; (b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of such Safeguard Frameworks and Safeguard Instruments; and (c) remedial measures taken or required to be taken to address such conditions and to ensure the continued
efficient and effective implementation of such Safeguard Frameworks and
Safeguard Instruments.

Section II.  Project Monitoring, Reporting and Evaluation

A.  Project Reports

1. The Recipient shall 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 (1) calendar semester, and shall be
furnished to the Association not later than forty-five (45) days after the end of the
period covered by such report.

2. The Recipient shall, not later than one month prior to the mid-term review
referred to in paragraph 3 of this Section II.A, furnish to the Association for
comments, a report, in such detail as the Association shall reasonably request, on
the progress of the Project, and giving details of the various matters to be
discussed at such review.

3. The Recipient shall, not later than thirty-six (36) months after the Effective Date,
undertake in conjunction with all agencies involved in the Project, a
comprehensive mid-term review of the Project during which it shall exchange
views with the Association and implementing agencies generally on all matters
relating to the progress of the Project, the performance by the Recipient of its
obligations under this Agreement and the performance by said implementing
agencies, having regard to the performance indicators referred to in paragraph 1
immediately above.

4. Following the mid-term review, the Recipient shall act promptly and diligently in
order to take any corrective action deemed necessary to remedy any shortcoming
noted in the implementation of the Project, or to implement such other measures
as may be required in furtherance of the objectives of the Project.

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 upon 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, commencing with the Fiscal Year in which the first withdrawal was made under the Preparation Advance for the Project. The audited Financial Statements and management letter for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

C. Financial Management Covenant

The Recipient, through the Judicial Service Commission ("JSC") and in accordance with terms of reference satisfactory to the Association, shall reconstitute and thereafter maintain at all times during Project implementation, the Audit Committee not later than May 31, 2013. To this end, the Recipient, through the JSC, shall appoint said Audit Committee members with qualifications, experience and terms of reference acceptable to the Association.

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) National Competitive Bidding (subject to the additional provisions in paragraph 3 below); (b) Shopping (subject to the additional provision in paragraph 4 below); (c) procurement under Framework Agreements in accordance with procedures which have been found acceptable to the Association; (d) Direct Contracting; and (e) Limited International Bidding.

3. The following additional provisions shall apply to the procurement of items in accordance with National Competitive Bidding:

(a) The tender submission date shall allow a period of at least thirty (30) days following the later of: (i) the date of advertisement; and (ii) the date of availability of the tender documents;
(b) Government-owned enterprises may participate in the tendering only if they can establish that they are legally and financially autonomous, operate under commercial law and are independent agencies;
(c) The Recipient shall use, or cause to be used, bidding documents and tender documents (containing, inter alia, draft contracts and conditions of contracts, provisions on fraud and corruption, provisions on audit and publication of award) in form and substance satisfactory to the Association;
(d) Extension of tender validity shall be permitted once only, and for not more than thirty (30) days, unless otherwise previously agreed to in writing by the Association;
(e) Evaluation of tenders shall be based on quantifiable criteria expressed in monetary terms as defined in the tender documents. The use of a merit point system for bid evaluation shall not be permitted;
(f) No domestic preference shall be permitted in the evaluation of tenders;
(g) Each contract shall be awarded to the lowest evaluated substantially responsive tender;
(h) Notification of contract award shall constitute formation of the contract. There shall be no negotiations prior to contract award; and
(i) The two envelope bid opening procedure shall not be permitted.

4. Shopping procedure shall apply for each low value contracts, in lieu of direct procurement, except as otherwise previously agreed to in writing by the Association.

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) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants; and (g) 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>Prior to the date of signature Amended and Restated Financing Agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Goods, works, non-consulting services, consultants' services, Training and Operating Costs under Part 1 of the Project</td>
<td>1,302,430.00</td>
<td>100%</td>
</tr>
<tr>
<td>(2) Goods, non-consulting services, consultants' services, Training and Operating Costs under Part 2 of the Project</td>
<td>3,861,228.00</td>
<td>100%</td>
</tr>
<tr>
<td>(3) Goods, works, non-consulting services, consultants' services, Training and Operating Costs under Part 3 of the Project</td>
<td>932,753.00</td>
<td>100%</td>
</tr>
<tr>
<td>(4) Goods, non-consulting services, consultants' services, Training and Operating Costs under Part 4 of the Project</td>
<td>1,243,412.00</td>
<td>100%</td>
</tr>
<tr>
<td>(5) Unallocated</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>(6) Refund of Preparation Advance</td>
<td>354,713.00</td>
<td>Amount payable pursuant to Section 2.07 of the General Conditions</td>
</tr>
<tr>
<td>As of the date of signature of the Amended and Restated Financing Agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(7) Goods, works, non-consulting services, consultants' services, Training and Operating Costs under the Project except for Part 1.B.(a)(i)</td>
<td>70,455,464.00</td>
<td>100%</td>
</tr>
<tr>
<td>(8) Sub-Projects under Part 1.B.(a)(i) of the Project</td>
<td>750,000.00</td>
<td>100% of amount disbursed</td>
</tr>
<tr>
<td>TOTAL AMOUNT</td>
<td>78,900,000.00</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:

   (a) for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed Special Drawing Rights seven million nine hundred thousand (SDR7,900,000) may be made for payments made prior to this date but on or after June 30, 2012, for Eligible Expenditures; or

   (b) under Category (8) until evidence satisfactory to the Association has been presented to the Association that the CUCs under Part I B. (a) of the Project have been established.

2. The Closing Date is December 31, 2018.
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 February 15 and August 15:</td>
<td></td>
</tr>
<tr>
<td>commencing February 15, 2023 to and including August 15, 2032</td>
<td>1%</td>
</tr>
<tr>
<td>commencing February 15, 2033 to and including August 15, 2052</td>
<td>2%</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

Definitions

1. “Alternative Justice Systems” means the program coordinated by the Judiciary Training Institute to link courts with traditional dispute resolvers.

2. “Annual Work Plan and Budget” means the work plan and budget prepared annually by the Recipient and approved by the Association in accordance with Section I.B.3 of Schedule 2 to this Agreement; and “Annual Work Plans and Budgets” means more than one Annual Work Plan and Budget.


4. “Audit Committee” means the committee referred to in Section II.C of Schedule 2 to this Agreement and reconstituted pursuant to the Recipient’s Treasury Circular Number 16 of 2005 (on establishment and operationalization of Audit Committees), and any successor thereto.

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


7. “Chief Registrar of the Judiciary” means the Recipient’s chief registrar of the Judiciary established and operating pursuant to Article 161 of the Constitution of the Recipient, 2010, and any successor thereto.


9. “Court User Committees” or “CUC” means the Recipient’s committees to be established and to operate in selected court stations, pursuant to the Judiciary Transformation Framework, and any successors thereto.

10. “Daily Court Return’s Template” means the record of case activity completed by each court and submitted to the directorate of the Judiciary responsible for collecting and analyzing Judiciary data to inform managerial decision making (Performance Management Directorate).

12. "Directorates" means the Judiciary’s directorates responsible for, inter alia, performance management, human resources, ICT, public outreach, finance, public affairs and communication as well as supply chain management, and any successors thereto.

13. "Displaced Persons" means persons who, on account of the execution of the Project would suffer direct economic and social impacts resulting in: (a) the involuntary taking of land resulting in: (i) relocation or loss of shelter; (ii) loss of assets or access to assets; and (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or (b) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of said persons.

14. "Environmental and Social Impact Assessment" or "ESIA" means, with respect to each activity under the Project pursuant to which the ESMF requires an environmental and social impact assessment, such assessment carried out pursuant to Section I.D of Schedule 2 to this Agreement, in accordance with the ESMF; and “ESIAs” means more than one ESIA.

15. "Environmental and Social Management Framework" or "ESMF" means the framework of the Recipient entitled "Judicial Performance Improvement Project (JPIP) Environmental and Social Management Framework", dated September 2012 and disclosed locally on September 20, 2012, setting forth the modalities for environmental screening and procedures for the preparation and implementation of environmental and social impact assessments and environmental and/or social management plans under the Project, and such term includes all schedules and annexes to the ESMF.

16. "Environmental and Social Management Plan" or "ESMP" means, with respect to each activity under the Project pursuant to which the ESMF and the ESIA of said activity requires an environmental and social management plan, such plan prepared in accordance with the ESMF and ESIA pursuant to the provisions of Section I.D of Schedule 2 to this Agreement; and “ESMPS” means more than one ESMP.

17. "Fiscal Year" means the Recipient’s fiscal year, a period of twelve months, commencing on July 1 and ending on June 30 of the following year.

19. "High Court" means the Recipient's high court established and operating pursuant to Article 165 of the Constitution of the Recipient, 2010, and any successors thereto.

20. "ICT" means information and communications technology.

21. "IFMIS" means integrated financial management information system.

22. "Integrated Fiduciary Agent" means the Recipient's fiduciary agent referred to in Section I.A.5 of Schedule 2 to this Agreement.


24. "Judicial Service Commission" or "JSC" means the Recipient’s judicial service commission established and operating pursuant to Article 171 of the Constitution of the Recipient, 2010, and any successor thereto.

25. "Judiciary Training Institute" or "JTI" means the Recipient's institute established in 2008 to coordinate the training of judicial officers and staff on the administration of justice.


27. "Kenya Judiciary Staff Association" means the Recipient’s association established and operating pursuant to the Societies Act, Chapter 108 of the laws of the Recipient, and any successor thereto.

28. "Kenya Magistrates and Judges Association" means the Recipient’s association established and operating pursuant to the Societies Act, Chapter 108 of the laws of the Recipient, and any successor thereto.

29. "Kenya Women Judges Association" means the Recipient’s association established and operating pursuant to the Societies Act, Chapter 108 of the laws of the Recipient, and any successor thereto.


32. “Ministry of Justice, National Cohesion and Constitutional Affairs” means the Recipient’s ministry responsible for justice, national cohesion and constitutional affairs, and any successor thereto.

33. “Ministry of Finance” means the Recipient’s ministry responsible for finance, and any successor thereto.

34. “National Council for Law Reporting” or “NCLR” means the Recipient’s national council for law reporting established and operating pursuant to the National Council for Law Reporting Act No. 11 of 1994 of the laws of the Recipient, and any successor thereto.

35. “National Council on Administration of Justice” or “NCAJ” means the Recipient’s national council on administration of justice established and operating pursuant to Section 34 of the Judicial Service Act Number 1 of 2011 of the laws of the Recipient, and any successor thereto.


37. “Operating Costs” means the PMU’s reasonable incremental expenses arising under the Project, and based on the Annual Work Plan and Budget, and consisting of expenditures for vehicle operation and maintenance, maintenance of equipment, communication and insurance costs, office administration costs, advertising expenses, travel and per diem, administrative support staff but excluding the salaries of the Recipient’s civil servants; and rental/lease of office space for the JTI, the NCLR, PMU and the unit to be established pursuant to Part 3 B. (f) of the Project.

38. “Performance Management and Measurement Steering Committee” means the committee established by the Chief Justice to design and oversee implementation of the Judiciary’s performance management system.

39. “Preparation Advance” means the advance referred to in Section 2.07 of the General Conditions, granted by the Association to the Recipient pursuant to the letter agreement signed on behalf of the Association on December 3, 2007 and on behalf of the Recipient on December 6, 2007.


41. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated September 28, 2012 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.
42. "Project Implementation Manual" means the manual to be prepared by the Recipient and approved by the Association, in accordance with Section I.B.1 of Schedule 2 to this Agreement; as such manual may be amended from time to time in accordance with the provisions of said Section I.B.1 of Schedule 2.

43. "Project Management Unit" or "PMU" means the Recipient's unit to be established for the Project pursuant to Section I.A.4 of Schedule 2 to this Agreement.

44. "Project Steering Committee" or "PSC" means the Recipient's Committee referred to in Section I.A.1 of Schedule 2 to this Agreement.

45. "Project Technical Committee" or "PTC" means the Recipient's Committee referred to in Section I.A.2 of Schedule 2 to this Agreement.

46. "Resettlement Action Plan" or "RAP" means, for any Project activity involving Displaced Persons, a resettlement action plan for such activity prepared and implemented in accordance with the RPF pursuant to the provisions of Section I.D of Schedule 2 to this Agreement.


48. "Safeguard Framework" means, the ESMF or RPF, as the context may require; and "Safeguard Frameworks" means, collectively, both of said frameworks.

49. "Safeguard Instrument" means an ESIA, ESMP or a RAP for a Project activity, as the context may require; and "Safeguard Instruments" means, collectively, all such assessments or plans for the Project.

50. "Sub-Grant" means a grant made by the Recipient to a CUC under Part I B.(a) (i) of the Project for a Subproject; and "Sub-Grants" means, collectively, two or more such grants.

51. "Sub-Grant Agreement" means an agreement made or proposed to be made between the Recipient and a CUC providing for a Sub-Grant, and "Sub-Grant Agreements" means, collectively, two or more such agreements.

52. "Sub-Project" means a specific set of activities to be carried out by a CUC under Part I B.(a) (i) of the Project to address the particular bottlenecks to delivery of court services that exist at a specific court, and financed or to be financed out of the proceeds of the Financing through a Sub-Grant; and "Sub-Projects" means, collectively, two or more such subprojects.
"Training" means the reasonable costs associated with the training, workshop and study tour participation of personnel involved in Project activities, as specified in the Annual Work Plan and Budget, said costs to consist of travel and subsistence for training, workshop and study tour participants, costs associated with securing the services of trainers, rental of training and workshop facilities, preparation and reproduction of training and workshop materials, and other costs directly related to training course, workshop or study tour preparation and implementation (but excluding costs of consulting services).