Project Agreement
(Malawi Electricity Access Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ELECTRICITY SUPPLY CORPORATION OF MALAWI LIMITED
AGREEMENT between INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association") and Electricity Supply Corporation of Malawi Limited ("Project Implementing Entity") ("Project Agreement") in connection with the Financing Agreement ("Financing Agreement") of the Signature Date between Republic of Malawi ("Recipient") and the Association, concerning Credit Number 6461-MW and Grant Number D501-MW.

The Association and the Project Implementing Entity hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to the Financing Agreement) apply to and form 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 Financing Agreement or the General Conditions.

ARTICLE II — PROJECT

2.01. The Project Implementing Entity declares its commitment to the objective of the Project. To this end, the Project Implementing Entity shall carry out Parts A and C.1 of the Project in accordance with the provisions of Article V of the General Conditions and the Schedule to this Agreement, and shall provide promptly as needed, the funds, facilities, services and other resources required for its Respective Part of the Project.

ARTICLE III — TERMINATION

3.01. For purposes of Section 10.05 (c) of the General Conditions, the date on which the provisions of this Agreement shall terminate is twenty (20) years after the Signature Date.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

4.01. The Project Implementing Entity’s Representative is its Chief Executive Officer.
4.02. For purposes of Section 11.01 of the General Conditions:

(a) the Association's address is:

    International Development Association
    1818 H Street, NW
    Washington, DC 20433
    United States of America; and

(b) the Association's Electronic Address is:

    Facsimile:
    1-202-477-6391

4.03. For purposes of Section 11.01 of the General Conditions:

(a) the Project Implementing Entity's address is:

    ESCOM House
    9 Haille Sellassie Road
    P. O. Box 2047
    Blantyre
    Malawi; and

(b) the Project Implementing Entity's Electronic Address is:

    Facsimile:
    265-1-1822008
AGREED as of the later of the two dates written below.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: Bella Bird
Title: Country Director
Date: October 18, 2019

ELECTRICITY SUPPLY CORPORATION
OF MALAWI LIMITED

By

Authorized Representative

Name: Dr. Allexon Chiwaya
Title: Chief Executive Officer
Date: October 18, 2019
SCHEDULE

Execution of the Project Implementing Entity's Respective Parts of the Project

Section I. Implementation Arrangements

A. Institutional Arrangements

1. Project Implementation Unit (PIU)

The Project Implementing Entity shall, at all times during the Project implementation, maintain the PIU with terms of reference, resources and functions, acceptable to the Association, including the following key staff: (a) a Project coordinator; (b) a senior engineer; (c) a financial management officer/Project accountant; (d) a social development specialist; (e) an environmental (including an occupational health safety) safeguards specialist, and (f) a procurement specialist, all with qualifications, experience and terms of reference shall be satisfactory to the Association.

B. Annual Work Plans

1. The Project Implementing Entity shall prepare and furnish to the Recipient, not later than March 2 in each year during the implementation of the Project, for forwarding to the Association for the latter's approval in accordance with the provisions of Section IF of Schedule 2 to the Financing Agreement, a proposed annual work plan and related budget containing all activities proposed to be carried out under its Respective Parts of the Project in the following calendar year.

2. The Project Implementing Entity shall ensure the implementation, monitoring and evaluation of each Annual Work Plan, in accordance with the provisions set forth in this Agreement.

C. Environmental and Social Safeguards

1. The Project Implementing Entity shall:

(a) carry out Respective Parts of the Project with due regard to appropriate health, safety, social, and environmental practices and standards, and in accordance with the Safeguards Instruments;

(b) for each activity under Part A of the Project for which the ESMF, and the RPF provide for the preparation of a Subproject ESIA, and/or a Subproject ESMP, and a Subproject RAP:

   (i) proceed to have such Subproject ESIA, and/or Subproject ESMP and Subproject RAP as appropriate: (A) prepared and disclosed in
accordance with the ESMF and the RPF, respectively; (B) consulted upon adequately with people affected by the Project as per the ESMF and the RPF, respectively, and submitted to the Association for review and approval; and (C) thereafter adopted, prior to implementation of the activity;

(ii) take such measures as shall be necessary or appropriate to ensure compliance with the requirements of such Subproject ESIA, and/or Subproject ESMP and Subproject RAP in a manner satisfactory to the Association; and

(iii) the implementation, monitoring and evaluation of the Subproject ESMP is completed and reported in a manner satisfactory to the Association.

(c) all measures are taken to implement the Subproject RAPs in a manner and timeframe satisfactory to the Association. To this end, the Recipient shall ensure that:

(i) Funds are made available to cover all the costs of implementing the RAPs;

(ii) prior to carrying out activities which involve displacement, Affected Persons shall be compensated at full replacement cost, resettled and provided with resettlement assistant in accordance with the Subproject RAPs, as applicable; and

(iii) the implementation, monitoring and evaluation of such Subproject RAPs is completed and reported in a manner satisfactory to the Association.

2. The Project Implementing Entity shall ensure that the Subprojects do not include any activities or expenditures on the negative list set forth in the ESMF.

3. Except as the Association shall otherwise agree in writing, the Project Implementing Entity shall ensure that none of the provisions of the Safeguard Instruments be abrogated, amended, repealed, suspended or waived. In case of any inconsistencies between the provisions of any of the Safeguard Instruments and the provisions of this Agreement, the provisions of this Agreement shall prevail.

D. Grievance Redress Mechanism

1. The Project Implementing Entity shall maintain, throughout Project implementation, and publicize the availability of a grievance redress mechanism, in form and substance satisfactory to the Association, to hear and determine fairly
and in good faith all complaints raised in relation to the Project and take all measures necessary to implement the determinations made by such mechanism in a manner satisfactory to the Association.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Project Implementing Entity shall monitor and evaluate the progress of its Respective Parts of the Project and prepare Project Reports for its Respective Part of the Project in accordance with the provisions of Section 5.08 (b) of the General Conditions and on the basis of the indicators acceptable to the Association. Each such Project Report shall cover the period of six (6) calendar months and shall be furnished to the Recipient not later than thirty (30) days after the end of the period covered by such report for incorporation and forwarding by the Recipient to the Association of the overall Project Report.

2. The Project Implementing Entity shall provide to the Recipient not later than thirty (30) days after the end of each six (6) calendar months, for incorporation in the report referred to in Section 5.08 (c) of the General Conditions all such information as the Recipient or the Association shall reasonably request for the purposes of such Section.

Section III. Specific Financial Covenants

A.

1. Except as the Association may otherwise agree, the Project Implementing Entity shall, for each Fiscal Year (FY) starting in FY 2020 and in each succeeding Fiscal Year:

   (a) maintain a ratio of total operating revenues to total operating expenses of not less than 1.0;

   (b) maintain a ratio of current assets to current liabilities of not less than 1.0; and

   (c) ensure that the estimated free cash flows from its operating activities shall be at least 1.0 times the estimated maximum debt service requirements for any such Fiscal Year on all its debt.

B. Definition of specific terms:

1. For the purposes of this Section III.A.1, immediately above:
(a) the term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation of the average current gross value of the Project Implementing Entity's fixed assets in operation determined on the basis of criteria acceptable to the Association, but excluding interest and other charges on debt;

(b) the term "total operating revenues" means revenues from all sources related to operations;

(c) the term "current assets" means cash, all assets which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories, and pre-paid expenses properly chargeable to operating expenses within the next Fiscal Year;

(d) the term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends;

(e) the term "debt" means any indebtedness of the Project Implementing Entity maturing by its terms more than one year after the date on which it is originally incurred; Debt shall be deemed to be incurred: (i) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (ii) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into;

(f) the term "free cash flows from operating activities" means net revenues minus increase in net working capital excluding cash;

(g) the term "net revenues" means the difference between: (i) the sum of revenues from all sources related to operations (adjusted to take account of the Project Implementing Entity's tariffs in effect at the time of the incurrence of debt even though they were not in effect during the twelve-month period to which such revenues relate) plus net non-operating income; and (ii) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt;

(h) the term "net non-operating income" means the difference between: (i) revenues from all sources other than those related to operations; and
(ii) expenses, including taxes and payments in lieu of taxes, incurred in the
generation of revenues referred to in (i) immediately above;

(i) the term “net working capital excluding cash” means the difference
between current assets (excluding cash and cash equivalents) and current
liabilities in a given financial year. The term in “increase in net working
capital excluding cash” refers to the change in the aforementioned between
two financial years; and

(j) the term “debt service requirements” means the aggregate amount of
repayments (including sinking fund payments, if any) of, and interest and
other charges on debt.

2. For the purpose of this Section, whenever it shall be necessary to value, in terms
of the currency of the Recipient debt payable in another currency, such valuation
shall be made on the basis of the prevailing lawful rate of exchange at which such
other currency is, at the time of such valuation, obtainable for the purposes of
servicing such debt, or, in the absence of such rate, on the basis of a rate of
exchange acceptable to the Association.