

## Annex D

Repayment Provisions on Amounts Due  
To the Department of Defense

All payments of principal and interest are payable in immediately available funds, free and clear of, and without deduction for, any taxes, levies, imposts, deductions, and withholdings whatsoever now or hereafter imposed, levied, collected, or assessed with respect thereto by any central or local authority of the Borrower and shall be paid free from all restrictions of any central or local authority of the Borrower.

The terms of this Agreement require payment in immediately available funds. To meet this requirement, request the payment be wire transferred to the Defense Security Cooperation Agency ("DSCA") through the Federal Reserve Bank of New York. The wire transfer must include the following payment instructions:

021020004

Payment Amount (in U.S. dollars)

TREASURY NYC/(97000002)DSCA/COMPT/FM/PENTAGON

(Begin third party text - may use up to 230 characters with this optimum format; this text should include the precise loan installments (s) to which the remitted amount should be credited.)

Interest shall be computed on the basis of the actual number of days using a 365-day factor. Repayments that are due on a Saturday, Sunday, or public holiday, shall be made on the next succeeding business day in accordance with the laws of the United States. This extension of time, if applicable, shall be included in computing the interest on such repayments, but excluding from the next interest period, if any. Failure of the borrower to make full repayment when due of any installment(s) of principal and/or interest shall result in an aggregate amount payable of the overdue installment(s), plus additional interest thereon at the rate specified from the due date to the date of repayment. If an installment payment made by the Borrower is insufficient to satisfy the aggregate amount of principal and interest then due, such repayment shall be applied first to satisfy the interest due with the remainder, if any, applied to satisfy the principal amount of the installment.

In order to determine accurately the actual cost of funds applicable to debt due DSCA and hereby rescheduled, the interest rate shall be assigned at the time DSCA provides the notification implementing this Agreement pursuant to Article I, Paragraph 2. The interest rate stated in Article III, Paragraph 2(b) of this Agreement represents a best estimate only and may fluctuate prior to the assignment of the interest rate as noted above.

The Borrower shall have the right to prepay at any time and from time-to-time without penalty or premium, all or any part of the principal due under this Agreement. Each prepayment shall be accomplished by the payment of interest on the amount prepaid to the date of prepayment. Each such prepayment shall be applied to the principal installments in the inverse order of their maturity.

The Borrower represents and warrants that it has taken all action necessary and appropriate under its constitution and laws to authorize it to incur the indebtedness herein contemplated and to execute this Agreement. The Borrower further represents and warrants that this Agreement has been validly signed and entered into by the Borrower and is binding upon it in accordance with its terms and when delivered pursuant hereto, will constitute the valid and binding obligation of the Borrower for the payment and performance of which the full faith and credit of the Borrower is pledged.

If the Borrower shall fail to pay any amount due to the Department of Defense, or if any representation or warranty of the Borrower herein proves to be untrue in any material respect, the Department of Defense, by written notice to the Borrower, and giving the Borrower ten (10) business days to respond, may make immediately due and payable the entire principal indebtedness then outstanding and accrued interest thereon to date of payment.

All sums payable hereunder shall be payable without deduction for any present or future taxes, duties, fees or other charges levied or imposed by the Borrower or any political or taxing subdivision thereof.

No failure or delay on the part of the Department of Defense to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof.

All statements, reports, certificates, opinions and other documents or information furnished to the Department of Defense under this Agreement shall be supplied by the Borrower without cost to the Department of Defense.

The Borrower shall reimburse the Department of Defense, on demand, for all reasonable and documented out-of-pocket expenses (including legal fees) incurred by the Department of Defense in connection with the enforcement of this Agreement.

To the extent that the Borrower has or hereafter may acquire immunity from suit, judgment, and/or execution, the Borrower agrees that it shall not assert or claim any such right of immunity with respect to any action to enforce its obligations under this Agreement, except as provided for in the Borrower's judicial codes with respect to execution through the courts of the Borrower.

Upon entry into force of this Agreement, the Department of Defense shall consider arrears as having been rescheduled for the purposes of resuming the provision of assistance to the Borrower. The Department of Defense will notify the Borrower of the amounts rescheduled, provide a repayment schedule of those amounts, and provide the actual interest rate assigned to this Agreement.

The Department of Defense portion of this Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia, United States of America.

If the terms of this Agreement provide for the consolidation period to be extended beyond the initial consolidation period, and provided conditions contained therein are met, the Department of Defense will manage each extended consolidation period as a separate loan and identify it with a separate loan number and interest.

All communications between the Borrower and the Department of Defense shall be in writing, in the English language at the following address:

Defense Security Cooperation Agency  
Crystal Gateway North  
Suite 303  
1111 Jefferson Davis Highway  
Arlington, VA 22202-4306

Facsimile: (703) 604-6538

## Annex E

Additional Terms and Conditions with Respect to  
Amounts Owing to Ex-Im Bank

The Government of the Republic of Kenya, (hereinafter referred to as the "Government"), agrees to the following additional terms and conditions with respect to the amounts owing to Ex-Im Bank, guaranteed by Ex-Im Bank, or insured by Ex-Im Bank, pursuant to the attached Agreement between the United States of America and the Government:

A. Definitions.

1. "Business Day" means any day on which the Federal Reserve Bank of New York is open for business.
2. "Interest Payment Date" means, with respect to Consolidated Non-ODA PRD, January 1 and July 1 of each year. Provided that in the event any Interest Payment Date is -a Non-Business Day -, then the next succeeding Business Day after such date shall be the Interest Payment Date.
3. "Interest Period" for purposes of Article III, paragraph 2(b)(i) means (a) an initial period beginning on January 1, 2004 and ending on June 30, 2004 and (b) thereafter, the period beginning on each Interest Payment Date and ending on the day immediately preceding the next succeeding Interest Payment Date.

B. Payments.

1. Funds and Place of Payment. All payments to be made by the Government to Ex-Im Bank under this Agreement shall be made in United States dollars in immediately available and freely transferable funds to the Federal Reserve Bank of New York for credit to Ex-Im Bank's account at the U.S. Treasury Department as identified below or as otherwise directed in writing by the Treasurer-Controller or an Assistant Treasurer-Controller of Ex-Im Bank.

US Treasury Department  
021030004  
TREAS NYC/CTR/  
BNF=/AC-4984 OBI=  
EXPORT-IMPORT BANK



E. Representations. The Government represents and warrants that it has taken all actions necessary or advisable under its laws and regulations to authorize the execution, delivery and performance of this Agreement and that this Agreement constitutes the valid and binding obligations of the Government, enforceable against the Government in accordance with its terms and for the performance of which the full faith and credit of the Government is pledged. The Government acknowledges that the activities contemplated by this Agreement are commercial in nature rather than governmental or public and agrees that, to the extent that it has or hereafter may acquire immunity from suit, judgment and/or execution, it will not assert or claim any such right of immunity with respect to any action by Ex-Im Bank to enforce the Government's obligations under this Agreement.

F. Events of Default. In the event that the Government fails to pay when due (a) any amount owing to Ex-Im Bank under this Agreement or (b) any amount owing under any other agreement or instrument in which any indebtedness (whether direct or indirect, contingent or otherwise) of the Government thereunder is owed to, guaranteed or insured, in whole or in part, by Ex-Im Bank, then Ex-Im Bank, by written notice to the Government, may make immediately due and payable the entire principal amount owing to Ex-Im Bank and outstanding under this Agreement, plus accrued Interest and Additional Interest thereon to the date of payment, and all other amounts owing to Ex-Im Bank under this Agreement.

G. Miscellaneous Provisions.

1. Disposition of Indebtedness. Ex-Im Bank may at any time sell, assign, transfer, negotiate, grant participation in, or otherwise dispose of all or any portion of the indebtedness of the Government outstanding and owing to Ex-Im Bank under this Agreement to any party, and any such party shall enjoy all the rights and privileges of Ex-Im Bank under this Agreement. The Government shall, at the request of Ex-Im Bank, execute and deliver to Ex-Im Bank or to such party or parties as Ex-Im Bank may designate any and all further instruments as may be necessary or advisable to give full force and effect to such disposition by Ex-Im Bank.

2. Expenses. The Government shall pay on demand all reasonable costs and expenses incurred by or charged to Ex-Im Bank in connection with or arising out of this Agreement, including without limitation costs and legal fees incurred by or

charged to Ex-Im Bank in connection with the enforcement of this Agreement.

3. Adjustments. On or about 135 days after the execution of this Agreement, Ex-Im Bank shall inform the Government of the actual amounts to be rescheduled- hereunder. The parties hereto agree to make any necessary adjustments to the amounts being - rescheduled.

4. Communications. All communications between the Government and Ex-Im Bank under this Agreement shall be in writing, in the English language (or accompanied by an accurate English translation). All communications to the Government shall be addressed to the Government at the address designated by the Government from time to time in writing to Ex-Im Bank; all communications to Ex-Im Bank shall be addressed to Ex-Im Bank at the following address:

Export-Import Bank of the United States  
811 Vermont Avenue, N.W.  
Washington, D.C. 20571  
Attention: Treasurer-Controller  
Telex: 89461 EX-IM BANK WSH  
197681 EXIM UT  
Facsimile: (202) 565-3294

5. Governing Law. The Ex-Im Bank portion of this Agreement shall be governed by and construed in accordance with, the laws of the District of Columbia, United States of America.

## Annex F

Additional Terms and Conditions with Respect  
to Amounts Owing to USAID

## A. TERMS AND CONDITIONS OF PAYMENTS

1. Payments. The Government agrees to pay amounts owing to USAID in accordance with the terms and conditions of this Agreement, including this Annex.
2. Funds and Place of Payment. All payments made to USAID by the Government under this Agreement shall be made in United States dollars via electronic funds transfer to the Federal Reserve Bank, 33 Liberty Street, New York, New York 10045. Payment instructions to the Federal Reserve Bank should read:
 

BNF-/AC-72000001 OBI=(Pay US  
Dollars \_\_\_\_\_  
Principal \_\_\_\_\_ Interest \_\_\_\_\_  
Loan Number \_\_\_\_\_)
3. Application of Payments. To the extent a payment by the Government is insufficient to satisfy the aggregate amount of principal and interest due, such payment shall be applied first to interest then due, with the remainder, if any, applied to the principal amount of the installment.
4. Prepayments. Any prepayments made pursuant to Article IV that may be applied to installments of principal shall be applied in the inverse order of their maturity if the rescheduled amounts relate to direct loans and in chronological order if the rescheduled amounts relate to obligations under the housing guaranty program.
5. Payments due on non-business days. In the event that a payment is due on a day when the Federal Reserve Bank of New York is closed for business, the payment shall be made on the next succeeding business day. This extension of time shall be included in computing the interest on such payment and excluded from the following interest period, if any.

## B. INTEREST

1. Computation of Interest. Interest shall be computed on the basis of the outstanding balance of the loan times the interest rate (annual interest) and dividing by the number of payments per year.

C. GENERAL PROVISIONS

1. Adjustments. Following the execution of this Agreement, USAID shall inform the Government of the actual amounts to be rescheduled hereunder, provide a repayment schedule of those amounts, and notify the Government of the actual applicable interest rate(s). The parties hereto agree to make any necessary adjustments to the amounts being rescheduled under this Agreement and such amounts may be further adjusted, from time to time, as the parties may mutually agree.
2. Future consolidations. If the terms of this Agreement provide for the consolidation period to be extended beyond the initial consolidation period, and provided conditions contained in the Agreement are met, USAID will manage each extended period as a separate loan and identify it with a separate loan number and interest rate. Following notification that the conditions have been met, USAID will inform the Government of the actual amounts to be rescheduled under that consolidation, provide a repayment schedule of those amounts, and notify the Government of the applicable interest rate(s).
3. Communications. All communications between the Government and USAID shall be in writing in the English language (or accompanied by an accurate translation). All communications to the Government shall be addressed as the Government may designate from time to time in writing to USAID. All communications to USAID shall be addressed as follows:

Chief  
Office of Financial Management  
Loan Management Division (FM/LM)  
USAID  
1300 Pennsylvania Avenue, N.W.  
Room 2.10.56  
Washington, D.C. 20523  
Fax: (202) 216-3541

USAID may change this designated address upon written notice to the Government.

4. Authorized Representatives. The Government shall designate in writing duly authorized representatives permitted to perform any and all actions required under this Agreement and may change its designated representatives by written notice to USAID. USAID may accept the signature of such representatives on any instrument as conclusive evidence that any such action effected by such instrument is authorized by the Government until receipt of written notice of revocation of their authority.
5.
  - a. Event of Default. The failure by the Government to make full payment of any installment when due under this Agreement shall be deemed to be an event of default. Upon the occurrence of an event of default, USAID, at its option, may declare all or any part of unpaid principal and all accrued interest thereon to be due and payable immediately. If the Government pays the defaulted installment, including any Additional Interest which has accrued thereon, within sixty (60) days of the any such declaration, the declaration of an Event of Default will be deemed to have been rescinded.
  - b. Waivers of Default. No delay in exercising, or omission to exercise, any right accruing to USAID under this Agreement shall be construed as an acquiescence or waiver by USAID of any such right.
6. Notification and Confirmation. USAID will, to the maximum extent practicable, notify the Government of payments due at least fifteen (15) days prior to the due date of each payment. Failure to provide such notice, however, does not excuse failure to make payment when due.
7. Governing Law. The USAID portion of this Agreement will be governed by and construed in accordance with the laws of the District of Columbia, United States of America.
8. Expenses. The Government shall reimburse USAID, upon demand, for all reasonable and documented expenses (including legal fees) incurred by or charged to USAID in connection with or arising out of enforcement of this Agreement.