

No.10655

**INTERNATIONAL DEVELOPMENT ASSOCIATION
and
MALAWI**

**Development Credit Agreement—*Malawi Power Project*
(with annexed General Conditions Applicable to Development Credit Agreements and Project Agreement between the Association and Electricity Supply Commission of Malawi). Signed at Washington on 11 February 1970**

Authentic text: English.

Registered by the International Development Association on 11 August 1970.

**ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT
et
MALAWI**

Contrat de crédit de développement — *Projet relatif à l'énergie électrique au Malawi* (avec, en annexe, les Conditions générales applicables aux contrats de crédit de développement et le Contrat relatif au Projet entre l'Association et l'Electricity Supply Commission du Malawi). Signé à Washington le 11 février 1970

Texte authentique : anglais.

Enregistré par l'Association internationale de développement le 11 août 1970.

DEVELOPMENT CREDIT AGREEMENT¹

AGREEMENT, dated February 11, 1970 between REPUBLIC OF MALAWI (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

(A) WHEREAS the Borrower has requested the Association to assist in financing a part of the development programme of Electricity Supply Commission of Malawi (hereinafter called ESCOM) by granting a credit to it in an aggregate principal amount equivalent to \$5,250,000;

(B) WHEREAS the Borrower has requested the African Development Bank to assist in financing the other part of the said development programme by granting a loan to it in an aggregate principal amount equivalent to \$3,000,000, for relending to ESCOM;

(C) WHEREAS ESCOM is an entity established under Electricity Act Cap. 73:01 of the Republic of Malawi and is entrusted *inter alia* with powers and functions relating to the generation and supply of electricity;

(D) WHEREAS by agreement of even date herewith (hereinafter called the Project Agreement)² between the Association and ESCOM, ESCOM has undertaken certain obligations regarding the use of the proceeds of the Credit, as provided in such Project Agreement;

(E) WHEREAS by agreement of even date herewith (hereinafter called the Subsidiary Agreement) between the Borrower and ESCOM, the Borrower has agreed to relend the proceeds of the Credit as provided in such Subsidiary Agreement; and

(F) WHEREAS the Association, on the basis of the foregoing, has agreed to make a credit to the Borrower upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Development Credit Agreement accept all the provisions of the General Conditions Applicable to Develop-

¹ Came into force on 20 April 1970, upon notification by the Association to the Government of Malawi.

² See p. 178 of this volume.

ment Credit Agreements of the Association, dated January 31, 1969,¹ with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said General Conditions Applicable to Development Credit Agreements of the Association, as so modified, being hereinafter called the General Conditions):

(a) The following subparagraph is added to Section 2.01:

“13. The term ‘Project Agreement’ shall have the meaning set forth in the Development Credit Agreement.”

(b) Section 6.06 is amended by inserting the words “, the Project Agreement” after the words “the Development Credit Agreement”.

(c) Section 8.02 is amended by inserting the words “or under the Project Agreement” after the words “the Development Credit Agreement”.

Section 1.02. Wherever used in this Development Credit Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Act” means the Electricity Act Cap. 73:01 of the Republic of Malawi providing for the establishment of an Electricity Supply Commission and as such Act may be amended from time to time.

(b) “ESCOM” means the Electricity Supply Commission of Malawi established under the provisions of Section 3 of the Act.

(c) “Project Agreement” means the project agreement between the Association and ESCOM of even date herewith, providing for the carrying out of the Project, as the same shall be amended from time to time by agreement between the Borrower, the Association and ESCOM.

(d) “Subsidiary Loan Agreement” means the Agreement entered into between the Borrower and ESCOM referred to in Section 4.03 of the Development Credit Agreement, as the same may be amended from time to time with the approval of the Association.

(e) “ADB” means African Development Bank.

(f) “ADB Loan Agreement” means the loan agreement between the Borrower and the ADB providing for a loan by the ADB to the Borrower in an aggregate principal amount equivalent to three million dollars, as the same may be amended from time to time.

¹ See p. 178 of this volume.

(g) "ADB Loan" means the loan provided for in the ADB Loan Agreement.

Article II

THE CREDIT

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions in this Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to five million two hundred and fifty thousand dollars (\$5,250,000).

Section 2.02. (a) The Association shall open a Credit Account on its books in the name of the Borrower and shall credit to such Account the amount of the Credit.

(b) The amount of the Credit may be withdrawn from the Credit Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Development Credit Agreement and in accordance with the allocation of the proceeds of the Credit set forth in Schedule 1 to this Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such schedule or by further agreement between the Borrower and the Association.

Section 2.03. The Borrower shall be entitled to withdraw from the Credit Account such amounts as shall have been paid (or, if the Association shall so agree, shall be required to meet payments to be made) in respect of the reasonable cost of goods or services required for Part A of the Project and to be financed under this Development Credit Agreement.

Section 2.04. Except as the Association shall otherwise agree, no withdrawals from the Credit Account shall be made on account of payments in the currency of the Borrower, or for goods produced in, or services supplied from the territories of the Borrower.

Section 2.05. The currency of the United Kingdom of Great Britain and Northern Ireland is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.06. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.07. Service charges shall be payable semi-annually on May 15 and November 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Credit withdrawn from the Credit Account in semi-annual installments

payable on each May 15 and November 15 commencing May 15, 1980, and ending November 15, 2019, each installment to and including the installment payable on November 15, 1989, to be one-half of one per cent ($1\frac{1}{2}$ of 1%) of such principal amount, and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}\%$) of such principal amount.

Article III

USE OF PROCEEDS OF THE CREDIT

Section 3.01. The Borrower shall cause the proceeds of the Credit to be applied in accordance with the provisions of this Development Credit Agreement to expenditures on Part A of the Project, described in Schedule 2 to this Agreement.

Section 3.02. Except as the Association shall otherwise agree, (i) the Borrower shall cause the goods and services to be financed out of the proceeds of the Credit to be procured on the basis of international competitive bidding in accordance with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with such other procedures supplementary thereto as are set forth in Schedule 3 to this Agreement or as shall be agreed between the Borrower and the Association, and (ii) contracts for the procurement of such goods and services shall be subject to the prior approval of the Association.

Section 3.03. Except as the Association may otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Credit to be used exclusively in carrying out Part A of the Project.

Article IV

PARTICULAR COVENANTS

Section 4.01. The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, economic and public utility practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

Section 4.02. The Borrower shall take all action which shall be necessary on its part to enable ESCOM to perform all its obligations under the

Project Agreement and the Subsidiary Loan Agreement and shall not take any action, or, issue any directions under (i) Statutory Bodies (Control of Contracts) Act Cap. 18:07 with respect to procurement of goods and services out of the proceeds of the Credit, and (ii) any other existing or future legislation that would interfere with the performance of such obligations by ESCOM.

Section 4.03. (a) The Borrower shall relend the proceeds of the Credit, or the equivalent thereof, to ESCOM on terms and conditions and pursuant to a subsidiary loan agreement satisfactory to the Association.

(b) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association, and, except as the Association shall otherwise agree, the Borrower shall not amend, assign, abrogate or waive any provision of the Subsidiary Loan Agreement.

Section 4.04. (a) The Borrower and the Association shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Credit. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower and the international balance of payments position of the Borrower.

(b) The Borrower and the Association shall from time to time, at the request of either party, exchange views through their representatives with regard to matters relating to the purposes of the Credit, the maintenance of the service thereof, the Project Agreement and the Subsidiary Loan Agreement, and the performance by the Borrower of its obligations under the Development Credit Agreement and under the Subsidiary Loan Agreement.

(c) The Borrower shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the maintenance of the service thereof, the performance by the Borrower of its obligations under the Development Credit Agreement and the Subsidiary Loan Agreement and the performance by ESCOM of its obligations under the Project Agreement and under the Subsidiary Loan Agreement.

(d) The Borrower shall afford all reasonable opportunities for accredited representatives of the Association to visit any part of the territories of the Borrower for purposes related to the Credit.

Section 4.05. (a) The Borrower shall make a study of the resources of water from Lake Malawi and Upper Shire River for irrigation, power production and other uses, with a view to determining the most economic

usage of water for irrigation, power and other sectors of the economy, and except as the Association shall otherwise agree, complete such study within three years from the date of this Agreement. Copies of the study shall, within three months of its completion, be made available to the Association.

(b) The Borrower shall, promptly upon the completion of the study referred to in Section 4.05 (a) above, make a decision as to the allocation of water for the generation of power and communicate its decision to the Association and ESCOM.

Section 4.06. The Borrower shall promptly issue an authorization in favor of ESCOM to enable it to divert water for a period of 50 years commencing from January 1, 1973, up to 2,100 cusec and shall increase such authorization from time to time to amounts agreed between the Borrower and ESCOM consistent with the allocation of water referred to in Section 4.05 (b) of this Agreement.

Section 4.07. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of the Borrower or laws in effect in its territories.

Section 4.08. The Development Credit Agreement and the Project Agreement shall be free from any taxes that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, delivery or registration thereof.

Section 4.09. Except as the Association shall otherwise agree the Borrower shall ensure that ESCOM:

(A) levies a development surcharge equivalent to 3% of its basic tariff level, not later than February 1, 1970, on consumers in ESCOM's existing inter-connected system excluding high density areas.

(B) makes no reductions in the level of:

- (i) basic tariffs including surcharge levied in accordance with paragraph (A), and
- (ii) basic tariffs and surcharges in respect of any other operating region of ESCOM

prior to January 1, 1974; and

(C) after January 1, 1974, takes from time to time all steps necessary or desirable to obtain such adjustments in its tariffs as will provide revenues sufficient to yield an operating income of at least 9% on ESCOM's average net fixed assets in operation in order to (i) meet ESCOM's operating expenses, including provisions for maintenance, depreciation and interest; (ii) meet repayments of indebtedness to the extent that such repayments

exceed provision for depreciation; and (iii) finance a reasonable portion of ESCOM's capital expansion. For the purposes of this Section:

1. the term "operating income" shall mean the difference between operating revenues and operating expenses including adequate maintenance and provision for depreciation on a straight-line basis and taxes, if any, but excluding interest and other charges on debt;
2. the term "value of the average net fixed assets in operation" shall mean for each financial year the average of the gross fixed assets in operation less accumulated depreciation at the beginning and at the end of the financial year, based on realistic valuations of such assets; and
3. If, at any time, the Borrower, Association or ESCOM considers that circumstances have arisen as a result of which the valuations of such assets have ceased to be realistic for the purposes of this Section, the parties shall consult together about what action is necessary to revalue such assets.

Section 4.10. The Borrower shall exercise its powers under the Act or any other legislation relating to the operations of ESCOM only to the extent necessary to ensure the continued operation and development of ESCOM on sound commercial lines and in accordance with this Agreement, the Project Agreement and the Subsidiary Loan Agreement.

Article V

REMEDIES OF THE ASSOCIATION

Section 5.01. If any event specified in Section 7.01 of the General Conditions or in Section 5.02 of this Agreement shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Association, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal, together with such charges, shall become due and payable immediately, anything in this Development Credit Agreement to the contrary notwithstanding.

Section 5.02. For the purpose of Section 7.01 of the General Conditions, the following additional events are specified:

(a) The Project Agreement, the Subsidiary Loan Agreement or any material provision thereof shall have been amended, suspended, abrogated or waived without the prior approval of the Association;

(b) ESCOM shall have failed to perform any of its obligations under the Project Agreement or under the Subsidiary Loan Agreement and such event shall continue for a period of sixty days;

(c) Any amendment, suspension or repeal of the Act or of any provisions thereof which materially and adversely affects the operations or financial condition of ESCOM or performance by ESCOM of its obligations under the Project Agreement and Subsidiary Loan Agreement shall have been brought into force and effect.

(d) The right of the Borrower to withdraw the proceeds of the ADB Loan shall not have become effective or shall have been suspended in whole or in part, and the Borrower shall have failed to obtain funds from other sources in substitution therefor; and

(e) The outstanding principal of the ADB Loan shall have been declared, or become, due and payable in advance of the agreed maturity thereof in accordance with the terms of the ADB Loan Agreement.

Article VI

EFFECTIVE DATE; TERMINATION

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Development Credit Agreement within the meaning of Section 10.01 (b) of the General Conditions:

- (a) That all the conditions precedent to the first disbursement as provided for in the ADB Loan Agreement shall have been fulfilled in accordance with its terms;
- (b) That the execution and delivery of the Project Agreement on behalf of ESCOM have been duly authorized or ratified by all necessary corporate and governmental action;
- (c) That the execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and ESCOM have been duly authorized or ratified by all necessary corporate and governmental action; and
- (d) That the development surcharge referred to in Section 4.09 (A) of this Agreement shall have been levied.

Section 6.02. The following are specified as additional matters, within the meaning of Section 10.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

- (a) That the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, ESCOM and constitutes a valid and binding obligation of ESCOM in accordance with its terms;

- (b) That the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and ESCOM in accordance with its terms; and
- (c) That the development surcharge referred to in Section 4.09 (A) of this Agreement has been duly and validly levied and is in full force and effect.

Section 6.03. The date of June 1, 1970, is hereby specified for the purposes of Section 10.04 of the General Conditions.

Section 6.04. The obligations of the Borrower under Sections 4.06, 4.09 and 4.10 of this Agreement shall terminate on the date on which this Development Credit Agreement shall terminate or on a date twenty-five years after the date of this Development Credit Agreement, whichever, shall be the earlier.

Article VII

MISCELLANEOUS

Section 7.01. The Closing Date shall be June 30, 1974 or such other date as shall be agreed between the Borrower and the Association.

Section 7.02. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 9.03 of the General Conditions.

Section 7.03. The following addresses are specified for the purposes of Section 9.01 of the General Conditions:

For the Borrower:

The Secretary to the Treasury
Ministry of Finance
P.O. Box 53
Zomba, Malawi
Cable address:

Finance
Zomba, Malawi

For the Association:

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

Cable address:

Indevas
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Development Credit Agreement to be signed in their respective names and to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Malawi:
By NYEMBA WALES MBEKEANI
Authorized Representative

International Development Association:
By J. BURKE KNAPP
Vice President

SCHEDULE 1

ALLOCATION OF PROCEEDS OF THE CREDIT

<i>Category</i>	<i>Amounts Expressed in Dollar Equivalent</i>
I. Hydrostation and Civil Works	1,541,000
II. Electrical and Mechanical Works	1,882,000
III. Substations	559,000
IV. Engineering and other services	512,000
V. Three MW Diesel	377,000
VI. Training	48,000
VII. Unallocated	331,000
TOTAL	<u>5,250,000</u>

REALLOCATION UPON CHANGE IN COST ESTIMATES

1. If the estimate of the cost of the items included in any of the Categories I to VI shall decrease, the amount of the Credit then allocated to, and no longer required for, such Category will be reallocated by the Association to Category VII.

2. If the estimate of the cost of the items included in any of the Categories I to VI shall increase, an amount equal to the portion, if any, of such increase to be financed out of the proceeds of the Credit will be allocated by the Association, at the request of the Borrower, to such Category from Category VII, subject, however, to the requirements for contingencies, as determined by the Association, in respect of the cost of the items in the other Categories.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project consists of the development program of ESCOM for the three-year period 1970 through 1972, Part A and Part B of the Project being financed respectively by the Association and the ADB.

Part A

1. Addition of a 3MW diesel unit at Lilongwe.
2. Construction of first stage (16MW) of a hydroelectric station at Tedzani Falls on Shire River.
3. Training of personnel.

Part B

1. Construction of 66 kv lines from:
 - (a) Tedzani to Nkula Falls—4.5 miles;
 - (b) Tedzani to Blantyre—28 miles;
 - (c) Nkula Falls to Lilongwe—165 miles.
2. Extensions and improvements to mains and substations; and
3. Procurement of equipment and materials including accessories required for general development, such as service line materials, meters, special transport equipment and office machines.

The Project is expected to be completed by March 31, 1973.

SCHEDULE 3

PROCUREMENT

1. With respect to goods and services in Categories I to VI of the allocation of the proceeds of the Credit, set forth in Schedule 1 to the Development Credit Agreement, and required to be procured on the basis of international competitive bidding under Section 3.02 of the Development Credit Agreement, identical or similar items to be procured shall be grouped together wherever practicable for the purposes of bidding and procurement, and such grouping of items shall be subject to the approval of the Association.

2. With respect to contracts of (i) civil works of \$50,000 equivalent or more, and (ii) contracts for supply of equipment of \$25,000 equivalent or more, the following procedures shall apply:

(a) Invitations to bid, specifications, the text of proposed bid advertisements to be published and all other tender documents will be submitted to the Association for review and approval prior to the issuance of invitations to bid, together with a description of the advertising procedures to be followed.

(b) After bids have been received and analyzed, the analyses of bids, recommendations of the consultants where applicable and ESCOM's proposals for awards, together with the reasons for such proposals, will be submitted to the Association for review and approval prior to any award of contract or issuance of any letter of intent.

(c) If the proposed final contract differs materially from the terms and conditions contained in the respective documents approved by the Association under sub-paragraph (a), then the text of the proposed changes will be submitted to the Association for its review and approval prior to the execution of such contract or issuance of any letter of intent.

(d) One conformed copy of any letter of intent issued and of any contract executed under this paragraph 2 will be sent to the Association promptly after its issuance or execution and prior to the submission to the Association of the first application for withdrawal of funds from the Credit Account in respect of such contract.

3. In respect of (i) civil works contracts of less than \$50,000 equivalent, and (ii) contracts for the supply of equipment of less than \$25,000 equivalent, the Borrower will submit to the Association, at the time the award is made, a summary of bids or quotations, the bid analysis reports and the recommendations, together with a copy of the record of the public opening of the tenders. The Borrower will also send a copy of any such contract to the Association promptly after its execution and prior to the submission to the Association of the first application for withdrawals in respect thereof.

INTERNATIONAL DEVELOPMENT ASSOCIATION

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS

[Not published herein. See *United Nations, Treaty Series, vol. 703, p. 244.*]

PROJECT AGREEMENT

AGREEMENT, dated February 11, 1970, between the INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association) and the ELECTRICITY SUPPLY COMMISSION OF MALAWI (hereinafter called ESCOM).

WHEREAS on the basis of the considerations described in the recitals to the agreement of even date herewith (hereinafter called the Development Credit Agreement)¹ between the Republic of Malawi (hereinafter called the Borrower) and the Association, the Association has agreed to make available to the Borrower a development credit in various currencies equivalent to five million two hundred and

¹ See p. 156 of this volume.

fifty thousand dollars (\$5,250,000) on the terms and conditions set forth therein, but only on condition that ESCOM agree to undertake certain obligations to the Association as hereinafter in this Project Agreement set forth; and

WHEREAS ESCOM, in consideration of the foregoing has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

Article I

Section 1.01. Wherever used in this Project Agreement, unless the context shall otherwise require, the several terms defined in the Development Credit Agreement and in the General Conditions¹ (as so defined) shall have the respective meanings therein set forth, and the term "Subsidiary Loan" shall mean the proceeds of the Credit lent by the Borrower in accordance with the terms of Section 4.03 of the Development Credit Agreement and pursuant to the Subsidiary Loan Agreement.

Article II

PARTICULAR COVENANTS

Section 2.01. (a) ESCOM shall carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, management and public utility standards and practices, under the supervision of experienced and competent management.

(b) In carrying out the Project, ESCOM shall employ engineering consultants and contractors acceptable to, and to the extent and upon terms and conditions satisfactory to, ESCOM and the Association.

(c) ESCOM shall furnish to the Association, promptly upon their preparation, the plans, specifications and work for the Project and any modifications subsequently made therein, in such detail as the Association shall reasonably request.

Section 2.02. (a) Except as the Association shall otherwise agree, (i) the goods and services to be financed out of the proceeds of the Subsidiary Loan shall be procured on the basis of international competitive bidding in accordance with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with such other procedures supplementary thereto as are set forth in Schedule 3 to the Development Credit Agreement and as shall be agreed between the Association and the Borrower, and (ii) contracts for the procurement of such goods and services shall be subject to the prior approval of the Association.

¹ See p. 178 of this volume.

(b) Except as the Association shall otherwise agree, ESCOM shall cause all goods and services financed out of the proceeds of the Subsidiary Loan to be used exclusively in carrying out Part A of the Project in accordance with the provisions of the Development Credit Agreement and of this Agreement.

Section 2.03. ESCOM shall maintain records adequate to identify the goods and services financed out of the proceeds of the Subsidiary Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices, the operations and financial conditions of ESCOM; shall enable the Association's representatives to inspect the Project, the goods financed out of the proceeds of the Subsidiary Loan, all other plants, sites, works, property and equipment of ESCOM and any records and documents relevant thereto; and shall furnish to the Association all such information as the Association shall reasonably request concerning the expenditure of the proceeds of the Subsidiary Loan, the Project, the said goods and services, and the operations, administration and financial condition of ESCOM.

Section 2.04. ESCOM shall have its accounts audited annually by an independent auditor or accounting firm acceptable to the Association and shall promptly after audited financial statements (balance sheet and related statement of earnings and expenses) are available, and, except as the Association shall otherwise agree, not later than four months after the close of the financial year to which they apply, transmit to the Association certified copies of such statements and a signed copy of the auditor's or accounting firm's report relating to each such statement.

Section 2.05. (a) ESCOM and the Association shall cooperate fully with each other to assure that the purposes of the Subsidiary Loan will be accomplished. To that end, each of them shall from time to time exchange views through their representatives with regard to matters relating to: (i) the general status of the Subsidiary Loan; (ii) the performance by ESCOM of its obligations under the Project Agreement and the administration, operations and financial condition of ESCOM; and (iii) other matters relating to the purposes of the Credit.

(b) ESCOM shall promptly inform the Association and the Borrower of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit or the performance by ESCOM of its obligations under this Agreement or the Subsidiary Loan Agreement.

Section 2.06. ESCOM shall not effect any change in the positions of the General Manager, Chief Engineer and Secretary of ESCOM or make any change which would materially alter the responsibilities and functions heretofore performed by said officers except after consultation with the Association.

Section 2.07. Except as the Association shall otherwise agree ESCOM shall:

(A) levy a development surcharge equivalent to 3% of its basic tariff level, not later than February 1, 1970, on consumers in ESCOM's existing inter-connected system excluding high density tariff areas.

(B) make no reductions in the level of:

- (i) basic tariffs including surcharge levied in accordance with paragraph (A), and
- (ii) basic tariffs and surcharges in respect of any other operating region of ESCOM prior to January 1, 1974; and

(C) after January 1, 1974, take from time to time all steps necessary or desirable to obtain such adjustments in its tariffs as will provide revenues sufficient to yield an operating income of at least 9% on ESCOM's average net fixed assets in operation in order to (i) meet ESCOM's operating expenses, including provisions for maintenance, depreciation and interest; (ii) meet repayments of indebtedness to the extent that such repayments exceed provision for depreciation; and (iii) finance a reasonable portion of ESCOM's capital expansion. For the purposes of this Section:

1. the term "operating income" shall mean the difference between operating revenue and operating expenses including adequate maintenance and provision for depreciation on a straight-line basis and taxes, if any, but excluding interest and other charges on debt; and
2. the term "value of the average net fixed assets in operation" shall mean for each financial year the average of the gross fixed assets in operation less accumulated depreciation at the beginning and at the end of the financial year, and as this value of the gross assets may be redetermined if: (i) there shall have occurred any material change in the factors affecting the valuation of such fixed assets of ESCOM, and (ii) the Association shall in consequence of such change have requested revaluation of such fixed assets, in accordance with methods acceptable to the Borrower, Association and ESCOM.

Section 2.08. (a) ESCOM shall at all times take all requisite steps for the acquisition and retention by it of all such lands, interests in land and properties and all rights, powers, privileges and franchises as may be necessary or proper for the construction and operation of the Project and the carrying on of its business.

(b) ESCOM shall not commit any act or omission which would prejudice its corporate existence and right to carry on the operations and business.

(c) ESCOM shall at all times carry on its operations, manage its affairs, maintain its financial position, and plan the future expansion of its electric power system, all in accordance with sound business, financial and public utility principles and practices and under the supervision of experienced and competent management.

Section 2.09. (a) ESCOM shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amount as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, ESCOM undertakes that the imported goods financed out of the proceeds of the Subsidiary Loan shall be insured against marine, transit and other hazards incident to acquisition, transportation and delivery thereof to the place of use or installation and incident to construction and installation thereof and for such insurance any indemnity shall be payable in a currency freely usable by ESCOM to replace or repair such goods.

Section 2.10. Except as the Association shall otherwise agree, ESCOM shall not incur any debt unless ESCOM's net revenue for the financial year next preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such incurrence, whichever is the greater, shall be not less than 1.5 times the maximum debt service requirements on all ESCOM's debt (including the debt to be incurred) in any succeeding financial year (including the financial year in which such debt is to be incurred). For the purposes of this Section:

(a) The term "debt" shall mean all debt, including debt assumed or guaranteed by ESCOM and maturing by its terms more than one year after the date on which it is originally incurred.

(b) Debt shall be deemed to be incurred (i) under a contract or loan agreement on the date such contract or loan agreement providing for such debt is entered into; and (ii) under a guarantee agreement, on the date the agreement providing for such guarantee is entered into but shall be only counted to the extent that the underlying debt is outstanding.

(c) The term "net revenue" shall mean gross revenues from all sources, adjusted to take account of ESCOM's rates in effect at the time of the incurrence of debt even though they were not in effect during all or part of the financial year or twelve-month period to which such revenues relate, less all operating and administrative expenses and provision for taxes, if any, but before provision covering depreciation and interest and other charges on the debt.

(d) The term "debt service requirements" shall mean the aggregate amount of amortization (including sinking fund payments, if any) interest and other charges on debt.

(e) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, 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 by ESCOM for the purposes of servicing such debt or, if such other currency is not so obtainable, at the rate of exchange that will be reasonably determined by the Association.

Section 2.11. ESCOM shall prepare in consultation with the Borrower and the Association a program of managerial, administrative, professional and technical training for its staff and furnish to the Borrower and the Association copies of this program not later than June 30, 1970.

Article III

EFFECTIVE DATE; TERMINATION

Section 3.01. This Agreement shall come into force and effect on the Effective Date.

Section 3.02. This Project Agreement and all of the obligations of the parties hereunder shall terminate on a date twenty-five (25) years from the date of this Agreement or upon termination of the Development Credit Agreement, whichever is earlier.

Article IV

MISCELLANEOUS PROVISIONS

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Association:

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

Cable address:

Indevas
Washington, D.C.

For ESCOM:

Electricity Supply Commission of Malawi
P.O. Box 186
Blantyre, Malawi

Cable address:

Electric
Blantyre

Section 4.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any

default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 4.03. ESCOM shall furnish to the Association sufficient evidence of the authority of the person or persons who will, on behalf of ESCOM, take any action or execute any documents required or permitted to be taken or executed by ESCOM pursuant to any of the provisions of this Project Agreement and the authenticated specimen signature of each such person.

Section 4.04. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement on behalf of ESCOM may be taken or executed by the General Manager of ESCOM or such other person or persons as ESCOM shall designate in writing.

Section 4.05. The Project Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Development Association:

By J. BURKE KNAPP
Vice President

Electricity Supply Commission of Malawi:

By NYEMBA WALES MBEKEANI
Authorized Representative