
LOAN NUMBER 9525-KE

Loan Agreement

(The Fiscal Sustainability and Inclusive Green Growth Development Policy Operation)

between

REPUBLIC OF KENYA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

LOAN AGREEMENT

AGREEMENT dated as of the Signature Date between REPUBLIC OF KENYA ("Borrower") and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ("Bank") for the purpose of providing financing in support of the Program (as defined in the Appendix to this Agreement). The Bank has decided to provide this financing on the basis, *inter alia*, of: (i) the actions which the Borrower has already taken under the Program, and which are described in Section I of Schedule 1 to this Agreement; and (ii) the Borrower's maintenance of an adequate macroeconomic policy framework. The Borrower and the Bank therefore hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this 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 General Conditions or in the Appendix to this Agreement.

ARTICLE II — LOAN

- 2.01. The Bank agrees to lend to the Borrower the amount of five hundred million Dollars (USD 500,000,000) as such amount may be converted from time to time through a Currency Conversion ("Loan").
- 2.02. The Front-end Fee is one quarter of one percent (0.25%) of the Loan amount.
- 2.03. The Commitment Charge is one quarter of one percent (0.25%) per annum on the Unwithdrawn Loan Balance.
- 2.04. The interest rate is the Reference Rate plus the Variable Spread or such rate as may apply following a Conversion; subject to Section 3.02(e) of the General Conditions.
- 2.05. The Payment Dates are March 15 and September 15 in each year.
- 2.06. The principal amount of the Loan shall be repaid in accordance with Schedule 2 to this Agreement.
- 2.07. Without limitation upon the provisions of Section 5.05 of the General Conditions, the Borrower shall promptly furnish to the Bank such information relating to the provisions of this Article II as the Bank may, from time to time, reasonably request.

ARTICLE III — PROGRAM

- 3.01. The Borrower declares its commitment to the Program and its implementation. To this end, and further to Section 5.05 of the General Conditions:
- (a) the Borrower and the Bank shall from time to time, at the request of either party, exchange views on the Borrower's macroeconomic policy framework and the progress achieved in carrying out the Program;
 - (b) prior to each such exchange of views, the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request; and
 - (c) without limitation upon paragraph (a) and (b) of this Section, the Borrower shall promptly inform the Bank of any situation that would have the effect of materially reversing the objectives of the Program or any action taken under the Program including any action specified in Section I of Schedule 1 to this Agreement.

ARTICLE IV — REMEDIES OF THE BANK

- 4.01. The Additional Event of Suspension consists of the following, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part of it, will be carried out.
- 4.02. The Additional Event of Acceleration consists of the following, namely, that the event specified in Section 4.01 of this Agreement occurs and is continuing for a period of sixty (60) days after notice of the event has been given by the Bank to the Borrower.

ARTICLE V — EFFECTIVENESS; TERMINATION

- 5.01. The Additional Conditions of Effectiveness consist of the following:
- (a) The Bank is satisfied with the progress achieved by the Borrower in carrying out the Program and with the adequacy of the Borrower's macroeconomic policy framework.
 - (b) The IDA Blend Financing Agreement and the SML Financing Agreement have been executed and delivered and all conditions precedent to their effectiveness or to the right of the Recipient to make withdrawals under them (other than the effectiveness of the IDA Blend Financing Agreement and the SML Financing Agreement) have been fulfilled.
- 5.02. The Effectiveness Deadline is the date sixty (60) days after the Signature Date.

- 5.03. For purposes of Section 9.05 (b) of the General Conditions, the date on which the obligations of the Borrower under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the Signature Date.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

- 6.01. The Borrower's Representative is its cabinet secretary responsible for finance.

- 6.02. For purposes of Section 10.01 of the General Conditions:

- (a) the Borrower's address is:

The National Treasury and Economic Planning
Treasury Building
P.O Box 30007-00100
Nairobi, Kenya; and

- (b) the Borrower's Electronic Address is:

Facsimile: 254 20 330426; 254 20 218475

- 6.03. For purposes of Section 10.01 of the General Conditions:

- (a) the Bank's address is:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America; and

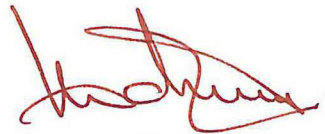
- (b) the Bank's Electronic Address is:

Telex:	Facsimile:
248423(MCI) or 64145(MCI)	(+1)-202-477-6391

AGREED as of the Signature Date.

REPUBLIC OF KENYA

By



Authorized Representative

Name: NGUGUNA NDUNGU

Title: CS

Date: 29-05-2023

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

By



Authorized Representative

Name: KEITH HANSEN

Title: COUNTRY DIRECTOR

Date: MAY 29 2023

SCHEDULE 1

Program Actions; Availability of Loan Proceeds

Section I. Actions under the Program

The actions taken by the Borrower under the Program include the following:

A. Creating Fiscal Space in a Sustainable and Equitable Manner

1. To minimize fiscal burden caused by the power sector, the Energy and Petroleum Regulatory Authority (“EPRA”) issued a tariff order for the next three-year period to ensure that the Kenya Power and Lighting Company (“KPLC”) revenues are sufficient to cover the cost of purchasing power and expanding investments.
2. To broaden the tax base and improve tax administration the Recipient, through the National Treasury and Economic Planning issued: (i) Income Tax (Financial Derivatives) Regulations, 2023; (ii) Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023; and (iii) Excise Duty (Amendment) Regulations, 2023.
3. The Recipient: (i) through its Cabinet, approved and submitted to the Parliament amendments to the Public Finance Management Act which proposes: to align the definition of public debt with the provisions of the Constitution of Kenya; to introduce the concept of a public debt anchor (threshold); and, should such debt anchor be exceeded, to mandate the National Treasury and Economic Planning to submit a written report to Parliament explaining the cause of the breach and provide a time-bound remedial plan towards achieving the debt anchor; and, (ii) through the National Treasury and Economic Planning, issued the Public Finance Management (National Government) (Amendment) Regulations, 2023 to establish a public debt anchor (threshold) at 55% of Gross Domestic Product in present value terms.
4. The Recipient, through its Cabinet: (i) designated the National Safety Net Program (“NSNP”) as a priority budgetary expenditure; and (ii) directed the National Treasury and Economic Planning to prioritize full disbursements to implementing agencies of NSNP in accordance with each cash transfer payment schedule.

B. Improving Competitiveness to Boost Agricultural Exports

5. The Recipient: (i) through its Ministry of Agriculture and Livestock Development, eliminated the outright purchase of publicly-procured cereals from farmers and instead has instituted a policy of holding a physical base stock through warehouse receipts by issuing the National Cereals and Produce Board (National Strategic Reserve) Regulations, 2023; and (ii) through its Cabinet, approved the National Agricultural Soil Management Policy which creates an institutional framework for effective management and enforcement of issues pertaining to agricultural soils and water.
6. To secure and expand access to international markets for Kenyan farmers by facilitating their compliance with importers’ food safety and phytosanitary requirements, the Recipient, through its Cabinet: (i) approved and submitted to Parliament the Food and Feed

Safety Control Coordination Bill, 2023; and (ii) approved the National Phytosanitary Policy, that together help coordinate all government activities in the field of food safety, food quality, and safety systems, as well as regulate compliance with importing countries' phytosanitary and food safety requirements.

C. Improving Governance and Financial Inclusion for Private Sector Driven Development

7. To mitigate risks associated with conflicts of interest, the Recipient, through its Cabinet, approved and submitted to the Parliament the Conflict of Interest Bill, 2023 expanding the scope of public officers and decision-making processes under the purview of the law, and providing a coherent institutional framework for the management of conflict of interest in the discharge of official duties.
8. To streamline the process for the government to exit commercial investments, the Recipient, through its Cabinet, approved and submitted to the Parliament the Privatization Bill, 2023 whose objective is to streamline the regulatory and institutional framework for the privatization of public entities.
9. The Recipient, through its National Climate Change Council, issued the Climate Change (Public Participation and Access to Climate Change Information) Regulations, 2023 to improve access to climate change information by providing detailed guidance on the conduct of mandatory public consultations for any proposed law, policy, and strategy related to government's climate actions.
10. The Recipient, through the National Treasury and Economic Planning, issued the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 to create the Financial Inclusion Fund, which enhances financial inclusion of the under-served segment of the population and small and micro-enterprises in a sustainable manner leveraging market-based mechanisms.

Section II. Availability of Loan Proceeds

- A. **General.** The Borrower may withdraw the proceeds of the Loan in accordance with the provisions of this Section and such additional instructions as the Bank may specify by notice to the Borrower.
- B. **Allocation of Loan Amounts.** The Loan is allocated in a single withdrawal tranche, from which the Borrower may make withdrawals of the Loan proceeds. The allocation of the amounts of the Loan to this end is set out in the table below:

Allocations	Amount of the Loan Allocated (expressed in USD)
(1) Single Withdrawal Tranche	500,000,000
TOTAL AMOUNT	500,000,000

C. Withdrawal Tranche Release Conditions.

No withdrawal shall be made of the Withdrawal Tranche unless the Bank is satisfied: (a) with the Program being carried out by the Borrower; and (b) with the adequacy of the Borrower's macroeconomic policy framework.

D Deposit of Loan Amounts.

1. Notwithstanding the provisions of Section 2.03 of the General Conditions:
 - (a) the Borrower shall open, prior to furnishing to the Bank the request for withdrawal from the Loan Account, and thereafter maintain the following two dedicated accounts on terms and conditions satisfactory to the Bank: (i) a dedicated account in United States Dollars ("Foreign Currency Dedicated Account"); and (ii) a dedicated account in Kenyan Shillings ("Local Currency Dedicated Account"); and
 - (b) all withdrawals from the Loan Account shall be deposited by the Bank into the Foreign Currency Dedicated Account. Upon each deposit of an amount of the Loan into the Foreign Currency Dedicated Account, the Borrower shall deposit an equivalent amount into the Local Currency Dedicated Account.
2. The Borrower, within thirty (30) days after the withdrawal of the Loan from the Loan Account, shall report to the Bank: (a) the exact sum received into the Foreign Currency Dedicated Account; (b) the details of the account to which the Kenyan Shillings equivalent of the Loan proceeds will be credited; (c) the record that an equivalent amount has been accounted for in the Borrower's budget management systems; and (d) the statement of receipts and disbursement of the Foreign Currency Dedicated Account.

E. Audit. Upon the Bank's request, the Borrower shall:

1. have the Dedicated Accounts audited by independent auditors acceptable to the Bank, in accordance with consistently applied auditing standards acceptable to the Bank;
2. furnish to the Bank as soon as available, but in any case, not later than four(4) months after the date of the Bank's request for such audit, a certified copy of the report of such audit, of such scope and in such detail as the Bank shall reasonably request, and make such report publicly available in a timely fashion and in a manner acceptable to the Bank; and
3. furnish to the Bank such other information concerning the Dedicated Accounts and their audit as the Bank shall reasonably request.

F. Closing Date. The Closing Date is June 30, 2025.

SCHEDULE 2

Commitment-Linked Amortization Repayment Schedule

The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date ("Installment Share").

Principal Payment Date	Installment Share
On each March 15 and September 15 Beginning September 15, 2028 Through March 15, 2041	3.7%
On September 15, 2041	3.8%

APPENDIX

Section I. Definitions

1. “Cabinet” means the Recipient’s cabinet as defined in article 152(1) of the Recipient’s Constitution, 2010.
2. “Climate Change Act” means the Recipient’s Law No. 11 of 2016, which provides, *inter alia*, the regulatory framework for enhanced response to climate change, as may be amended from time to time.
3. “Climate Change (Public Participation and Access to Climate Change Information) Regulations, 2023” means the regulations made pursuant to section 24(3) of the Climate Change Act (published under Legal Notice No. 38/2023 dated March 30, 2023), providing for *inter alia*, detailed guidance on the conduct of mandatory public consultations for any proposed law, policy, and strategy related to government’s climate actions.
4. “Conflict of Interest Bill, 2023” means the conflict of interest bill approved by Cabinet on February 28, 2023 and submitted to the Parliament, which makes provision for the management of conflict of interest by public officials in the discharge of their official duties.
5. “Constitution of Kenya” means the Recipient’s constitution of 2010, as may be amended from time to time.
6. “Dedicated Accounts” means both the Foreign Currency Dedicated Account and the Local Currency Dedicated Account.
7. “Energy and Petroleum Regulatory Authority” or “EPRA” means the body established under section 9 of the Energy Act, No. 1 of 2019, Laws of Kenya.
8. “Excise Duty (Amendment) Regulations, 2023” means the regulations made by the Cabinet Secretary the National Treasury and Economic Planning pursuant to section 45 of the Excise Duty Act (No. 23 of 2015) and published under Legal Notice No. 40/ 2023 (dated March 21, 2023), providing for, *inter alia*, the importation of excisable goods.
9. “Foreign Currency Dedicated Account” means the account referred to in Part D.1(a) of Section II of Schedule 1 to this Agreement.
10. “General Conditions” means the “International Bank for Reconstruction and Development General Conditions for IBRD Financing, Development Policy Financing”, dated December 14, 2018 (revised on August 1, 2020, December 21, 2020, April 1, 2021, and January 1, 2022).
11. “IDA Blend Financing Agreement” means the legal agreement through which the Association agrees to extend to the Recipient a credit in the amount of one hundred eighty-five million Dollars (USD 185,000,000) (credit number 7322-KE) to finance the Program.

12. "Income Tax (Financial Derivatives) Regulations, 2023" means the regulations made by the Cabinet Secretary, National Treasury and Economic Planning pursuant to section 9(4) of the Income Tax Act (published on Legal Notice No.4/ 2023 dated January 27, 2023), providing for additional guidance on the taxation of gains accruing to non-resident persons without a permanent establishment in Kenya from financial derivative contracts.
13. "Kenya Power and Lighting Company" or "KPLC" means the Kenya Power & Lighting Company PLC, the public company domiciled in the Republic of Kenya and with the Government of Kenya as its principal shareholder, whose business is the transmission, distribution and retail of electricity.
14. "Kenyan Shillings" means the Recipient's local currency.
15. "Local Currency Dedicated Account" means the account referred to in PartD.1(a)ii of Section II of Schedule 1 to this Agreement.
16. "Ministry of Agriculture and Livestock Development" means the Recipient's ministry responsible for agriculture (as described in the Recipient's Executive Order No. 1 of 2023) and its successor thereto.
17. "National Agricultural Soil Management Policy" means the Recipient's policy approved by Cabinet on March 21, 2023, aimed at raising the awareness about the services that soils provide to society with a view to instigating a process by which key stakeholders will work together to achieve better soil protection.
18. "National Cereals and Produce Board (National Strategic Reserve) Regulations, 2023" means the regulations made pursuant to section 30 of National Cereals and Produce Board Act, 1985 (Chapter 338 of the laws of Kenya) and the published on Legal Notice no. 25/ 2023 dated March 13, 2023, providing for, inter alia, the management of national strategic food reserve.
19. "National Climate Change Council" means the council established pursuant to section 5 of the Climate Change Act.
20. "National Phytosanitary Policy" means the Recipient's national phytosanitary policy approved by Cabinet on March 21, 2023, providing a road map for the creation of an enabling environment for the protection of Kenya's plant resources, and an effective phytosanitary system and frameworks to facilitate fair and safe competitive international trade.
21. "National Safety Net Program" or "NSNP" means the Recipient's social protection program established in September 2013 as part of the Recipient's initiatives to improve and enhance social protection delivery in Kenya.
22. "National Treasury and Economic Planning" means the Recipient's ministry responsible for finance and any successor thereto.
23. "Parliament" means the Recipient's legislative arm of government.

24. “Privatization Bill, 2023” means the bill approved by Cabinet on March 21, 2023, and submitted to Parliament, providing for, inter alia, the regulatory and institutional framework for privatization of public entities.
25. “Program” means the program of objectives, policies, and actions set forth or referred to in the letter dated April 6, 2023 from the Republic of Kenya to the Association and the Bank declaring the Republic of Kenya’s commitment to the execution of the Program, and requesting assistance from the Association and the Bank in support of the Program during its execution and comprising actions taken, including those set forth in Section I of Schedule 1 to this Agreement, and actions to be taken consistent with the program’s objectives.
26. “Public Finance Management Act” means the Recipient’s Law No. 18 of 2012, providing for the management of public finances at both the national and the county levels of government in accordance with the principles set out in the Recipient’s constitution, as may be amended from time to time.
27. “Public Finance Management (Financial Inclusion Fund) Regulations, 2022” means the regulations made pursuant to section 24(4) of Public Finance Management Act (published under Legal Notice No. 213/2022 dated November 23, 2022), providing for, inter alia, the establishment of the Financial Inclusion Fund.
28. “Public Finance Management (National Government) (Amendment) Regulations, 2023” means the regulations made by the Cabinet Secretary for the National Treasury and Economic Planning pursuant to section 205 of the Public Finance Management Act, providing for the level of public debt to be maintained.
29. “Recipient” means the Republic of Kenya.
30. “Signature Date” means the later of the two dates on which the Borrower and the Bank signed this Agreement and such definition applies to all references to “the date of the Loan Agreement” in the General Conditions.
31. “Single Withdrawal Tranche” means the amount of the Financing allocated to the category entitled “Single Withdrawal Tranche” in the table set forth in Part B of Section II of Schedule 1 to this Agreement.
32. “SML Financing Agreement” means the legal agreement through which the Association agrees to extend to the Recipient a credit in the amount of three hundred and fifteen million Dollars (USD315,000,000) (credit number 7323-KE) to finance the Program.
33. “Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023” means the regulations made pursuant to section 67 of the Value Added Tax Act (No. 35 of 2013) and published under Legal Notice No 29/ 2023 dated March 21, 2023, providing for value added tax on taxable services supplied in Kenya through digital marketplace.