Financing Agreement

(Telecommunication and ICT Development Project)

between

REPUBLIC OF KIRIBATI

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated September 26, 2012
FINANCING AGREEMENT

AGREEMENT dated September 26, 2012, entered into between REPUBLIC OF KIRIBATI ("Recipient") and INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association"). The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.

1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to seven hundred thousand Special Drawing Rights (SDR700,000) ("Financing") to assist in financing the project described in Schedule 1 to this Agreement ("Project").

2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement. The Recipient's Representative for purposes of taking any action required or permitted to be taken pursuant to this Section is its Minister of Finance and Economic Development, its Secretary of Communications, Transport and Tourism Development or the ICT Project Manager.

2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.

2.04. The Payment Dates are January 15 and July 15 in each year.

2.05. The Payment Currency is Dollars.
ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objective of the Project and the Program. To this end, the Recipient shall carry out Components 1, 3 (a) and 4 of the Project through MCTTD and MFED and cause Components 2 and 3(b) of the Project to be carried out by the Project Implementing Entity in accordance with the provisions of Article IV of the General Conditions and the Project Agreement.

3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

4.01. The Additional Events of Suspension consist of the following:

(a) The Project Implementing Entity’s Legislation has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Project Implementing Entity to perform any of its obligations under the Project Agreement.

(b) The Program has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Recipient or Project Implementing Entity to perform any of their obligations under this Agreement or the Project Agreement.

(c) The Co-financing Agreement has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Recipient or Project Implementing Entity to perform any of their obligations under this Agreement or the Project Agreement.

4.02. The Additional Event of Acceleration consists of the following, namely that any of the events specified in paragraphs (a) and (b) of Section 4.01 of this Agreement occurs and is continuing for a period of ninety (90) days after notice of the event has been given by the Association to the Recipient.
ARTICLE V — EFFECTIVENESS; TERMINATION

5.01. The Additional Condition of Effectiveness consists of the following, namely that the Subsidiary Agreement has been executed on behalf of the Recipient and the Project Implementing Entity.

5.02. The Additional Legal Matter consists of the following, namely that the Subsidiary Agreement has been duly authorized or ratified by the Recipient and the Project Implementing Entity and is legally binding upon the Recipient and the Project Implementing Entity in accordance with its terms.

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

5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. Except as provided in Section 2.02 of this Agreement, the Recipient’s Representative is its Minister of Finance and Economic Development.

6.02. The Recipient’s Address is:

Ministry of Finance and Economic Development
P.O. Box 67, Bairiki, Tarawa
Republic of Kiribati

Facsimile:
686 21307

6.03. The Association’s Address is:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America
Cable: INDEVAS
Telex: 248423 (MCI)
Facsimile: 1-202-477-6391
Washington, D.C.

AGREED at Tarawa, Kiribati, as of the day and year first above written.

REPUBLIC OF KIRIBATI

By

Authorized Representative

Name: TOM MURDOCH
Title: HON. MPED

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: ULRICH ZACHAU
Title: Country Director, Deputy Director, Strategy & Operations
SCHEDULE I

Project Description

The objective of the Project is to strengthen the legal, regulatory and institutional environment enabling a market-driven telecommunications sector, and facilitating improved connectivity for the Outer Islands in the Recipient’s territory.

The Project consists of the following components:

Component 1: Policy and Legal Support to MCTTD

Support MCTTD to carry out:

(a) an ICT policy review and coordination including: (i) coordinating and updating sector policy in line with industry developments and Recipient’s objectives, such as second-generation reforms and application of ICT in other sectors and monitoring ICT sector development; and (ii) leading the Recipient’s work on international agreements related to telecommunications;

(b) a TSKL restructuring in coordination with MFED, MCTTD and TSKL thereunder identifying and implementing options for restructuring, such as equity investment, strategic partnership or privatization through specialized legal, transactional and financial technical assistance; and

(c) a legal and regulatory review work through technical assistance for legislative and regulatory reforms, drafting and general legal advice, including specialized legal support to the Recipient’s Office of the Attorney General.

Component 2: ICT Regulatory Support to TAK

Support TAK to carry out:

(a) an analysis, in coordination with MCTTD, of conditions for new market entry including the design and conduct of a selection process for new telecommunications service provider(s) that will permit other operator(s) to offer telecommunication services;

(b) an improved general regulatory role through technical assistance and capacity-building in order to regulate a competitive market with multiple operators, consistent with the new legal and regulatory framework; and
(c) an improved technical management through technical assistance and capacity-building in order to develop a spectrum management and monitoring system through the acquisition of special equipment and software and the implementation of a training program for TAK staff at external training institutions, under a comprehensive and prioritized training plan.

**Component 3: Outer Islands Connectivity**

(a) Support MCTTD through technical assistance, to carry out: (i) the development of an appropriate Outer Islands connectivity policy and strategy (the Outer Islands Connectivity Policy and Strategy), including technical and financial feasibility analysis, and stakeholder consultations; (ii) the identification, analysis and evaluation of possible coverage and services extension offerings (such as voice, data, broadband, backbone infrastructure, or access facilities), least cost subsidy and financing and risk-sharing mechanism; (iii) the development of the necessary regulatory instruments, instructions and practical procedures to implement Outer Islands coverage and services extensions; (iv) the preparation of documentation for the selection process for identifying and contracting with an operator for the supply of specified services, and ongoing monitoring and audit of the service being subsidised (as referred to in subparagraph (b) below), possibly including specialised equipment and software; and (v) the community reach-out and training programs to encourage take-up; and

(b) Support TAK to implement and monitor an output-based least cost subsidy initiative for Outer Islands connectivity based on the outputs of Component 3(a) by subsidising Outer Islands communications services provision, to be bid openly, competitively and on a technologically neutral basis to the private sector; said subsidies to be calculated based on the extent of commercial rollout and connectivity gaps, the identification of Outer Islands Subprojects that warrant subsidization, and the types of services (such as mobile voice, data, improved access for essential services, including health and/or education, etc.) prioritized by the Recipient and said monitoring to include audits on compliance with all output-based obligations.

**Component 4: Project Management**

Support MCTTD and MFED to carry out effective and efficient Project management and monitoring through technical assistance, equipment and the financing of incremental operating costs and Project audits.
SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements.

1. The Recipient shall:

   (a) maintain throughout the period of Project implementation, the Steering Committee to provide overall policy guidance and strategic direction for Project implementation with terms of reference and membership acceptable to the Association as further detailed in the Project Operations Manual;

   (b) not later than three (3) months after the Effective Date (or any later date as shall be notified by the Association to the Recipient) establish, and thereafter maintain throughout the period of Project implementation, the Project Management Unit within MFED to administer and coordinate the implementation of the Project, said structure to be endowed with powers, and key staffing (including a manager for the Project Management Unit, a Project management advisor, a procurement officer, a financial management specialist and a procurement advisor, all with terms of reference, experience and qualifications acceptable to the Association) as further set forth in the Project Operations Manual;

   (c) not later than three (3) months after the Effective Date (or any later date as shall be notified by the Association to the Recipient) establish, and thereafter maintain throughout the period of Project implementation, the ICT Project Support Team within MCTTD to administer and coordinate the technical administrative requirements of the Project, said structure to be endowed with powers, and staffing (including an ICT Project Manager with terms of reference, experience and qualifications acceptable to the Association) as further set forth in the Project Operations Manual.

B. Subsidiary Agreement

1. To facilitate the carrying out of the Project Implementing Entity’s Respective Parts of the Project, the Recipient shall make part of the proceeds of the Financing available to the Project Implementing Entity under a subsidiary agreement (the Subsidiary Agreement) between the Recipient and the Project Implementing Entity, under terms and conditions approved by the Association.

2. The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall
otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreement or any of its provisions. In case of any conflict between the terms of the Subsidiary Agreement and the terms of the Financing Agreement or the Project Agreement, the terms of the Financing Agreement and the Project Agreement shall prevail.

C. Anti-Corruption

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

D. Subsidies for Outer Islands Connectivity

The Recipient shall cause the Project Implementing Entity to provide Subsidies to Providers under Subsidy Agreements for Outer Islands Connectivity Subprojects as set out under Component 3(b) of the Project and in accordance with eligibility criteria and procedures acceptable to the Association, as further detailed in the Outer Islands Connectivity Policy and Strategy, in the Project Operations Manual and in the Project Agreement.

E. Project Operations Manual and Safeguard Documents

1. The Recipient shall, not later than three (3) months after the Effective Date adopt, and thereafter maintain throughout the period of Project implementation the Project Operations Manual (including the Safeguard Documents) in form and substance satisfactory to the Association.

2. carry out the Project or cause the Project to be carried out in accordance with the Project Operations Manual and the Safeguard Documents.

3. The Recipient shall ensure that all plans prepared in accordance with the Safeguard Documents are carried out in accordance with their terms.

4. The Recipient shall not amend the Project Operations Manual or the Safeguard Documents without the prior written approval of the Association. In case of conflict between the terms of the Project Operations Manual or those of the Safeguard Documents and the terms of this Agreement, the terms of this Agreement shall prevail.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General
Conditions and on the basis of indicators set forth in the Project Operations Manual. Each Project Report shall cover the period of one calendar semester, and shall be furnished to the Association not later than forty five days after the end of the period covered by such report.

B. Financial Management, Financial Reports and Audits

1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.

2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association not later than forty five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.

3. The Recipient shall have the Project Financial Statements audited in accordance with the provisions of Section 4.09(b) of the General Conditions. Each audit of the Project Financial Statements shall cover the period of one (1) fiscal year of the Recipient, commencing with the fiscal year in which the first withdrawal was made under the Preparation Advance for the Project. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

Section III. Procurement

A. General

1. Goods, Works and Non-consulting Services. All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.

2. Consultants’ Services. All consultants’ services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.

3. Definitions. The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.
B. Particular Methods of Procurement of Goods, Works and Non-consulting Services

1. International Competitive Bidding. Except as otherwise provided in paragraph 2 below, goods, works and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.

2. Other Methods of Procurement of Goods, Works and Non-consulting Services. The following method, other than International Competitive Bidding, may be used for procurement of goods, works and non-consulting services for those contracts specified in the Procurement Plan, namely: (a) Shopping; (b) Direct Contracting; and (c) Performance Based Procurement under International Competitive Bidding, in accordance with procedures set forth in paragraphs 3.16 and 3.17 of the Procurement Guidelines.

C. Particular Methods of Procurement of Consultants’ Services

1. Quality- and Cost-based Selection. Except as otherwise provided in paragraph 2 below, consultants’ services shall be procured under contracts awarded on the basis of Quality and Cost-based Selection.

2. Other Methods of Procurement of Consultants’ Services. The following methods, other than Quality- and Cost-based Selection, may be used for procurement of consultants’ services for those contracts which are specified in the Procurement Plan: (a) Quality-based Selection; (b) Selection under a Fixed Budget; (c) Least Cost Selection; (d) Selection based on Consultants’ Qualifications; (e) Single-source Selection of consulting firms; and (f) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants.

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association’s Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the Association and as made applicable to
this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.

2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing ("Category"), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Financing Allocated (expressed in SDR)</th>
<th>Percentage of Expenditures to be Financed (inclusive of Taxes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Goods, works, non-consulting services, consultants' services, Incremental Operating Costs and Training for the Project</td>
<td>500,000</td>
<td>100%</td>
</tr>
<tr>
<td>(2) Subsidies under Component 3(b) of the Project</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL AMOUNT</strong></td>
<td><strong>700,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

B. **Withdrawal Conditions; Withdrawal Period**

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made:

   (a) for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed SDR 140,000 may be made for payments made prior to this date but on or after twelve (12) months prior to the date of this Agreement, for Eligible Expenditures under Category (1); or

   (b) under Category (2), until and unless the Outer Islands Connectivity Policy and Strategy (referred to in Component 3(a) of the Project) has been adopted by the Recipient, in form and substance satisfactory to the Association.

2. The Closing Date is June 30, 2017.
Section V. **Other Undertakings**

The Recipient, through MTED shall, by February 28, 2015, or such other date as the Association and the Recipient shall agree upon: (i) carry out jointly with the Association, a mid-term review of the implementation of operations under the Project, which shall cover the progress achieved in the implementation of the Project; and (ii) following such mid-term review, act promptly and diligently to take any corrective action as shall be recommended by and agreed with the Association.
APPENDIX

Section I. Definitions


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

3. "Code of Practice" means the document dated February 14, 2012 prepared by the Recipient and published and available to the public on the World Bank’s Infoshop website: http://infoshop.worldbank.org/ on February 24, 2012 with outlines general implementation procedures, mitigation measures and practices for the constructions to be carried out under the Project, as said code may be amended from time to time with the Association’s prior written approval.

4. "Co-financier" means the Multi-Donor Trust Fund for Pacific Region Infrastructure Facility (PRIF).

5. "Co-financing" means, for purposes of paragraph 11 of the Appendix to the General Conditions, an amount equivalent to US$4,100,000, to be provided by the Co-financier to assist in financing the Project.

6. "Co-financing Agreement" means the agreement entered into on January 20, 2012 between the Recipient and the World Bank acting as administrator for the PRIF Multi-Donor Trust Fund providing for the Co-financing, as amended from time to time.

7. "Compensation Framework" means the document dated February 14, 2012, prepared by the Recipient and published and available to the public on the World Bank’s Infoshop website: http://infoshop.worldbank.org/ on February 24, 2012, which outlines general implementation procedures, mitigation measures and monitoring procedures for involuntary resettlement purposes under the Project, as said framework may be amended from time to time with the Association’s prior approval.


10. “ICT” means information and communication technologies.

11. “ICT Project Manager” means the project manager heading the ICT Project Support Team in MCTTD.

12. “ICT Project Support Team” means the unit to be established by the Recipient within the administrative structure of MCTTD to administer and coordinate the technical administrative requirements of the Project.


15. “Non-Consulting Services” means the reasonable cost of services for which the physical aspects predominate and are bid and contracted on the basis of performance of measurable physical outputs that include but are not limited to media, communication, and ICT services for the Project.

16. “Operating Costs” means the recurrent operating costs of the Project incurred by the Recipient or the Project Implementing Entity on account of Project implementation, monitoring, evaluation, coordination and supervision, as approved by the Association based on annual budgets acceptable to the Association, which would not have been incurred but for the Project, including: (i) operation and maintenance of vehicle, repairs, fuel, and spare parts; (ii) equipment and computer maintenance, including hardware and software; (iii) communication costs and shipment costs (whenever these costs are not included in the cost of goods); (iv) office supplies and equipment; (v) rent for office facilities; (vi) utilities and insurances; (vii) travel and per diem costs for technical staff carrying out training, supervisory, data collection and quality control activities; (viii) bank charges and fees; and (ix) salaries of local Project administrative staff but excluding salaries of the Recipient’s civil servants.

17. “Outer Islands” means the Recipient’s islands outside South Tarawa and Kiritimati.

18. “Outer Islands Connectivity Subproject” means an investment eligible for Subsidy under Component 3(b) pursuant to criteria established in the Outer Islands Connectivity Policy and Strategy mentioned under Component 3(a) and in the Project Operations Manual.
19. "Outer Islands Connectivity Policy and Strategy" means a strategy to be adopted by the Recipient in form and substance satisfactory to the Association as referred to in Component 3(a) of the Project and to be published on the websites: [www.mettd.gov.ki and www.tak.gov.ki]


21. "Procurement Plan" means the Recipient’s procurement plan for the Project, dated May 7, 2012 and referred to in paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

22. "Program" means the Recipient’s ICT sector policy ("Kiribati: National ICT Policy – phase 1 reforms") adopted by the Recipient’s Cabinet in February 2011 (Extract of Cabinet Minute: No. 10/11 dated April 1, 2011) and designed to carry out reform in the sector of information and communication technologies.

23. "Project Agreement" means the agreement of same date herewith between the Association and the Project Implementing Entity.

24. "Project Implementing Entity" means the Telecommunications Authority of Kiribati (TAK.).


26. "Project Management Unit" means the unit established by the Recipient within the administrative structure of MFED to administer and coordinate the implementation of the Project.

27. "Project Operations Manual" means a manual to be adopted by the Recipient and the Project Implementing Entity, found satisfactory to the Association and which shall contain, inter alia: (i) the terms of reference, functions and responsibilities for the personnel of the Steering Committee, the Project Management Unit and the ICT Project Support Team; (ii) the criteria, detailed rules and procedures for the selection and financing of the Outer Islands Connectivity Initiatives (as further detailed in the Outer Islands Connectivity Policy and Strategy); (iii) the procedures for procurement of goods, works, non-consulting services, consultants’ services, Training and Operating Costs, as well as for financial management and audits under the Project; (iv) the indicators to be used in the monitoring and evaluation of the Project; (v) flow and disbursement arrangements of Project funds; (vi) the model form for the Subsidy Agreements;
(vii) the Procurement Plan; and (viii) the Safeguard Documents, as said manual may be amended from time to time with the Association’s prior written approval.

28. “Provider” or “Providers” means a private telecommunication provider, established and operating on the Recipient’s territory whose Outer Islands Connectivity Subproject meets selection criteria established in the Outer Islands Connectivity Policy and Strategy and in the Project Operations Manual and who has or have received, or is or are to receive a Subsidy under Component 3(b) of the Project.


30. “Steering Committee” means the Recipient’s National Infrastructure Steering Committee, as established and operating under the Cabinet Meeting No.60/10 dated October 13, 2010 referred to in Section I.A.1(a) of Schedule 2 to this Agreement and in charge of providing overall policy guidance and strategic direction for Project implementation, as further detailed in the Project Operations Manual.

31. “Subsidy” or “Subsidies” means a grant (or grants) made or proposed to be made under Component 3(b) to a Provider for the financing of works, equipments and non-consulting services and consultants’ services for of an Outer Islands Connectivity Subproject.

32. “Subsidy Agreement” means an agreement referred to in Section I.D of Schedule 2 to this Agreement and in Section I.C of the Schedule to the Project Agreement to be signed between a Provider and the Project Implementing Entity for the financing of an Outer Islands Connectivity Subproject.

33. “Subsidiary Agreement” means the agreement referred to in Section I.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the Project Implementing Entity.

34. “Training” means, in relation to the Project: (a) reasonable travel, room, board and per diem expenditures as incurred by trainers and trainees in connection with their training and by non-consultant training facilitators; (b) course fees; (c) training facility rentals; and (d) training material preparation, acquisition, reproduction and distribution expenses, in each case as approved by the Association based on annual budgets acceptable to the Association.

35. “TSKL” means Telecom Services Kiribati Limited, the Recipient’s telecom services company established and operating under the Recipient’s Company Ordinance No. CAP 10A, dated 1979, as amended.