

CREDIT NUMBER 3958 KE

Development Credit Agreement

(Energy Sector Recovery Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated

, 2004

CREDIT NUMBER 3958 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated _____, 2004, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested the Association to assist in the financing of the Project;

(B) the Borrower intends to contract from the European Investment Bank (EIB) a loan (the EIB Loan) in an amount of approximately sixty two million Euro (□ 62,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the EIB Loan Agreement) to be entered into between the Borrower and EIB;

(C) the Borrower intends to contract from Agence Francaise de Developpement (AFD) a loan (the AFD Loan) in an amount of approximately twenty million Euro (□20,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the AFD Loan Agreement) to be entered into between the Borrower and AFD;

(D) the Borrower intends to contract from the Nordic Development Fund (NDF) a loan (the NDF Loan) in an amount of approximately ten million Euro (□ 10,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the NDF Loan Agreement) to be entered into between the Borrower and NDF;

(E) Parts A.4 (b), B.1 (a), B.1 (c), B.2, B.6, B.7, B.8, B.9 and C of the Project will be carried out by the Kenya Electricity Generating Company (KenGen), and Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project will be carried out by the Kenya Power and Lighting Company (KPLC), all with the Borrower's assistance and, as part of such assistance, the Borrower will make a portion of the proceeds of the Credit provided for in Article II of this Agreement (the Credit) available to KenGen and KPLC, as set forth in this Agreement; and

WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement, in the KenGen Project Agreement of even date herewith between the Association and KenGen, and KPLC Project Agreement of even date herewith between the Association and KPLC;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through May 1, 2004) (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. 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) “Affected Persons” means persons who, on account of the execution of Parts of the Project referred to in Part D of Schedule 2 to this Agreement, had or would have their: (i) standard of living adversely affected; or (ii) right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently; (iii) access to productive assets adversely affected, temporarily or permanently; or (iv) business, occupation, work or place of residence or habitat adversely affected; and “Affected Person” means any of the Affected Persons;

(b) “Co-lenders Loan Agreements” means the EIB Loan Agreement, AFD Loan Agreement and NDF Loan Agreement referred to in Recitals B, C and D of this Agreement, and in its singular form the term means any one of such Agreements;

(c) “Development Credit Agreement” means this Agreement;

(d) “Eligible Categories” means Categories (1), (2), (3) and (4) set forth in the table in Paragraph 1 of Schedule 1 to this Agreement;

(e) “Eligible Expenditures” means expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the Eligible Categories in accordance with the provisions of Schedule 1 to this Agreement;

(f) “ESIA” means the Environmental and Social Impact Assessment to be carried out by the KenGen for Part C of the Project, by the KPLC for Parts D.1 and D.2 of the Project, and referred to in Section III.1 (a) (i) of Schedule 4 to this Agreement, and for Part B.1 (d) by the MOE;

(g) “EMP” means the Environmental Management Plan referred to in Section III.1 (a) of Schedule 4 to this Agreement;

(h) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

(i) “FY” means the Fiscal Year of the Borrower commencing July 1 of each calendar year and ending on June 30 of the following calendar year;

(j) “Initial Deposit” means the deposit referred to in Section 2.03 (b) of the Project Agreements;

(k) “KenGen” Kenya Electricity Generating Company Limited, a limited liability company incorporated and operating under the laws of the Borrower, which is responsible for generation of electricity;

(l) “KenGen Project Account” means the account opened by KenGen pursuant to Section 2.03 (a) of the KenGen Project Agreement;

(m) “KenGen Project Agreement” means the agreement between the Association and KenGen of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(n) “KenGen Subsidiary Loan” means the proceeds of the Credit lent to KenGen under the KenGen Subsidiary Loan Agreement (as hereinafter defined);

(o) “KenGen Subsidiary Loan Agreement” means the agreement to be entered into between the Borrower and KenGen pursuant to Section 3.01 (c) (i) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to said Subsidiary Loan Agreement;

(p) “KPLC” means the Kenya Power and Lighting Company Limited, a limited liability company incorporated and operating under the laws of the Borrower, which is responsible for transmission and distribution of electricity;

(q) “KPLC Project Account” means the account opened by KPLC pursuant to Section 2.03 (a) of the KPLC Project Agreement;

(r) “KPLC Project Agreement” means the agreement between the Association and KPLC of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the said Project Agreement;

(s) “KPLC Subsidiary Loan” means the proceeds of the Credit re-lent to KPLC under the KPLC Subsidiary Loan Agreement (as hereinafter defined);

(t) “KPLC Subsidiary Loan Agreement” means the agreement to be entered into between the Borrower and KPLC pursuant to Section 3.01 (c) (ii) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement;

(u) "MOE" means the Ministry of Energy of the Borrower acting as the PEA (as hereinafter defined) for the Borrower;

(v) "Project Account" means each of the accounts referred to in Section 2.03 (a) of each Project Agreement, and in its plural form the term means, collectively, all such Accounts;

(w) "Project Agreement" means either the KenGen Project Agreement or the KPLC Project Agreement as the context may require;

(x) "Project Agreements" means, collectively, the KenGen Project Agreement and KPLC Project Agreement;

(y) "Project Coordination Team" and "PCT" mean a committee comprising the PIT (as hereinafter defined) Heads and referred to in Paragraph 1 (a) of Schedule 4 to this Agreement;

(z) "Project Executing Agencies" and "PEAs" means MoE, KenGen and KPLC, and in its singular form the term means any one of such Agencies;

(aa) "PIT" means the Project Implementation Team of a Project Executing Agency, and "PITs" means, collectively, the Project Implementation Teams of MOE, KenGen and KPLC;

(bb) "Procurement Plan" means the Borrower's procurement plan, dated May 28, 2004 covering the initial 18 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding 18 month periods of Project implementation or the remaining period if shorter than 18 months;

(cc) "RAP" means the Resettlement Action Plans prepared by KPLC on the basis of the RPF (as hereinafter defined) furnished to the Association and referred to in Paragraph (e) of Schedule 4 to this Agreement and section 2.06 (b) of the KPLC Project Agreement;

(dd) "RPF" means Resettlement Policy Framework dated April 2004 prepared by the Borrower for compensation payments to be made under the Project to Affected Persons and referred to in Section III.1 (a)(ii) of Schedule 4 to this Agreement;

(ee) "Special Account A" means the Special Account for the MOE of the Borrower and referred to in Part B of Schedule 1 of this Agreement;

(ff) "Special Account B" means the Special Account for KenGen and referred to in Part B of Schedule 1 of this Agreement;

(gg) “Special Account C” means the Special Account for KPLC and referred to in Part B of Schedule 1 of this Agreement;

(hh) “Special Accounts” means Special Accounts A, B and C referred to in Part B of Schedule 1 of this Agreement, and in its singular form the term means any one of such Accounts; and

(ii) “Subsidiary Loan Agreements” means, collectively, the “KenGen Subsidiary Loan Agreement” and the “KPLC Subsidiary Loan Agreement” referred to in Section 3.01 (c) (i) and (ii) of this Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to fifty five million two hundred thousand Special Drawing Rights (SDR 55,200,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of works, goods and services required for the Project and to be financed out of the proceeds of the Credit.

Section 2.03. The Closing Date shall be March 31, 2010 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for

the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may, from time to time, be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on June 1 and December 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each June 1 and December 1 commencing December 1, 2014 and ending June 1, 2044. Each installment to and including the installment payable on June 1, 2024 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by:

- (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and
- (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such

revision shall not change the Credit element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end:

- (i) shall carry out Parts A.2, A.3, A.4 (a), B.1 (d) B.4 and B.11 of the Project as set forth in Schedule 2 to this Agreement through MOE with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project; and
- (ii) without limitation or restriction to any of its other obligations under the Development Credit Agreement, the Borrower shall: (A) cause the KenGen to carry out Parts A.4 (b), B.1 (a), B.1 (c), B.2, B.6, B.7, B.8, B.9 and C of the Project as set forth in Schedule 2 to this Agreement; and (B) cause the KPLC to carry out Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project as set forth in Schedule 2 to this Agreement, with due diligence and efficiency and in conformity with appropriate administrative, financial, public utility and environmental practices, and to perform in accordance with the provisions of their respective Project Agreement all their obligations therein set forth, take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KenGen and KPLC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall, and shall cause KenGen and KPLC to, carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement and the provisions of their respective Project Agreement.

(c) For the purpose of carrying out of:

- (i) Parts A.4 (b), B.1 (a), B.1 (c), B.2, B.6, B.7, B.8, B.9 and C of the Project as set forth in Schedule 2 to this Agreement, the Borrower shall re-lend to the KenGen the proceeds of the Credit allocated from time to time to Categories 1 (a), 3 (e) and 4 (d) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, under a subsidiary loan agreement to be entered into between the Borrower and the KenGen, under terms and conditions which shall have been approved by the Association, which shall include, *inter alia*: (i) an interest rate of four and one half percent (4.5%) per annum, (ii) the principal amount of the KenGen Subsidiary Loan to be repaid in twenty (20) years, including a grace period of five (5) years, and (iii) the principal amount of the KenGen Subsidiary Loan repayable by KenGen, being the equivalent in Dollars of the currency or currencies withdrawn from the Credit Account in respect of the above-mentioned Categories, such equivalent to be determined as of the date or respective dates of repayment;
- (ii) Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project as set forth in Schedule 2 to this Agreement, the Borrower shall re-lend to KPLC the proceeds of the Credit allocated from time to time to Categories 1 (b), 2 (b), 3 (a), 3 (d) and 4 (e) of the table set forth in paragraph 1 of Schedule 1 to this Agreement, under a subsidiary loan agreement to be entered into between the Borrower and KPLC, under terms and conditions which shall have been approved by the Association, which shall include, *inter alia*: (i) an interest rate of four and one half percent (4.5%) per annum, (ii) the principal amount of the KPLC Subsidiary Loan to be repaid in twenty (20) years, including a grace period of five (5) years, and (iii) the principal amount of the KPLC Subsidiary Loan repayable by KPLC, being the equivalent in dollars of the currency or currencies withdrawn from the Credit Account in respect of the above-mentioned Categories, such equivalent to be determined as of the date or respective dates of repayment; and

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

Section 3.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement, as the said provisions may be further elaborated in the Procurement Plan dated May, 2004.

(b) The Borrower shall update the Procurement Plan in accordance with terms of reference acceptable to the Association, and furnish such update to the Association not later than twelve (12) months after the date of the preceding Procurement Plan, for the Association's approval.

Section 3.03. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare or cause to be prepared, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on the said plan.

Section 3.04. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of Parts A.4 (b), B.1 (a), B.1 (c), B.2, B.6, B.7, B.8, B.9 and C of the Project as set forth in Schedule 2 to this Agreement shall be carried out by the KenGen pursuant to Section 2.03 of the KenGen Project Agreement, and in respect of Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project as set forth in Schedule 2 to this Agreement shall be carried out by the KPLC pursuant to Section 2.03 of the KPLC Project Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall establish and maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association,

adequate to reflect the operations, resources and expenditures related to Parts A.2, A.3, A.4 (a), B.1 (d) and B.4 of the Project as set forth in Schedule 2 to this Agreement.

(b) The Borrower shall:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) retain, until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in Sections V and VI of Schedule 4 to this Agreement, the Borrower shall prepare and furnish to the Association a financial monitoring report, in form and substance satisfactory to the Association, which:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

(a) KenGen shall have failed to perform any of its obligations under the KenGen Project Agreement.

(b) KPLC shall have failed to perform any of its obligations under the KPLC Project Agreement.

(c) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that KenGen or KPLC will be able to perform its obligations under the Project Agreement.

(d) The Memorandum of Articles of Association of KenGen shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KenGen to perform any of its obligations under the KenGen Project Agreement.

(e) The Memorandum of Articles of Association of KPLC shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and

adversely the ability of KPLC to perform any of its obligations under the KPLC Project Agreement.

(f) The Co-lenders Loan Agreements shall have failed to become effective by the Effective Date of this Agreement, or such later date as the Association may agree; provided, however, that the provisions of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

- (g) (i) Subject to subparagraph (ii) of this paragraph: (A) the right of the Borrower to withdraw the proceeds of any loan made to the Borrower for the financing of the Project shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of any Co-lenders Loan Agreement; or (B) any such loan shall have become due and payable prior to the agreed maturity thereof.
- (ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that: (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01(h) of the General Conditions, the following additional event is specified, namely, that any events specified in paragraphs (a), (b), (c) and (d) of Section 5.01 of this Agreement shall occur and shall continue for a period of 60 days after notice thereof shall have been given by the Association to the Borrower.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

- (a) that the KenGen Subsidiary Loan Agreement has been executed on behalf of the Borrower and KenGen;

(b) the KPLC Subsidiary Loan Agreement has been executed on behalf of the Borrower and KPLC;

(c) all arrears of the Ministries and Departments of the Borrower outstanding as of May 31, 2004 to KPLC, on account of electricity consumption, shall have been paid;

(d) an Engineering Advisor and a Project Coordinator for MOE shall have been selected;

(e) Project Accounts shall have been opened and credited with the Initial Deposit of each such Account; and

(f) Special Accounts referred to in Part B of Schedule 1 of this Agreement shall have been opened.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the KenGen Project Agreement has been duly authorized or ratified by KenGen, and is legally binding upon KenGen in accordance with its terms;

(b) that the KenGen Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KenGen and is legally binding upon the Borrower and KenGen in accordance with its terms;

(c) that the KPLC Project Agreement has been duly authorized or ratified by KPLC, and is legally binding upon KPLC in accordance with its terms; and

(d) that the KPLC Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KPLC and is legally binding upon the Borrower and KPLC in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02 The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

The Minister for Finance
Ministry of Finance
P.O. Box 30007
Nairobi, Kenya

Cable address:	Facsimile:
FINANCE	254 2 240045
NAIROBI	254 2 219365

For the Association:

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

Cable address:	Telex:	Facsimile:
INDEVAS	248423 (MCI)	(202) 477-6391
Washington, D.C.	64145 (MCI)	

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Nairobi, Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Schedule 1

Withdrawal of the Proceeds of the Credit

A. General

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Works:		
Supply and installation		
(a) Part C of the Project	14,470,000	100% of foreign expenditures, and
(b) Part D of the Project	16,890,000	90% of local expenditures
(2) Goods		
(a) Part A.3 of the Project	390,000	100% of foreign expenditures,
(b) Part D of the Project	7,930,000	90% of local expenditures,
(3) Consultants' Services		
(a) Part A.1 of the Project	1,970,000	100 % of foreign expenditures, and
(b) Part A.4(a) of the Project	320,000	94% of local, expenditures,
(c) Part A.2 of the Project	380,000	
(d) Parts B.1(b), B.3 and B.5 of the Project	1,410,000	
(e) Parts B.1 (a), B.1 (c), B.2, B.6, B.7 B. 8 and B.9 of the Project	3,580,000	
(f) Parts B.1(d), B.4 and B.11	1,430,000	

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(4) Training		100%
(a) Part A.2 of the Project	63,000	
(b) Part A.3 of the Project	28,000	
(c) Part A.4(a)	320,000	
(d) Part A.4(b)	200,000	
(e) Part A.5	290,000	
(5) Unallocated	5,529,000	
TOTAL	<u>55,200,000</u> =====	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) the term “training” means expenditures associated with tuition fees, travel, subsistence and incidental expenditures incurred for the purposes of executing the capacity building activities under Parts A.2, A.3, A.4 (a), A.4 (b) and A.5 of the Project as set forth in Schedule 2 to this Agreement.

3. It is understood that the percentages of expenditures to be financed under the table set forth in paragraph 1 of this Schedule have been calculated on the basis of the provision of a letter issued by the Borrower’s Ministry of Finance pursuant to Section 138 (1) and (2) (g) of The Customs and Excise Act and Section 23 (1) and 3 (e) of the VAT Act, as read together with the Legal Notice Number 138 (The Customs and Excise Act, Chapter 472) and Legal Notice No. 145 (VAT Act, Chapter 476) both of 4th June, 1992 (as amended in 1996 and 2001) of the Borrower, which provides for exemption of taxes levied in the territory of the Borrower on works, goods and services for this Project. If any change is made to said Letter and Acts or Legal Notices, which has the effect of levying taxes or customs duties on such works, goods and services, the percentages referred to above shall be decreased in accordance with the provisions of Section 5.08 of the General Conditions.

4. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of: (a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of one million nine hundred thousand Special Drawing Rights (SDR 1,900,000), may be made in respect of Category 3 of this schedule on account of payments made for expenditures before that date but after September 30, 2003; and (b) Categories 1 (b) and 2 (b) of this schedule unless: (i) a management services contract, satisfactory to the Association, for the implementation of KPLC's corporate recovery program under Part A.1 of the Project has been awarded to a utility management services provider; and (ii) a policy for connection of new consumers, satisfactory to the Association has been adopted by KPLC.

5. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$200,000 equivalent per contract; (b) works costing less than \$500,000 equivalent per contract; (c) for services of individual consultants costing less than \$50,000 equivalent per contract; and (d) for services of consulting firms under contracts costing less than \$100,000 equivalent per contract and training, all under such terms and conditions as the Association shall specify by notice to the Borrower.

6. KenGen and KPLC through the Borrower may request withdrawals from the Credit Account for their Parts of the Project to be made on the basis of reports to be submitted to the Association in the form and substance satisfactory to the Association, such reports to include the FMR and any other information as the Association shall specify by notice to the Borrower (Report-based Disbursement). In the case of the first such requests submitted to the Association before any withdrawals has been made from the Credit account, the Borrower shall submit to the Association only a statement with the projected source and application of funds for the Project for the three-month period following the date of such request.

B. Special Accounts

1. The Borrower shall open and maintain in Dollars three separate special deposit accounts set forth herein: (a) Special Account A, managed by the Borrower for MOE; (b) Special Account B, managed by KenGen upon proper authorization by the Borrower; and (c) Special Account C, managed by KPLC upon proper authorization by the Borrower; in a commercial bank or commercial banks acceptable to the Association, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure and attachment.

2. After the Association has received evidence satisfactory to it that the Special Accounts have been opened, withdrawals from the Credit Account of amounts to be deposited into each Special Account shall be made as follows:

(a) in respect of Special Account A, for which the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) in respect of Special Accounts B and C, for which KenGen and KPLC each is to request Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of each Special Account shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower, KenGen and KPLC out of their respective Special Account, the Borrower, KenGen and KPLC shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Association shall not be required to make further deposits into the Special Accounts B and C:

(a) If the Association, at any time, is not satisfied that the reports referred to in Part A.6 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) If the Association determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Borrower directly from the Credit Account; or

(c) If KenGen or KPLC shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, and Section 4.02 of each Project Agreement any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of: (i) the records and accounts for the Special Account; or (ii) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Association shall not be required to make further deposits into any of the Special Accounts in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right either of the Borrower, KenGen or KPLC or of all three of them to make withdrawals for the Credit Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Association shall determine, in its sole discretion, whether further deposits into any or all of the Special Accounts may be made and what procedures should be followed for making such deposits, and shall notify the Borrower of its determination.

6. (a) If the Association determines at any time that any payment out of any of the Special Accounts was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association, provide such additional evidence as the Association may request, or deposit into the Special Account concerned (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment. Unless the Association shall otherwise agree, no further deposit by the Association into the such Special Account or Accounts shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association determines at any time that any amount outstanding in a Special Account will not be required to cover payments for Eligible Expenditures during the three-month period following such determination, the Borrower shall, promptly upon notice from the Borrower, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund the Association all or any portion of the funds on deposit in a Special Account.

(d) Refunds to the Association made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Credit Agreement.

Annex A

to

SCHEDULE 1

**Operation of Special Account
When Withdrawals Are Not
Report-based Disbursements**

1. For the purposes of this Annex, the term “ Authorized Allocation” means the amount of \$250,000 to be withdrawn from the Credit Account and deposited into the Special Account A pursuant to paragraph 2 of this Annex.

2. Withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account A shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the Special Account A of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account A such amount as the Borrower shall have requested.

(b) For replenishment of the Special Account A, the Borrower shall furnish to the Association requests for deposit into the Special Account A at such intervals as the Association shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account for Eligible Expenditures. Each such deposit into the Special Account A shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.

3. The Association shall not be required to make further deposits into the Special Account A, once the total unwithdrawn amount of the Credit minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account A as of the date of such notice will be utilized in making payments for Eligible Expenditures.

Annex B

To

SCHEDULE 1

**Operation of Special Account
When Withdrawals Are**

Report-based Disbursements

1. Withdrawals from the Credit Account shall be deposited by the Association into the Special Accounts B and C in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the Special Accounts B and C shall be withdrawn by the Association from the Credit Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the Credit, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account B or C, as appropriate, an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Association has determined, based on the reports referred to in Part A.6 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.

SCHEDULE 2

Description of the Project

The objectives of the Project are to: (a) enhance the policy, institutional and regulatory environment for private sector participation and sector development; (b) support efficient expansion of power generation capacity to meet the Borrower's economy's projected supply deficits by FY2006/07; and (c) increase access to electricity in urban and peri-urban areas while improving the efficiency, reliability and quality of service to existing customers.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Institutional and Capacity Building

1. Implementation of a comprehensive corporate recovery program through engagement of a management services provider to bring KPLC back to sound operational efficiency, reduce system losses to acceptable levels, reduce power outages, improve voltage levels, increase electricity access and improve financial performance.
2. Strengthening the sector regulator's capacity to discharge its functions under the applicable laws of the Borrower, including reviewing and setting power tariffs, preparing secondary legislation and enforcing regulations under the law.
3. Equipping the Kenya Bureau of Standards (KEBS) with the skills, training and equipment necessary for effective setting and monitoring of standards for petroleum products in Kenya.
4. Upgrading staff skills in (a) MOE; and (b) KenGen.
5. Implementation of a management and a staff development program for KPLC.

Part B: Studies and Engineering Services

1. Environmental and social impact assessments for: (a) Part C; and (b) Part D 1 and 2 of the Project; (c) the Kipevu Combined Cycle Power Plant; and (d) proposed LPG import handling and storage project.
2. Consultancy services to update the Kipevu Combined Cycle Plant feasibility study.
3. Consultancy services for the distribution upgrade under Part D of the Project to better define the priority subcomponents, estimate costs and establish performance targets.

4. Feasibility study, preliminary and detailed design for the proposed LPG import handling and storage project.
5. Consultancy services for supervision of major sub-components of Part D of the Project.
6. Review of the adequacy of the steam at Olkaria I and II sites by an independent board of consultants.
7. A geothermal reservoir optimization study for the Olkaria I, II and IV sites.
8. Preparation of a business plan for the proposed Geothermal Development Company.
9. Consultancy services for preliminary design and supervision of the Olkaria II Power Plant extension under Part C of the Project.
10. Consultancy services for the detailed design and supervision of the SCADA/EMS systems under Part D.4 of the Project.
11. Consultancy services for preparation of proposed future sector projects.

Part C: Generation Component

1. Civil works for the extension of the power house to: accommodate the third 35 MW steam turbine generating unit, control panel and other ancillary equipment, cooling tower, and switch yard for installing generator transformer, support bus-bar arrangement and switchgear equipment.
2. Steam gathering system from Olkaria I and Olkaria II sites and connecting pipes to the third Olkaria II unit.
3. Supply and installation of 35 MW steam turbine generating unit.
4. Supply and installation of 45 MVA 11/220kV step up generator transformer complete with switchgear equipment.
5. Supply and installation of other electrical and mechanical equipment including control room equipment, cables and other ancillary equipment.

Part D: Distribution Component

1. The upgrade of existing and construction of new substations comprising: (a) the supply and installation of: (i) about 147 MVA 132/33 kV substation transformer capacity complete with associated switchgear and control equipment; (ii) 12.5 MVA 33/11 kV substation transformer capacity with ancillary equipment; and (iii) 594 MVA 66/11 kV

substation transformer capacity with switchgear and control; and (b) the supply of replacement 132kV (about 8 in number) outdoor and 11kV indoor (about 35 in number) metal clad switchgear, autoreclosers and 11 kV shunt capacitors, all to be installed and commissioned by KPLC.

2. Reinforcement and extension of the distribution system comprising: (a) the supply and installation (construction) of : (i) 75 km of 66 kV line; (ii) 43 km of 33 kV line; (iii) 43.5 km of 11 kV line; and (b) the supply and installation of : (i) conductors for reconductoring 276 km of 33 kV and 303 km of 11 kV lines by KPLC directly or through local contractors; and (ii) about 500 km of conductors and hardware materials for the low voltage reinforcement and expansion of the distribution system in all regions to be carried out by KPLC directly or through local contractors; and (iii) about 800 (11,000/415V) distribution transformers totaling 150 MVA.

3. The supply of energy meters for installation by KPLC comprising the delivery of: (a) 400,000 energy (kWh) meters for domestic customers at the rate of about 80,000 annually or as may be mutually agreed between the Association and KPLC; (b) 5000 three-phase energy meters for replacement of old electromechanical meters; and (c) about 100 special purpose meters, statistical or others, as may be specified by KPLC.

4. Upgrade of SCADA/EMS comprising the supply and installation of hardware and software to upgrade and expand the existing system and raise to modern standards the National Control Center and Area Control Centers.

5. Supply and installation of Trunking Radio System for Mount Kenya Region.

* * *

The Project is expected to be completed by September 30, 2009.

Schedule 3

Procurement

Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Section I, paragraphs 3.15 through 3.20, and Section IV of, and Appendix 2 to, the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of international competitive bidding in accordance with the provisions of Section II of the Procurement Guidelines, and the following additional procedures:

1. Domestic Preference. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines and Appendix 2 thereto, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

B. Other Procurement Procedures

1. Limited International Bidding. Goods which the Bank agrees can only be purchased from a limited number of suppliers, regardless of the cost thereof, may be procured under contracts awarded on the basis of limited international bidding in accordance with the provisions of paragraphs 3.1 and 3.2 of the Procurement Guidelines.

2. National Competitive Bidding. Goods estimated to cost less than \$250,000 equivalent per contract and works estimated to cost less than \$500,000 per contract, may be procured under contracts awarded on the basis of national competitive bidding in accordance with the provisions of paragraphs 3.1, 3.3, 3.4, of the Procurement Guidelines.

3. Procurement of Small Works. Small works estimated to cost \$50,000 equivalent or less per contract, may be procured under lump-sum, fixed-price contracts awarded on the basis of quotations obtained from three (3) qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Association, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has the experience and resources to complete the contract successfully.

4. Shopping. Goods estimated to cost \$50,000 equivalent or less per contract, may be procured under contracts awarded on the basis of shopping procedures in accordance with the provisions of paragraphs 3.1 and 3.5 of the Guidelines.

5. Direct Contracting. Goods and works which meet the requirements for direct contracting referred to in paragraphs 3.1, 3.6 and 3.7 of the Procurement Guidelines may, with the Bank's prior agreement, be procured in accordance with the provisions of said paragraphs.

6. Procurement from UN Agencies. Goods estimated to cost less than \$100,000 equivalent per contract may be procured directly from Inter-Agency Procurement Services Office (IAPSO) in accordance with the provisions of paragraphs 3.1 and 3.9 of the Procurement Guidelines.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection.

1. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of quality and cost in accordance with the provisions of Section II of the Consultant Guidelines. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than \$200,000 equivalent per contract may comprise entirely national consultants.

B: Other Procedures

1. Least-cost Selection. Services for assignments which the Bank agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of lowest cost in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded

in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

3. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for single source selection, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

4. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis in accordance with the provisions of said paragraph 5.4, subject to prior approval of the Bank.

5. Training. Activities related to training under the Project and to be financed from the Credit may be procured in accordance with the provisions of Paragraph 1.19 of the Consultants Guidelines.

Section IV. Review by the Bank of Procurement Decisions

A. Prior Review

The following review procedures shall apply to contracts for which the Procurement Plan provides for prior review by the Association:

1. Goods, Works and Services (other than Consultants' Services).

The prior review procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Procurement Guidelines shall apply to contracts for goods, works or services (other than consultants' services). However, if such contracts are to be procured on the basis of direct contracting procedures, the following procedures shall apply instead: (a) prior to the execution of such contract, the Borrower shall provide to the Association a copy of the specifications and the draft contract for its approval; (b) the contract shall be awarded only after the Association's approval shall have been given; and (c) the procedures set forth in paragraphs 2(h) and 3 of Appendix 1 to the Guidelines shall apply.

2. Consultants' Services Provided by Firms.

The prior review procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply to contracts for consultants' services provided by firms. However, if such contracts are to be procured on the basis of single source selection, the following procedures shall apply instead: (a) the qualifications, experience, terms of reference and conditions of employment of the consultants shall be furnished to the Association for its prior review and approval; (b) the contract shall be awarded only

after the Association's approval shall have been given; and (c) the provisions of paragraphs 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply to the contract.

3. Consultants' Services Provided by Individuals.

The following prior review procedures shall apply to contracts for the employment of individual consultants: (a) the report on the comparison of the qualifications and experience of candidates, terms of reference and terms of employment of the consultants (or, if the consultant is to be selected on a sole source basis, the qualifications, experience, terms of reference and terms of employment of the consultants) shall be furnished to the Association for its prior review and approval; (b) the contract shall be awarded only after the Association's approval shall have been given; and (c) the provisions of paragraph 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply to the contract.

B. Post Review.

The following post review procedures shall apply to all contracts for which the Procurement Plan does not provide for prior review by the Association:

1. With respect to contracts for goods, works or services (other than consultants' services), the post review procedures set forth in paragraph 4 of Appendix 1 to the Procurement Guidelines shall apply.

2. With respect to contracts for consultants' services, the post review procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.

Schedule 4

Implementation Program

Section I. Project Implementation

(a) The Borrower shall through MOE, and shall cause KPLC and KenGen to, implement the Project. To this end, each PEA through its PIT shall carry out its respective Parts of the Project as specified in Section 3.01 (a) of this Agreement and the Project Agreements. PITs, adequately staffed, shall be maintained through the Project implementation and the Project shall be implemented in accordance with the guidelines and procedures satisfactory to the Association. Each PIT shall have overall responsibility for monitoring its respective Parts of the Project, including the preparation of progress reports, updating of Project costs and financing plan, and ensuring that the Project Implementation and Procurement Plans are kept up to date. PCT shall have overall responsibility for the Project implementation coordination and reporting. MOE's PIT Head will chair the PCT.

(b) The Borrower shall ensure that the Electricity Regulatory Board, or any successor thereto, and the Kenya Bureau of Standards (KEBS) will, each, as the beneficiary under Part A.2 and A.3 of the Project as set forth in Schedule 2 to this Agreement, appoint a suitable focal point person to liaise with MOE to carry out its activities in relationship to the Project. Such focal point person shall be assisted by an appropriate number of designated staff of the beneficiary in carrying out the assigned liaising functions.

Section II. Training

The Borrower shall ensure that MoE, KenGen and KPLC shall carry out a training program, including on the job training, under the Project comprising consulting services participation in seminars, workshops, and training in the region and abroad based on individual needs as well as group requirements. A detailed annual training program giving, *inter alia*, categories of training, number of trainees, duration of training, staff months, timing and estimated costs shall be submitted by the PEAs to the Association for its review and approval prior to initiating the training process.

Section III. Environmental Management

The Borrower shall ensure that:

(a) KenGen in respect of Part C of the Project and KPLC in respect of Part D of the Project shall develop, prior to the approval of bid documents for such activity:

- (i) an ESIA, acceptable to the Association, giving details of the environmental status, and potential environmental and social risks and adverse impacts, which are specific to the respective Project activity, along with proposed EMP, acceptable to the Association, giving

details of measures appropriate or required to manage potential environmental and social risks and mitigate adverse impacts associated with the respective Project activity, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with the EMP; and

- (ii) KPLC shall develop the RPF, acceptable to the Association, giving details of a program of actions, measures and policies designed to facilitate the compensation of Affected Persons, including the, proposed compensation, budget and cost estimates, and sources of funding, together with adequate institutional, monitoring and reporting arrangements capable of ensuring proper implementation of, and regular feedback on compliance with the RPF.

(b) the Project is implemented in accordance with the guidelines, procedures, timetable and other specifications set forth in the said EMPs and the RPF and, except as the Association shall otherwise agree, that PEAs concerned shall not amend or waive any provision of the aforementioned EMPs and the RPF, if such amendment or waiver may, in the opinion of the Association, materially or adversely affect the implementation of the Project;

(c) in the reports under Section V of this Schedule, KenGen and KPLC shall include progress made on compliance with social and environmental safeguard measures under the Project, giving details of measures taken in furtherance of the EMPs and the RPF, and any of conditions which interfere or threaten to interfere with the smooth implementation of the said plans, and remedial measures taken or required to be taken to address such conditions;

(d) KenGen and KPLC shall maintain adequately staffed Environmental and Social Management Monitoring Units throughout Project implementation; and

(e) KPLC shall prepare a RAP, in accordance with the RPF and implement the measures set forth in the said Plan in a manner satisfactory to the Association.

Section IV. Miscellaneous Actions

A. Actions to be Taken by the Borrower

The Borrower shall ensure:

(a) preparation and adoption of a tariff study by June 30, 2006 and on the basis of the study recommendations: (i) establish separate tariffs for transmission and distribution by December 31, 2006; and (ii) design and adopt revised retail consumer tariff structures by December 31, 2006;

(b) preparation of appropriate power purchase agreement(s) between KenGen and KPLC taking into account recommendations of the tariff study referred to in paragraph 1(a) of this Section by December 31, 2006;

(c) submission to the Parliament by December 2004 of an Energy Bill, amending and consolidating the Electric Power Act No 11 of 1997 and the Petroleum Act (Cap 116) to strengthen the legislative and regulatory framework for the energy sector;

(d) establishment of an Energy Regulatory Commission no later than 90 days after the enactment of the Energy law;

(e) preparation and adoption of secondary legislation no later than 180 days after establishment of the Energy Regulatory Commission; and

(f) establishment of separate business units for transmission and distribution services within KPLC with separate accounts by December 31, 2006.

B. Actions to be Taken by KenGen

The Borrower shall cause KenGen to carry out its obligations under Section 4.03 of the KenGen Project Agreement.

C. Actions to be Taken by KPLC

The Borrower shall cause KPLC to carry out its obligations under Sections 4.03 and 4.04 of the KPLC Project Agreement.

Section V. Monitoring and Evaluation

The Borrower shall through MOE, and shall cause KPLC and KenGen to:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 5 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof, in respect of : (i) MOE for Parts A.2, A.3, A.4 (a), B.1 (d) B.4 and B.11 of the Project as set forth in Schedule 2 to this Agreement; (ii) KenGen for A.4 (b), B.1 (a), B.1 (c), B.2, B.6, B.7, B.8, B.9 and C of the Project as set forth in Schedule 2 to this Agreement; and (iii) KPLC for Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project as set forth in Schedule 2 to this Agreement;

(b) prepare, jointly with KPLC and KenGen, under terms of reference satisfactory to the Association, and furnish to the Association, no later than September 30, 2006, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project and performance of PEAs during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying

out of the Project and the achievement of the objectives thereof during the period following such date;

(c) review jointly with the Association, KenGen and KPLC by January 31, 2007, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.

Section VI. Quarterly Progress Reports

The Borrower shall through MOE, and shall cause KenGen and KPLC to submit to the Association quarterly progress reports, in scope and form agreed with the Association, for the Project not later than 45 days after the end of each quarter. In addition, the Borrower shall cause MOE to submit reports referred to in paragraph 1(a) of Section I of this Schedule within 60 days after the end of each quarter.

SCHEDULE 5

Performance Indicators

The performance indicators to be used during the Project implementation are as follows:

1. Combined non-technical and technical losses shall be reduced by no less than one percent annually, and the overall current losses of 18.7% shall be reduced to 14.5% by the completion date of the Project.
2. That the availability of the transmission 220kV and 132kV lines shall not be less than 97%.
3. That the number of line interruptions per 100km per month shall not exceed 0.19 for 220kV, 0.50 for 132kV and 2.0 for 66kV.
4. That the total current monthly outages of 11,000 (about 1.54 per 100 customers) shall be reduced to no more than 4000 (0.41 per 100 customers) by the completion date of the Project.
5. Additional customer connections due to the Project will occur at an annual rate of no less than 80,000.
6. That average tariff levels are maintained at cost recovery level.
7. The KenGen to develop performance monitoring mechanism and adopt minimum Performance Indicators ensuring, *inter alia*, that the weighted average availability factor of the hydro plants shall have improved to no less than 92% by the Project completion date, and that of geothermal plant shall be maintained at availability factor of no less than 95%.