CONFORMED COPY

CREDIT NUMBER 4572-KE

CREDIT NUMBER 3958-KE

Financing Agreement

(Amending and Restating Development Credit Agreement)

(Energy Sector Recovery Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated May 8, 2009

CREDIT NUMBER 4572-KE
CREDIT NUMBER 3958-KE

FINANCING AGREEMENT
(Amending and Restating Development Credit Agreement)

AGREEMENT, dated May 8, 2009, between REPUBLIC OF KENYA (the Recipient) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) under an agreement dated August 4, 2004, between the Association and the Recipient ("Development Credit Agreement"), the Association agreed to provide the Recipient with a credit ("Original Credit") in an amount equivalent to fifty five million two hundred thousand Special Drawing Rights (SDR 55,200,000) to assist in financing the Energy Sector Recovery Project described in Schedule 2 to the Development Credit Agreement;

(B) the Recipient has requested the Association to provide additional financial assistance in support of the Energy Sector Recovery Project by increasing the amount made available under the Development Credit Agreement by an amount in various currencies equivalent to fifty three million Special Drawing Rights (SDR 53,000,000);

(C) the Recipient has obtained from the European Investment Bank (EIB) a loan (the EIB Loan No. 23324) in an amount of forty three million Euro (€43,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the EIB Loan Agreement), dated December 16, 2004, entered into between the Recipient and EIB;

(D) the Recipient has contracted from Agence Française de Développement (AFD) a loan (the AFD Loan) in an amount of twenty five million Euro (€25,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the AFD Loan Agreement), dated May 25, 2005, entered into between the Recipient and AFD;

(E) the Recipient has contracted from the Nordic Development Fund (NDF) a loan (the NDF Loan) in an amount of ten million Euros (€10,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the NDF Loan Agreement), dated October 5, 2004, entered into between the Recipient and NDF;

(F) the Kenya Electricity Generating Company Limited (KenGen) has obtained a loan from EIB (the KenGen EIB Original Loan) in an amount of forty million eight hundred thousand US Dollars (US$40,800,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the EIB-KenGen Original Loan Agreement), dated May 31,2005, and intends to obtain from EIB an additional loan (the EIB-KenGen Additional Loan) in an amount of nine million two hundred thousand US Dollars (US$9, 200,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the EIB-KenGen Additional Loan Agreement) to be entered into between EIB and KenGen;

(G) KenGen also intends to obtain a loan from AFD (the AFD-KenGen Loan) in an amount of twenty million Euro (□ 20,000,000) to assist in financing the Project on the terms and conditions set forth in an agreement (the AFD-KenGen Loan Agreement) to be entered into between AFD and KenGen.

WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing to extend such additional assistance to the Recipient upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the Recipient and the Association hereby agree to amend and restate the Development Credit Agreement as of the Effective Date of this Agreement, to read as follows:

GENERAL CONDITIONS; DEFINITIONS

The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions, in the Preamble to this Agreement 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 credit in an amount equivalent to a hundred and eight million two hundred thousand Special Drawing Rights (SDR 108,200,000) (variously, “Credit” and “Financing”) which consists of: (a) an Original Credit in various currencies equivalent to fifty five million two hundred thousand Special Drawing Rights (SDR 55,200,000); and (b) an Additional Credit in various currencies equivalent to fifty three million Special Drawing Rights (SDR 53,000,000), 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.

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 Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.

2.05. The Payment Dates are June 1 and December 1 in each year.

2.06. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.

2.07. The Payment Currency is Dollar.

ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall cause 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 to be carried out by KenGen, and Parts A.1(a), A.5, B.1 (b), B.3, B.5, B.10, B.11 (a) and D of the Project to be carried out by KPLC, in accordance with the provisions of Article IV of the General Conditions and the Project Agreements.

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.

3.03. Except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that each of the Project Implementing Entities:

(a) maintains in Kenya Shillings, until the completion of the Project, an account (the KPLC Project Account and KenGen Project Account) in a commercial bank acceptable to the Association for purposes of the Project, on terms and conditions satisfactory to the Association;

(b) replenishes its respective account from its own resources sufficient to cover the portion of counterpart financing requirements for which the Project Implementing Entity is responsible for under the Project financing plan and which are projected to be made under the Project in the three months succeeding.

(c) ensure that the funds deposited into the said accounts in accordance with paragraph (b) of this Section shall be used exclusively to finance Eligible Expenditures under the Project.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

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

(a) a situation has arisen which shall make it improbable that the Project, or a significant part thereof, will be carried out;

(b) The Companies Act, Cap 486 is amended, suspended, abrogated, repealed or waived so as to materially and adversely affect the ability of KPLC to perform any of its obligations under this Agreement or the KPLC Project Agreement, or to achieve the objectives of the Project; and

(c) The Companies Act, Cap 486 is amended, suspended, abrogated, repealed or waived so as to materially and adversely affect the ability of KenGen to perform any of its obligations under this Agreement or the KenGen Project Agreement, or to achieve the objectives of the Project.

4.02. The Additional Event consist of the event specified in Section 4.01 (b) and (c) of this Agreement occurs and is continuing for a period of 60 days after notice of the event has been given by the Association to the Recipient.

4.03. The Co-financing Deadline for the effectiveness of the EIB-KenGen Additional Loan Agreement and the AFD-KenGen Loan Agreement is May 31, 2010.

ARTICLE V — EFFECTIVENESS; TERMINATION

5.01. The Additional Conditions of Effectiveness consists of the following:

(a) The Subsidiary Loan Agreements have been executed on behalf of the Recipient and the Project Implementing Entities.

(b) The Project Agreements have been executed on behalf of the Recipient and the Project Implementing Entities.

5.02. The Additional Legal Matters consist of the following:

The Subsidiary Loan Agreements and the Project Agreements have been duly authorized or ratified by the Recipient and the Project Implementing Entities and are legally binding upon the Recipient and the Project Implementing Entities in accordance with their respective 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 years after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. The Recipient's Representative is the Minister for Finance.

6.02. The Recipient's Address is:

Ministry of Finance
Treasury Building
P.O Box 30007-00100
Nairobi, Kenya

Cable address:	Telex:	Facsimile:
FINANCEnairobi	22921minfin-ke	+ (254) 20 330426

6.03. The Association's Address is:

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

Cable:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI)	1-202-477-6391

AGREED at Nairobi, Republic of Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By /s/ Uhuru Kenyatta

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Johannes C.M. Zutt

Authorized Representative

SCHEDULE 1

Project Description

The objectives of the Project are to: (a) enhance the policy, institutional and regulatory environment for energy sector development, including private sector participation; and (b) increase access to electricity in urban and peri-urban areas while improving the efficiency, reliability and quality of service to consumers.

The Project consists of the following parts:

<u>Part A</u>: <u>Institutional and Capacity Building</u>

1. Implementing a comprehensive corporate recovery program through engagement of: (a) a management services provider to bring KPLC back to sound operational efficiency including reducing system losses to acceptable levels, reducing power outages, improving voltage levels, increasing electricity access and improving financial performance; and (b) specialist consultants to sustain and enhance KPLC's operational performance.

2. Strengthening the sector regulator's capacity to discharge its functions under the applicable laws of the Recipient, including carrying out an electricity tariff study, reviewing and setting power tariffs, and preparing and enforcing secondary legislation.

3. Equipping the Kenya Bureau of Standards (KEBS) with skills, training and equipment necessary for effective setting and monitoring of standards for petroleum products in Kenya.

4. Upgrading staff skills in (a) MoE; (b) KenGen; (c) Rural Electrification Authority (REA) and (d) the Energy Tribunal, in a range of skills including training in environmental and social aspects.

5. Implementing (a) a management and staff development program for KPLC including training in environmental and social aspects; and (b) training local electrical contractors to improve their capacity.

<u>Part B</u>: <u>Studies and Engineering Services</u>

1. Conducting environmental and social impact assessments for: (a) Part C of the Project; (b) Part D of the Project; and (c) the Kipevu combined cycle power plant.

2. Updating the feasibility study for Kipevu combined cycle power plant.

3. Conducting feasibility studies for upgrading of distribution systems under Part D of the Project.

4. Conducting a feasibility study, preliminary and detailed design for a liquefied petroleum gas import handling and storage facility.

5. Supervising major sub-components of Part D of the Project.

6. Reviewing the adequacy of the steam at Olkaria I and II sites.

7. Conducting a geothermal reservoir optimization study for the Olkaria I, II and IV sites.

8. Preparing a business plan for the Geothermal Development Company.

9. Conducting a preliminary design and supervising Olkaria II Power Plant extension under Part C of the Project.

10. Conducting a detailed design and supervising of the SCADA/EMS systems under Part D.4 of the Project.

11. Undertaking studies and assessments for proposed future sector projects including, but not limited to:

    (a) studies on transmission lines and on short/medium term impact of electricity access scale-up program on the operations of KPLC;

    (b) feasibility studies on coal power generation and on the use of liquefied natural gas for power generation and other commercial activities and preparation of related bidding documents;

    (c) a study on the separation of transmission and distribution functions;

    (d) monitoring and evaluation methods and baselines for the implementation of the scale-up program; and

    (e) a Sectoral Environmental and Social Assessment for the energy sector investment program.

12. Providing wind masts, data loggers, software, other equipment and any other assistance to MoE to assess the potential for wind power generation.

13. Advising on the management and concessioning of electricity systems that are not connected to the national grid.

<u>Part C</u>: <u>Generation</u>

1. Provision of civil works for the extension of the power house to accommodate the third 35 MW steam turbine generating unit, including a control panel and other ancillary equipment, cooling tower, switch yard for installing generator transformer, support bus-bar arrangement and switchgear equipment.

2. Steam gathering system for Olkaria I and Olkaria II sites and connecting pipes to the third Olkaria II unit.

3. Supplying and installing of 35 MW steam turbine generating unit.

4. Supplying and installing of 45 MVA 11/220kV step up generator transformer complete with switchgear equipment.

5. Supplying and installing electrical and mechanical equipment including but not limited to control room equipment, cables and other ancillary equipment.

<u>Part D</u>: <u>Distribution</u>

1. Upgrading and constructing 132/33 kV, 33/11 kV, and 66/11 kV substations with associated switchgear, control, and ancillary equipment, including the supply of and replacement of outdoor and indoor metal clad switchgear, autoreclosers and such other materials as required for network maintenance and expansion.

2. Upgrading and constructing (a) 66 kV, 33 kV and 11 kV overhead lines; (b) low-voltage distribution lines; (c) the Cathedral-Nairobi West 66 kV underground cable; and (d) supplying and installing materials required for network maintenance and expansion, including conductors, distribution transformers, meters and other required materials.

3. Supplying energy meters comprising: (a) about 400,000 meters for domestic customers; (b) about 5,000 three-phase energy meters for replacement of old electromechanical meters; (c) about 100 special purpose meters; and (d) about 120,000 prepayment meters to replace existing meters as the development of prepayment infrastructure takes place.

4. Upgrading and expanding SCADA/EMS at the National Control Centre and Regional Control Centers through supplying and installing of hardware and software.

5. Supplying and installing of a trunking radio system for Mount Kenya region.

SCHEDULE 2

Project Execution

Section I. <u>Implementation Arrangements</u>

A. Institutional Arrangements

(1) The Recipient shall through MoE, cause each Project Implementing Entity to implement its Respective Part of the Project. To this end, MoE and each Project Implementing Entity shall, through their respective Project Implementation Teams (PITs), carry out their Respective Parts of the Project as specified in Section 3.01 of this Agreement and the Project Agreements and ensure that their PITs, as well as their Environmental and Social Management Units are adequately staffed and maintained throughout the Project implementation. Each Project Implementing Entity's PIT shall comprise a team leader, a financial management specialist, a procurement specialist and any other specialists as may be required for the effective implementation of the Project and agreed with the Association. In each case the terms of reference, qualifications and experience of the aforementioned specialists shall be satisfactory to the Association. MoE's PIT shall include a project coordinator, a power engineer, a rural and renewable energy specialist, and any other technical specialists agreed with the Association, in each case with terms of reference, qualifications and experience satisfactory to the Association.

(2) The Recipient shall maintain a Project Coordination Team (PCT) with the overall responsibility for Project implementation, coordination and reporting. The PCT will be chaired by the MoE Project Coordinator and comprise the Team Leaders of the Implementing Entities' PITs and other specialists as may be required from time to time.

(3) The Recipient shall ensure that the Energy Regulatory Commission, REA and KEBS will each appoint a suitable focal point person to liaise with MoE to carry out its activities related to the Project. Such focal point person shall be assisted by an appropriate number of qualified and designated staff in carrying out the assigned functions.

B. Subsidiary Loan Agreement

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

the Association, which shall include the following: (i) repayment of principal in 20 years including a grace period of 5 years; (ii) the payment of interest at the rate of four and one half percent (4.5%) per annum; and (iii) the principal amount of each of the Project Implementing Entities' subsidiary loan repayable by the Project Implementing Entities, being the equivalent in dollars of the currency or currencies withdrawn from the Credit Account in respect of the Categories mentioned in Section 3.01 of this Agreement, such equivalent to be determined as of the date or respective dates of repayment.

2. The Recipient shall exercise its rights under the Subsidiary Loan Agreements 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 Loan Agreements or any of their provisions**.**

C. Anti-Corruption

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

D. Safeguards

1. The Recipient shall ensure that:

(a) Part D of the Project is carried out in accordance with the provisions of the Environmental and Social Management Plan (ESMP), the Resettlement Policy Framework (RPF) and the Resettlement Action Plan (RAP); and Part C of the Project is carried out in accordance with the Environmental Management Plan (EMP);

(b) the Recipient shall not permit, and neither shall KPLC amend or waive any provision of the ESMP, the RPF and RAP nor KenGen of the EMP if such amendment or waiver may, in the opinion of the Association, materially or adversely affect the implementation of the Project; and

(c) the Project Implementing Entities shall in their progress reports to the Recipient include progress made on compliance with social and environmental safeguard measures under the Project, with KPLC giving details of measures taken in furtherance of the ESMP, the RPF, and the RAP, and with KenGen giving details of measures taken in furtherance of the EMP, and any conditions which interfere or threaten to interfere with the smooth implementation of the said plans and framework, and remedial measures taken or required to be taken to address such conditions.

2. Without limitation upon the Recipient's other reporting obligations under Section II below, the Recipient shall submit quarterly consolidated reports on compliance with the social and environmental safeguards under the Project, giving details of measures taken in furtherance of the RAP and the mitigation measures specified in the EMP conditions, if any, which interfere or threaten implementation of the RAP or the mitigation measures specified in the EMP, and remedial measures taken or required to be taken to address such conditions.

E. <u>Training</u>

The Recipient shall ensure that MoE, and the Project Implementing Entities carry out a training program, including on the job training, use of trainers, participation in seminars, workshops, and training in the region and abroad based on individual needs as well as group requirements. The Project Implementing Entities shall submit to the Association for its review and approval, by no later than December 30 of every year or any other date agreed with the Association during Project implementation, a detailed annual training program and budget giving, *inter alia*, categories of training, number of trainees, duration of training, staff months, timing and estimated costs prior to initiating the training.

F. <u>Other Covenants</u>

The Recipient shall ensure that:

1. the Energy Regulatory Commission prepares secondary legislation pertaining to the Energy Act 2006, and the relevant authority gazettes it by no later than September 30, 2009, or such later date as may be agreed in writing between the Recipient and the Association;

2. KPLC and KenGen prepare and the Energy Regulatory Commission approves the Power Purchase Agreements satisfactory to the Association taking into account recommendations of the tariff study carried out under Part A.2 of the Project, by no later than December 31, 2009, or such later date as may be agreed in writing between the Recipient and the Association;

3. it exchanges views with the Association regarding the Least-Cost Power Development Plan on an annual basis and the Association's comments are taken into account in updating the said plan;

4. the Project Implementing Entities are financially viable throughout Project implementation and meet agreed financial covenants as specified in Section II.B3 of the Schedule of each of the Project Implementing Entity's Project Agreement; and

5. an amendment to the Recipient's Energy Act 2006, satisfactory to the Association, authorizing KPLC to provide loans to consumers for the service connection fee and disconnect customers who are loan recipients but fail to pay their monthly energy bills, is submitted to Parliament by December 31, 2009, or such later date as may be agreed in writing between the Recipient and the Association.

Section II. <u>Project Monitoring, Reporting and Evaluation</u>

A. Project Reports

1. (a) The Recipient shall cause the Project Implementing Entities to 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 the indicators set forth below in sub-paragraph (b) of this paragraph agreed with the Association. Each Project Report shall cover the period of 3 months, and shall be furnished to the Association not later than 45 days after the end of the period covered by such report.

(b) The performance indicators referred to above in sub-paragraph (a) consist of the following:

(i) kilometers of electricity distribution lines constructed or rehabilitated under the Project;

(ii) number of substations constructed or rehabilitated under the Project;

(iii) generation capacity added under the Project (MW);

(iv) annual electricity generation added under the Project (GWh);

(v) number of combined monthly distribution line interruptions per 100 km for 66 kV, and 33 kV lines;

(vi) number of households connected to electricity as a result of the Project;

(vii) KPLC's operating efficiency ratio (KPLC's operating expenses divided by its operating revenue), revenue collection rate, and annual accounts receivables;

(viii) annual transmission and distribution losses (percentage of energy purchased by KPLC);

(ix) the Project Implementing Entities' annual Current Ratio, Debt Service Ratio, and Self Financing Ratio;

(x) number of Independent Power Producers; and

(xi) percentage of disputes and complaints resolved annually by ERC.

2. On or about April 28, 2010 or any other date agreed with the Association, the Recipient shall undertake in conjunction with the Association, the Co-financiers and the Project Implementing Entities a comprehensive mid-term review of the Project during which it shall exchange views generally on all matters relating to the progress of the Project, the performance by the Recipient of its obligations under this Agreement and the Co-financing Agreements and the performance by the Project Implementing Entities of their respective obligations under the Project Agreements, having regard to the performance indicators referred to in paragraph 1 (b) of this Part A.

3. For purposes of Section 4.08 (c) of the General Conditions, the report on the execution of the Project and related plan required pursuant to that Section shall be furnished to the Association not later than 6 months after the Closing Date.

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 as part of the Project Report not later than 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 its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements along with a Management Letter for each such period shall be furnished to the Association not later than six months after the end of such period.

Section III. Procurement

A. General

1. **Goods and Works.** All goods and works 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 the Procurement Guidelines, or Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods and Works

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

2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

Procurement Method
(a) Limited International Bidding
(b) National Competitive Bidding*
(c) Shopping
(d) Direct Contracting
(e) Force Account
(f) Established Private or Commercial Practices which have been found acceptable to the Association

(*) Subject to the following provisions of the Recipient's Public Procurement and Disposal Act, 2005 (no. 3 of 2005) (herein referred to as the "PPDA"), and its Public Procurement Disposal Regulations, 2006 (herein referred to as the "Regulations") which are not fully consistent with the Procurement Guidelines and the Consultants Guidelines, and therefore may not be applied for the implementation of the Project.

(i) PPDA 55(2): instead, the tender submission date shall be set so as to allow a period of at least 30 days or the later of (A) the date of advertisement, and (B) the date of availability of the tender documents.

(ii) PPDA 4(2)(c): instead, Recipient's Government-owned enterprises shall be allowed to participate in the tendering only if they can establish that they are legally and financially autonomous, operate under commercial law and are an independent agency of the Recipient's Government.

(iii) the Recipient shall use, or cause to be used, bidding documents and tender documents (containing, *inter alia*, draft contracts and conditions of contracts, including provisions on fraud and corruption, audit and publication of award) in form and substance satisfactory to the Association.

(iv) PPDA 61(4): instead, extension of tender validity shall be allowed once only, and for not more than thirty (30) days, unless otherwise previously agreed in writing by the Association.

(v) PPDA 66(3)(b): instead, evaluation tender shall be based on quantifiable criteria expressed in monetary terms as defined in the tender documents. It shall not be based on a merit points system.

(vi) PPDA 39: instead, no domestic preference shall be used in the evaluation of tenders. Therefore, as a result of the non application of PPDA 66(3)(b) and 39, contracts shall be awarded to qualified tenderers having submitted the lowest evaluated substantially responsive tender.

(vii) PPDA 67: instead, notification of contract award shall constitute formation of the contract. No negotiation shall be carried out prior to contract award.

(viii) PPDA 91: instead, Shopping procedure will apply for each low value contracts, in lieu of Direct Procurement, except as otherwise previously agreed in writing by the Association.

(ix) Regulations 47: instead, the two envelope bid opening procedure shall not apply.

C. <u>Particular Methods of Procurement of Consultants' Services</u>

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 table specifies methods of procurement, other than Quality and Cost-based Selection, which may be used for consultants' services. The

Procurement Plan shall specify the circumstances under which such methods may be used.

Procurement Method
(a) Quality Based Selection
(b) Selection under a Fixed Budget
(c) Least-cost Selection
(d) Selection Based on Consultants' Qualifications
(e) Single-source Selection
(g) Established Private or Commercial Practices which have been found acceptable to the Association
(g) Procedures set forth in paragraphs 5.2 – 5.4 of the Consultant Guidelines for the Selection of Individual Consultants
(h) Sole Source Procedures 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:

Category	**Amended and Restated Original Credit (Expressed in SDR)**	**Additional Credit (Expressed in SDR)**	**Percentage of Expenditures to be Financed (Exclusive of Taxes)**
1. Works, Supply and Installation (a) Part C (b) Part D1-D3 (c) Part B.12	15,900, 000 22, 500,000	37, 700,000 1, 500,000	100% of foreign expenditures and 90% of local expenditures
2. Goods (a) Part A. 3 (b) Part D1-D3	391,000 2,250,000	8,000,000	100% of foreign expenditures and 90% of local expenditures
3. Consultants Services (a) Part A.1 (b) Part A. 4 (a) (c) Part A. 2 (d) Parts B.1(b), B.3, B.5 B.11(a) and B12 (e) Parts B.1(a), B.1 (c), B.2, B.6, B.7, B.8 and B.9 (f) Parts B.4, B.11 (b) – (e) and B.13	1,930,000 1,325,000 751,000 1,890,000 4,086,000 1,350,000	2,200,000 1,200,000	100%
4. Training (a) Part A.2 (b) Part A.3 (c) Part A.4(a) and A4(d) (d) Part A.4(b) (e) Part A.5 (f) Part A.4 (c)	65,500 28,000 576,500 267,000 290,000	200,000 400,000 150,000	100%
Unallocated	1,600,000	1 ,650,000	
TOTAL AMOUNT	55,200,000	53,000,000	

3. For purposes of this Schedule, and without limitation to the provisions of Section I.E of Schedule 2, the term "Training" means expenditures, based on annual budgets approved by the Association, 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(d) and A.5 of the Project as set forth in Schedule 1 to this Agreement.

4. It is understood that the percentages of expenditures to be financed under the table set forth in paragraph (2) of this Schedule have been calculated on the basis of the provision of a letter issued by the Recipient'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 4^{th} June, 1992 (as amended in 1996 and 2001) of the Recipient, which provides for exemption of taxes levied in the territory of the Recipient on works, goods and services for this Project.

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed $2,000,000 equivalent may be made for payments made prior to the date of this Agreement, but on or after April 15, 2008, for Eligible Expenditures.

2. The Closing Date is September 30, 2013.

SCHEDULE 3

Repayment Schedule

I. Repayment of the Original Credit

Date Payment Due	Principal Amount of the Original Credit repayable (expressed as a percentage)*
On each June 1 and December 1:	
commencing December 1, 2014 to and including June 1, 2024	**1%**
commencing December 1, 2024 to and including June 1, 2044	**2%**

II. Repayment of the Additional Credit

Date Payment Due	Principal Amount of the Additional Credit repayable (expressed as a percentage)*
On June 1and December 1	
commencing June 1, 2019 to and including December 1, 2028	**1%**
commencing June 1, 2029 to and including December 1, 2048.	**2%**

* The percentages represent the percentage of the principal amount of the Credit to be repaid, except as the Association may otherwise specify pursuant to Section 3.03 (b) of the General Conditions.

APPENDIX

Section I. Definitions

1. “Affected Persons” means persons who on account of the execution of Parts of the Project referred to in Part D of Schedule 1 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;

2. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006;

3. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement;

4. “Co-financier” means EIB, AFD and NDF, respectively;

5. “Co-financing” means an amount of twenty million Euro (€20,000,000), twelve million US Dollars (US$12 million) and forty million eight hundred thousand US Dollars (US$40,800,000) respectively initially provided by AFD under the AFD Loan Agreement, by NDF under the NDF Loan Agreement and by EIB under the EIB Loan Agreement, as well as an amount of nine million two hundred thousand dollars ($9,200,000) and an amount of twenty million Euro (€20,000,000) to be provided by EIB under the EIB-KenGen Additional Loan Agreement and by AFD under the AFD-KenGen Additional Loan Agreement, respectively, to assist in financing the Project;

6. “Co-financing Agreements” means, collectively, the AFD Loan Agreement, the NDF Loan Agreement, the EIB Loan Agreement, the EIB-KenGen Additional Loan Agreement and the AFD-KenGen Loan Agreement providing for the Co-financing and “Co-financing Agreement” refers to any of them;

7. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” published by the World Bank in May 2004 and revised in October 2006;

8. “Current Assets” means cash, all assets which could in the ordinary course of business be converted into cash within twelve months, including account receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year;

9. “Current Liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends;

10. “Current Ratio” means the ratio of Current Assets to Current Liabilities;

11. “Debt Service Ratio” means the estimated net revenues of either of the Project Implementing Entities divided by the estimated maximum debt service requirements of either Project Implementing Entity for each FY;

12. “Environmental Management Plan” or “EMP” means the plan, satisfactory to the Association, prepared by KenGen, dated June 2004, describing the environmental and social mitigation, monitoring and institutional measures to be applied in the implementation of Part C of the Project, as the said document may be amended and/or supplemented from time to time with the prior written concurrence of the Association;

13. “Environmental and Social Management Plan” or “ESMP” means the plan, satisfactory to the Association, prepared by KPLC dated February 2005, and updated in March 2008, describing the environmental and social mitigation, monitoring and institutional measures to be applied in the implementation of Part D of the Project, as the said document may be amended and/or supplemented from time to time with the prior written concurrence of the Association;

14. “Environmental and Social Management Units” means departments set up by the Project Implementing Entities responsible for monitoring and ensuring compliance with the relevant plans for managing the environmental and social impacts of the Project and referred to in Section I.A(1) of Schedule 2 to this Agreement;

15. “Energy Regulatory Commission” means the regulator of the energy sector established and operating pursuant to the Energy Act, 2006, or its legal successor thereto;

16. “Fiscal Year” and “FY” means the Fiscal Year of the Recipient commencing July 1 of each calendar year and ending on June 30 of the following calendar year;

17. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 1, 2005 (as amended through October 15, 2006) , with the modifications set forth in Section II of this Appendix;

18. “Geothermal Development Company” means a limited liability company wholly owned by the Recipient responsible for geothermal exploration, established under the Companies Act, Cap 486 and operating pursuant to the State Corporations Act, Cap 446 or any legal successor thereto;

19. “Independent Power Producers” means autonomous electric power generating business entities;

20. “KEBS” means the Kenya Bureau of Standards;

21. “KenGen” or “Kenya Electricity Generating Company Limited,” means a publicly listed, limited liability company incorporated and operating under the Companies Act, Cap 486, responsible for electricity generation or any legal successor thereto;

22. “KenGen Project Account” means the account maintained by KenGen pursuant to section 3.03 (a) of this Agreement;

23. “KenGen Project Agreement” means the Project Agreement, dated August 4, 2004, signed between the Association and KenGen, as amended and restated by agreement signed concurrently with the present Agreement;

24. “KPLC” or “Kenya Power and Lighting Company Limited,” means a publicly listed, limited liability company incorporated and operating under the Companies Act, Cap 486 responsible for electricity transmission and distribution or any legal successor thereto;

25. “KPLC Project Account” means the account maintained by KPLC pursuant to Section 3.03(a) of this Agreement;

26. “KPLC Project Agreement” means the Project Agreement, dated August 4, 2004, signed between the Association and KPLC, as amended and restated by agreement signed concurrently with the present Agreement;

27. “Least-Cost-Power Development Plan “means a plan prepared by the Recipient prioritizing or ranking projects in the electricity sector investment plan based on costs;

28. “Management Letter” means a letter issued by the external auditors as part of the annual audit report setting forth internal control weaknesses identified during the audit period;

29. “National Control Centre” means a national center responsible for scheduling and dispatch of electric power;

30. “MOE” means the Recipient’s Ministry of Energy;

31. “Power Purchase Agreements” means electricity purchase agreements between KPLC and KenGen as may be amended and/or supplemented from time to time;

32. “Project Agreements” means, collectively, the KenGen Project Agreement and the KPLC Project Agreement, and “Project Agreement” means either of them;

33. “Project Coordination Team” and “PCT” means a committee comprising the PIT (as hereinafter defined) team leaders and referred to Section I.A (2) of Schedule 2 to this Agreement;

34. “Procurement Guidelines” means the “Guidelines: Procurement under IBRD Loans and IDA Credits” published by the Bank in May 2004 and revised in October 2006;

35. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated February 24, 2009 and referred to in paragraph 1.16 of the Procurement Guidelines and paragraph 1.24 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs;

36. “Project Implementing Entities” means, collectively, KPLC and KenGen;

37. “PIT” means the Project Implementation Team of a Project Implementing Entity referred to in Section I.A(1) of Schedule 2 to this Agreement, and “PITs” means, collectively, the Project Implementation Teams of MOE, KenGen and KPLC;

38. “RAP” means the Resettlement Action Plan dated January 2008, prepared by KPLC on the basis of the RPF (as hereinafter defined) furnished to the Association and referred to in Section 1.D (1)(a) of Schedule2 to this Agreement, as the said document may be amended and/or supplemented from time to time with the prior written concurrence of the Association;

39. “REA” means the Rural Electrification Authority established and operating pursuant to the Recipient’s Energy Act, 2006;

40. “SCADA/EMS” means an electric system control and data acquisition/energy management system;

41. “Regional Control Centers” means a regional center responsible for scheduling and dispatch of electric power;

42. “Self Financing Ratio” means the ratio of funds from internal sources to the three year annual average of capital expenditure as detailed in Section IV.4(i) of Schedule II of the KenGen Project Agreement and Section IV.5(i) of the KPLC Project Agreement;

43. “Resettlement Policy Framework” and “RPF” means the Resettlement Policy Framework, dated February 2004 and updated in March 2008, prepared by KPLC for compensation payments to be made under the Project to Affected Persons and referred to in Section I.D (1)(a) of Schedule 2 to this Agreement, as the said document may be amended and/or supplemented from time to time with the prior written concurrence of the Association;

44. “Sectoral Environmental and Social Assessment” means a strategic environmental and social assessment of future energy sector investments and their potential impacts on ongoing and planned activities and investments in other sectors; and

45. “Subsidiary Loan Agreement” means the Amended and Restated Subsidiary Loan Agreement for each of the Project Implementing Entities 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 each of the Project Implementing Entities.

Section II. Modifications to the General Conditions

The modifications to the General Conditions for Credits and Grants of the Association, dated July 1, 2005 (as amended through October 15, 2006) are as follows:

Section 3.01 (b) of the General Conditions is modified to read as follows

“(b) The Commitment Charge shall accrue from a date sixty days after: (i) the date of the Development Credit Agreement with respect to the unwithdrawn balance of the Initial Credit; and (ii) the date of the Financing Agreement with respect to the unwithdrawn balance of the Additional Credit, to the respective dates on which amounts are withdrawn by the Recipient from the Financing Account or cancelled. The Commitment Charge shall accrue at the rate set as of the June 30 immediately preceding the accrual date and at such other rate as may be set from time to time thereafter pursuant to this Section. The rate set as of June 30 in each year shall be applied from the next Payment Date in that year. The Commitment Charge shall be payable semi-annually in arrears on each Payment Date. The Commitment Charge shall be computed on the basis of a 360-day year of twelve 30-day months.”