

CONFORMED COPY

CREDIT NUMBER 2966 KE

Development Credit Agreement

(Energy Sector Reform and Power Development Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated April 3, 1998

CREDIT NUMBER 2966 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated April 3, 1998, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Association has received a letter dated November 15, 1996 from the Borrower describing a program of actions, objectives and policies designed to improve the Borrower's energy sector (hereinafter called the Program) and declaring the Borrower's commitment to the execution of the Program;

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

(C) the Borrower intends to contract from the European Investment Bank (EIB) a loan (the EIB Loan) in an amount of approximately 29,000,000 European Currency Units 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;

(D) the Borrower intends to contract from Kreditanstalt für Wiederaufbau (KfW) a loan (the KfW Loan) in an amount of approximately 25,000,000 Deutsch Marks to assist in financing the Project on the terms and conditions set forth in an agreement (the KfW Loan Agreement) to be entered into between the Borrower and KfW;

(E) the Kenya Power Company Limited has contracted from the Overseas Economic Cooperation Fund (OECF) a loan (the OECF Loan) in an amount equivalent to ¥6,933,000,000 to assist in financing the Project on the terms and conditions set forth in an agreement (the OECF Loan Agreement) entered into between the Kenya Power Company Limited and OECF;

(F) Part C of the Project will be carried out by the Kenya Power and Lighting Company Limited (KPLC), and Part D of the Project will be carried out by the Kenya Power Company Limited (KPC), all with the Borrower's assistance and, as part of such assistance, the Borrower will make available to KPLC and KPC, respectively, a portion of the proceeds of the Credit as provided 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 KPLC Project Agreement of even date herewith between the Association and KPLC, and in the KPC Project Agreement of even date herewith between the Association and KPC;

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, with the modifications thereof set forth below (the General Conditions), constitute an integral part of this Agreement:

(a) The last sentence of Section 3.02 is deleted.

(b) The second sentence of Section 5.01 is modified to read:

"Except as the Association and the Borrower shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a member of the Association or for goods produced in, or services supplied from, such territories; or (b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Association, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations."

(c) Section 6.03 is modified to read:

"Section 6.03. Cancellation by the Association. If (a) the right of the Borrower to make withdrawals from the Credit Account shall have been suspended with respect to any amount of the Credit for a continuous period of thirty days, or (b) at any time, the Association determines, after consultation with the Borrower, that an amount of the Credit will not be required to finance the Project's costs to be financed out of the proceeds of the Credit, or (c) at any time, the Association determines, with respect to any contract to be financed out of the proceeds of the Credit, that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Credit during the procurement or the execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation, and establishes the amount of expenditures in respect of such contract which would otherwise have been eligible for financing out of the proceeds of the Credit, or (d) at any time, the Association determines that the procurement of any contract to be financed out of the proceeds of the Credit is inconsistent with the procedures set forth or referred to in the Development Credit Agreement and establishes the amount of expenditures in respect of such contract which would otherwise have been eligible for financing out of the proceeds of the Credit, or (e) after the Closing Date, an amount of the Credit shall remain unwithdrawn from the Credit Account, the Association may, by notice to the Borrower, terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice, such amount of the Credit shall be cancelled."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

- (a) "Fiscal Year" or "FY" means the period between July 1 and June 30;
- (b) "MOE" means the Borrower's Ministry of Energy;
- (c) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to an exchange of letters dated September 3, 1992; October 1, 1993; October 14, 1993; April 4, 1995 and April 18, 1995 between the Borrower and the Association;
- (d) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;
- (e) "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 the transmission and distribution of electricity;
- (f) "KPC" means the Kenya Power Company Limited, a limited liability company incorporated and operating under the laws of the Borrower, which is responsible for generation of electricity;
- (g) "KPLC Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and KPLC pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the KPLC Subsidiary Loan Agreement;
- (h) "KPC Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and KPC pursuant to Section 3.01 (d) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the KPC Subsidiary Loan Agreement;
- (i) "KPLC Project Agreement" means the agreement between the Association and Kenya Power and Lighting Company (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 KPLC Project Agreement;
- (j) "KPC Project Agreement" means the agreement between the Association and Kenya Power Company (KPC), 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 KPC Project Agreement;
- (k) "KWS" means the Kenya Wildlife Service, a statutory body established and operating under the Borrower's Wildlife (Conservation and Management) Act, which is responsible for managing the Borrower's wildlife resources;
- (l) "Project Implementation Plan" means the plan dated January 16, 1997 referred to in paragraph 1 of Schedule 4 to this Agreement, containing, inter alia, work programs, training programs, monitoring and performance indicators and procedures to be used for the purposes of implementation of the Project, as the same may be amended from time to time, in consultation with, and with the approval of, the Association, and such term includes any schedules to the Implementation Plan;
- (m) "PISG" means the Borrower's Project Implementation Support Group established in the Borrower's Ministry of Energy as of August 1996 to coordinate the implementation of the Project;
- (n) "PMT" means the Project Management Team established by KPC as of August 1996 to coordinate the implementation of Parts D and E of the Project; and
- (o) "Power Investment Program" means the least-cost investment plan in the power sector adopted by the Borrower pursuant to Section 3.05 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 eighty-six million six hundred thousand Special Drawing Rights (SDR 86,600,000).

Section 2.02. (a) 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 goods and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in US dollars a special deposit account (Special Account) in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be cancelled.

Section 2.03. The Closing Date shall be June 30, 2004 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 cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or 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 payment 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 per cent ($3/4$ 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 April 1 and October 1 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each April 1 and October 1, commencing October 1, 2007 and ending April 1, 2037. Each installment to, and including the installment payable on, April 1, 2017 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 grant 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, B, E and F of the Project through MOE with due diligence and efficiency and in conformity with appropriate administrative and financial practices and shall provide, promptly as needed, the funds, facilities, services and other resources required for such Parts of the Project; and

(ii) without limitation or restriction upon any of its other obligations under the Development Credit Agreement, the Borrower shall: (A) cause KPLC to carry out Part C of the Project; (B) cause KPC to carry out Part D of the Project; (C) cause KPLC and KPC to perform, in accordance with the provisions of the KPLC Project Agreement and the KPC Project Agreement, respectively, all the obligations of KPLC and KPC therein set forth; (D) take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KPLC and KPC to perform such respective obligations; and (E) 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 carry out, and shall cause the Project to be carried out, in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) The Borrower shall relend the proceeds of the Credit allocated from time to time to Categories (1) (a), (3) (b), (5) (b) and (6) (b) of the table in paragraph 1 of Schedule 1 to this Agreement to KPLC 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 at least 7.7% per annum, (ii) the principal amount of the KPLC Subsidiary Loan to be repaid in 20 years, including a grace period of five 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.

(d) The Borrower shall relend the proceeds of the Credit allocated from time to time to Categories (1) (b), (2), (3) (c), (4), (5) (c) and (6) (c) of the table in paragraph 1 of Schedule 1 to this Agreement to KPC under a subsidiary loan agreement to be entered into between the Borrower and KPC under terms and conditions which shall have been approved by the Association and which shall include: (i) interest payable by KPC of at least 7.7% per annum; (ii) repayment by KPC of the principal amount of the KPC Subsidiary Loan in 20 years, including a grace period of five years; and (iii) the principal amount of the KPC Subsidiary Loan repayable by KPC, 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.

(e) The Borrower shall exercise its rights under the KPLC Subsidiary Loan Agreement 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 KPLC Subsidiary Loan Agreement or any provision thereof.

(f) The Borrower shall exercise its rights under the KPC Subsidiary Loan Agreement 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 KPC Subsidiary Loan Agreement or any provision thereof.

Section 3.02. 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.

Section 3.03. For the purposes of Section 9.07 of the General Conditions, and without limitation thereto, the Borrower shall:

(a) prepare, 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;

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on 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: (a) Part C of the Project shall be carried out by KPLC pursuant to Section 2.03 (a) of the KPLC Project Agreement; and (b) Part D of the Project shall be carried out by KPC pursuant to Section 2.03 (a) of the KPC Project Agreement.

Section 3.05. The Borrower shall:

(a) not later than March 31 of each year, commencing on March 31, 1998, prepare and furnish to the Association for its review, a draft of its investment program in the power sector covering a period of five years;

(b) following a review of each such draft, the Borrower shall adopt a Power Investment Program, satisfactory to the Association, for the five-year period in question; and

(c) until the date of adoption of the Power Investment Program and

thereafter, the Borrower shall not carry out any single capital investment in new facilities estimated to cost in excess of the equivalent of \$10,000,000 (including investments by independent power producers) which is not included in the Power Investment Program for the period in question, without prior consultation with the Association.

Section 3.06. The Borrower shall, until completion of the Project, take all necessary measures to ensure that: (a) environmental impact assessments, satisfactory to the Association, are carried out for every power project under the Power Investment Program, and (b) appropriate mitigation plans are developed and implemented for each such project.

Section 3.07. The Borrower shall: (a) not later than September 30, 1998, adopt a plan, satisfactory to the Association, for adjusting power tariffs so as to reflect the long-run marginal cost of supply and to enable KPC and KPLC to achieve the financial targets specified in Sections 4.02 and 4.03 of the KPLC and KPC Project Agreements, respectively; and (b) thereafter implement the tariff adjustments in accordance with the said plan, including effecting by December 31, 1998 any adjustments agreed under the said plan for implementation by that date.

Section 3.08. The Borrower shall take all necessary measures to ensure free movement of wildlife within the Olkaria area and between Olkaria and Hells Gate and Longonot National Park, in accordance with the agreement dated September 20, 1994 between KPC and KWS.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain, or cause to be maintained, records and accounts adequate to reflect, in accordance with sound accounting practices, the operations, resources and expenditures in respect of Parts A, B, E and F of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

(i) have the records and accounts referred to in paragraph (a) of this Section, including those for the Special Account, for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, 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, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(iii) furnish to the Association such other information concerning said records, accounts and the audit thereof as the Association shall 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) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;

(ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

(iii) enable the Association's representatives to examine such records;

and

(iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. (a) The Borrower and the Association shall, from time to time, at the request of either party, exchange views with regard to the Borrower's power pricing policies and its plans in respect of the overall development of the power sector.

(b) In carrying out Part A.2 of the Project, the Borrower shall establish an autonomous electricity regulatory body which will, amongst other things, establish adequate prices for electricity sold by electric companies to: (i) enable KPLC and KPC, under conditions of efficient operation at reasonable levels of capacity utilization, to cover their operating costs including taxes, earn an adequate return on funds invested in such companies, meet their financial obligations and make a reasonable contribution to future investment for expansion of capacity, as provided in the KPLC and the KPC Project Agreements, respectively; and (ii) subject to the achievement of objectives in (i) above, pass on the benefit of declines in the real costs of production and supply to consumers through reduction in tariffs in real terms.

Section 4.03. Until such time as the autonomous regulatory body referred to in Section 4.02 (b) above is established, the Borrower shall take all necessary measures to adjust the level and structure of tariffs for electricity on the basis of recommendations of the power tariff study referred to in Section 3.07 of this Agreement, as agreed with the Association, with the objective of meeting the pricing objectives referred to in Section 4.02 (b) of this Agreement.

ARTICLE V

Remedies of the Association

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

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

(b) KPLC or KPC shall have failed to perform any of its obligations under the KPLC Project Agreement or KPC Project Agreement, respectively;

(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 KPLC or KPC will be able to perform its obligations under the KPLC Project Agreement or KPC Project Agreement, respectively;

(d) the Memorandum and 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;

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

(f) the Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of KPLC or KPC or for the suspension of either of their operations;

(g) the EIB and KfW Loan Agreements shall have failed to become effective by

December 31, 1998, 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; and

(h) (i) Subject to subparagraph (ii) of this paragraph:

(A) the right of the Borrower to withdraw the proceeds of any loan or grant made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor; or

(B) any such loan shall have become due and payable prior to the 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 (d) of the General Conditions, the following additional events are specified:

(a) any event specified in paragraph (b) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower;

(b) any event specified in paragraphs (d), (e) and (f) of Section 5.01 of this Agreement shall occur; and

(c) any event specified in paragraph (h) (i) (B), subject to the proviso in subparagraph (ii) of said paragraph (g).

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) the Borrower has furnished to the Association, and adopted a plan, satisfactory to the Association for future preparation and award of contracts for independent power supply projects;

(b) the Borrower has enacted a new Electric Power Act providing for the establishment of an autonomous regulatory body, satisfactory to the Association;

(c) the KPLC Subsidiary Loan Agreement and the KPC Subsidiary Loan Agreement have been executed between the Borrower and KPLC and KPC, respectively; and

(d) MOE and KPC have selected consultants for their PISG and PMT, respectively, in accordance with Section II of Schedule 3 to this Agreement.

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 KPLC Project Agreement has been duly authorized or ratified by KPLC and is legally binding upon KPLC in accordance with its terms;

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

(c) 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; and

(d) that the KPC Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KPC and is legally binding upon the Borrower and KPC 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

Representatives of the Borrower; Addresses

Section 7.01. The Minister of the Borrower responsible for finance 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:

Ministry of Finance
P.O. Box 30007
Nairobi
Kenya

Cable address:

FINANCE
Nairobi

Telex:

22921
MINFIN-KE

For the Association:

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

Cable address:

INDEVAS
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

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

REPUBLIC OF KENYA

By /s/ Samson K. Chemai

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Callisto Madavo

Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

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:

| Category | Amount of the Credit Allocated (Expressed in SDR Equivalent) | % of Expenditures to be Financed |
|--|--|---|
| (1) Civil works: | | |
| (a) for Part C of the Project | 560,000 | 100% of foreign expenditures |
| (b) for Part D of the Project | 17,100,000 | 50% |
| (2) Supply and erect for Part D of the Project | 26,600,000 | 100% of foreign expenditures |
| (3) Equipment: | | 100% of foreign expenditures and 80% of local expenditures |
| (a) for Parts A and B of the Project | 63,000 | |
| (b) for Part C of the Project | 6,730,000 | |
| (c) for Part E of the Project | 6,370,000 | |
| (4) Vehicles for Parts A and C of the Project | 70,000 | 100% of foreign expenditures and 80% of local expenditures |
| (5) Consultants' services: | | 100% |
| a) for Parts A and B of the Project | 4,850,000 | |
| b) for Part C of the Project | 490,000 | |
| c) for Parts D and E of the Project | 15,930,000 | |

| | | | |
|-----|---|------------|---|
| | d) for Part F of the Project | 970,000 | |
| (6) | Training: | | 100% |
| | a) for Part B of the Project | 63,000 | |
| | b) for Part C of the Project | 180,000 | |
| | c) for Part E of the Project | 530,000 | |
| (7) | Household survey | 140,000 | 100% |
| (8) | Refunding of Project Preparation Advance | 1,390,000 | Amounts due pursuant to Section 2.02 (c) of this Agreement |
| (9) | Unallocated | 4,564,000 | |
| | TOTAL | 86,600,000 | |

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; and

(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.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures made prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding the equivalent of SDR 260,000 may be made in respect of Category 5 (a) on account of payments made for expenditures before that date but after June 30, 1997.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures for: (a) civil works and goods under contracts not exceeding \$200,000 equivalent, (b) services of consulting firms under contracts not exceeding \$100,000 equivalent, and (c) services of individual consultants under contracts not exceeding \$50,000 equivalent, all under such terms and conditions as the Association shall specify to the Borrower.

SCHEDULE 2

Description of the Project

The objectives of the Project are to assist the Borrower in formulating and implementing major policy and institutional reforms aimed at: (i) creating an efficient energy sector, (ii) supporting investments needed to meet power demand, and (iii) facilitating deregulation of the energy sector and private sector participation.

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: Energy Sector Restructuring and Reform

1. Carrying out a study on the restructuring of the power subsector and implementing the recommendations of such study.

2. Carrying out studies of the legal and regulatory regime of the energy sector to define changes required for the restructuring of the power sector, facilitating private sector investment and improving sector efficiency and establishing an autonomous regulatory board and implementing recommendations of such studies.

3. Strengthening, through the provision of technical assistance and training, the capacity of MOE in negotiations with the independent power producers for the development of Kipevu II and Olkaria III power plants, including preparation and evaluation of bid documents.

Part B: Institutional Support

1. Providing specialized advisory services to MOE in: (a) overall Project implementation, (b) devising and implementing a deregulation strategy in the petroleum sector, (c) mobilizing resources for financing the Program, and (d) carrying out prefeasibility and feasibility studies and preparing tender documents for activities under the Program.

2. Training of MOE staff in the monitoring of petroleum industry activities and in demand-side management.

3. Acquisition of vehicles, computers, facsimile and photocopying machines and other office equipment for MOE's PISG.

4. Carrying out a study to develop uniform standards for LPG cylinders, valves, pressure regulators and associated testing, monitoring and regulatory arrangements.

5. (a) Carrying out a study on quality guidelines for photovoltaic equipment and related organizational regulatory framework for the monitoring and application of minimum standards.

(b) Carrying out an information campaign to disseminate information on photovoltaic systems.

6. Carrying out a household energy strategy study, including: (a) surveys on energy use, (b) survey of energy supply and marketing, and (c) a study on policy, institutions and pricing with respect to household energy.

7. Establishing demand-side management teams and programs.

8. Facilitating the development, by independent power producers, of:

(a) one 64 MW geothermal power plant on the southwestern part of the Olkaria field, including the erection of a 132 KV transmission line between the second and the third Olkaria plants; and

(b) one 75 MW diesel electric power plant at Kipevu.

9. Carrying out a study on efficiency standards and a labelling program for electrical appliances and motors and a mechanism for the implementation of such a program.

10. Implementing environmental mitigation measures with respect to power plants to be constructed under the Program.

Part C: Efficiency Improvements

1. Assisting KPLC in establishing demand-side management teams and programs.

2. (a) Training KPLC staff in areas of demand-side management program design, economic analysis, use of computer software, marketing techniques, monitoring and evaluation, energy auditing and energy management.

(b) Acquisition of vehicles and training equipment, including computer hardware and software.

3. Carrying out a program for providing electricity customers with advisory

services.

4. Providing specialized advisory services to KPLC in: (a) overall Project management, and (b) carrying out prefeasibility and feasibility studies and preparing tender documents for activities under the Program.

5. Carrying out demonstrations of efficient lighting and equipment, including the provision of efficient lights and appliances targeting industrial service and residential customers.

6. Implementing a program to reduce power losses, including installation of capacitors, new substations and feeders, reconditioning of feeders and reinforcement of low-voltage systems.

7. (a) Reinforcement and reconditioning of distribution lines, including line interconnectors, in the Nairobi area.

(b) Upgrading and construction of new power substations in the Nairobi area.

(c) Upgrading of power substations in Mombasa, Nyali, Malindi, Makande, Kipevu and Diani.

(d) Construction of new power substations in the Mombasa and coastal area, including associated interconnection lines.

Part D: Power System Expansion and Upgrading

1. Construction of one 75 MW diesel electric power plant at Kipevu.

2. Implementation of environmental mitigation measures with respect to power plants to be constructed under the Program.

3. (a) Construction of one 64 MW geothermal power plant on the northeastern part of the Olkaria Geothermal Field, including: (i) erection of a 220 KV transmission line, (ii) construction of substations to connect into the Nairobi grid, and (iii) connection of the existing production wells to the power plant.

(b) Drilling and connection of additional wells for the existing power station at Olkaria.

4. Construction of one 72.5 MW power generating unit at the Gitaru power station.

5. Provision of specialized advisory services to KPC in: (a) overall Project implementation, and (b) carrying out prefeasibility and feasibility studies and preparing tender documents for activities under the Program.

Part E: Geothermal Resource Assessment

Carrying out an assessment of geothermal resources in the Borrower's territory, including:

(a) carrying out a feasibility and drilling program in the northwestern and central areas of the Olkaria Geothermal Field, and

(b) carrying out advanced prefeasibility studies at Olkaria Domes and Suswa, and prefeasibility studies at Longonot and Menangai.

Part F: Studies for Preparation of Future Projects

Carrying out studies for the preparation of future projects to be carried out under the Program.

* * *

The Project is expected to be completed by December 31, 2003.

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: General

Goods and works shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Prequalification

Bidders for civil works and supply and erect contracts estimated to cost the equivalent of \$10,000,000 or more per contract shall be prequalified in accordance with the provisions of paragraphs 2.9 and 2.10 of the Guidelines.

(b) Grouping of contracts

To the extent practicable, contracts for goods shall be grouped in bid packages estimated to cost \$200,000 equivalent or more each.

(c) Preference for domestically manufactured goods and domestic contractors

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower and works to be carried out by domestic contractors.

(d) Dispute Review Board

Each contract for works estimated to cost \$50,000,000 equivalent or more shall include the provisions for a dispute review board set forth in the standard bidding documents for works referred to in paragraph 2.12 of the Guidelines.

(e) Preshipment Inspection

Goods procured in accordance with Part A shall be exempt from preshipment inspection of price.

(f) Notification and Advertising

The invitation to prequalify or bid for each contract to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. National Competitive Bidding

(a) Civil works under Part C.7 of the Project estimated to cost \$200,000 equivalent or less per contract, and \$800,000 equivalent or less in the aggregate, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) Goods estimated to cost \$50,000 equivalent or less per contract, and \$200,000 equivalent or less in the aggregate, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. International Shopping

Goods estimated to cost \$50,000 equivalent or less per contract, and \$200,000 equivalent or less in the aggregate, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

Part D: Review by the Association of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for goods and civil works estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 (the Consultant Guidelines) and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

Individual consultants' services for tasks that meet the requirements set forth in Section V of the Consultant Guidelines shall be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Association of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Association for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Association, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 1, 2 and (other than the third subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, but less than the equivalent of \$200,000, the procedures set forth in paragraphs 1, 2 (other than the second subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(c) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, 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. The contract shall be awarded only after the said approval shall have been given.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.

SCHEDULE 4

Implementation Program

1. The Borrower shall, and shall cause KPLC and KPC to, implement the Project in accordance with the procedures set out in the Project Implementation Plan, and, except as the Association shall otherwise agree, the Borrower shall not amend or waive any provision thereof which, in the opinion of the Association, may materially and adversely affect the implementation of the Project.

2. MOE shall be responsible for the overall coordination of the Project, including, inter alia, overseeing the sector policy reform program, coordinating the sector-wide expenditure programs between KPLC and KPC and coordinating financial assistance to the Program.

3. Reviews

The Borrower shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) not later than March 31 of each year, commencing on March 31, 1998, undertake, in conjunction with the Association, a joint annual review on all matters relating to the progress of the Project and, in particular, the progress achieved by the Borrower during the current fiscal year having regard to the monitoring indicators referred to in subparagraph (a) of this paragraph;

(c) not later than one month prior to each annual review, shall furnish to the Association for its comments a report in such detail as the Association shall reasonably request on the progress of the Project;

(d) following each annual review, act promptly and diligently in order to take any corrective action deemed necessary to remedy any shortcoming identified in the implementation of the Project or to implement such measures as may have been agreed upon between the parties in furtherance of the objectives of the Project; and

(e) promptly after the Effective Date, take all measures necessary on its part to organize, in conjunction with the Association, a workshop for the launching of the Project implementation, which shall cover, inter alia, disbursement and procurement procedures and detailed timetables for the implementation of the Project.

4. Midterm Review

(a) Not later than June 30, 2000, the Borrower shall carry out jointly with the Association, KPLC and KPC a midterm review of the progress made in carrying out the Project (hereinafter referred to as the Midterm Review).

The Midterm Review shall cover, amongst other things:

(i) the status of progress in restructuring the power subsector and in the operation of the electricity regulatory board referred to in Section 4.02 (b) of this Agreement;

(ii) the outcome of the Borrower's efforts to attract private sector investment in the power sector; and

(iii) the status of implementation of the physical components of the Project as well as the studies and training programs.

(b) The Borrower shall, at least four weeks prior to the Midterm Review, furnish to the Association a separate report describing the status of implementation of each component of the Project and a summary report of Project implementation generally.

(c) The Borrower shall, not later than four weeks after the Midterm Review, prepare an action program, acceptable to the Association, for the further implementation of the Project having regard to the findings of the Midterm Review and, thereafter, implement such action program.

SCHEDULE 5

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) through (7) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods 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; and

(c) the term "Authorized Allocation" means an amount equivalent to \$5,000,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$2,500,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR 10,000,000.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

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

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special

Account at such intervals as the Association shall specify.

(ii) 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 paragraph 4 of this Schedule 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 and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower 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.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, 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 allocated to the eligible Categories 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 as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account 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 shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the

Association all or any portion of the funds on deposit in the Special Account.

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

