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CREDIT NUMBER 4572-KE
CREDIT NUMBER 3958-KE

Project Agreement

(Amending and Restating Project Agreement)

(Energy Sector Recovery Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

KENYA POWER AND LIGHTING COMPANY LIMITED

Dated May 8, 2009

CREDIT NUMBER 4572-KE
CREDIT NUMBER 3958-KE

PROJECT AGREEMENT

AMENDING AND RESTATING PROJECT AGREEMENT

Agreement dated May 8, 2009, entered into between INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”) and THE KENYA POWER AND LIGHTING COMPANY LIMITED (“Project Implementing Entity”) in connection with the Financing Agreement (“Financing Agreement”) of even date between the Republic of Kenya (“Recipient) and the Association. The Association and the Project Implementing Entity hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to the Financing Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the Financing Agreement or the General Conditions.

ARTICLE II — PROJECT

- 2.01. The Project Implementing Entity declares its commitment to the objectives of the Project. To this end, the Project Implementing Entity shall carry out Parts A.1 (a), A.5, B.1 (b), B.3, B.5, B.10, B.11 (a) and D of the Project in accordance with the provisions of Article IV of the General Conditions, and shall provide promptly as needed, the funds, facilities, services and other resources required for its Respective Part of the Project.
- 2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, and except as the Association and the Project Implementing Entity shall otherwise agree, the Project Implementing Entity shall carry out its Respective Part of the Project in accordance with the provisions of the Schedule to this Agreement.

ARTICLE III — TERMINATION

- 3.01. For purposes of Section 8.05 (c) of the General Conditions, the date on which the provisions of this Agreement shall terminate is twenty years after the date of this Agreement.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

4.01. The Project Implementing Entity's Representative is the Managing Director and Chief Executive Officer.

4.02. The Association's Address is:

International Development Association
1818 H Street, NW
Washington, DC 20433
United States of America

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

4.03. The Project Implementing Entity's Address is:

Stima Plaza
Kolobot Road
Parklands
P. O Box 30099
Nairobi 00100
Kenya

Telephone:	Facsimile:
254-020-32013201	254-020-337351

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

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Johannes C.M. Zutt

Authorized Representative

THE KENYA POWER AND LIGHTING COMPANY LIMITED

By /s/ Joseph Njoroge

Authorized Representative

SCHEDULE

Execution of the Project Implementing Entity's Respective Part of the Project

Section I. Implementation Arrangements

A. Institutional Arrangements.

The Project Implementing Entity shall:

- (1) maintain, until the completion of the Project, (i) a Project Implementation Team (PIT), consisting of 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, as well as (ii) an Environmental and Social Management Unit, in each case with terms of reference, qualifications and experience satisfactory to the Association.
- (2) carry out its Respective Parts of the Project as specified in Section 3.01 of the Financing Agreement and this Agreement and ensure that its PIT, as well as its Environmental and Social Management Unit, are adequately staffed and maintained throughout the Project implementation.

B. Anti-Corruption

The Project Implementing Entity shall ensure that its Respective Part of the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

C. Safeguards

The Project Implementing Entity shall:

- (i) maintain the RAPs in accordance with the RPF and implement the measures set forth in the said RAPs in a timely manner satisfactory to the Association; and
- (ii) the Project Implementing Entity shall carry out its Respective Part of the Project in accordance with the ESMP, the RPF and the RAPs, and shall not amend or waive any provision of the ESMP, the RPF or any of the RAPs if such amendment or waiver in the opinion of the Association, materially or adversely affects the implementation of its Respective Part of the Project.

Section II. Project Monitoring, Reporting and Evaluation**A. Project Reports**

1.
 - (a) The Project Implementing Entity shall monitor and evaluate the progress of its Respective Part of the Project and prepare Project Reports for its Respective Part of the Project in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators set forth below in subparagraph (b) of this paragraph agreed with the Association. Each such Project Report shall cover the period of one calendar quarter, and shall be furnished to the Recipient not later two weeks after the end of the period covered by such report for incorporation and forwarding by the Recipient to the Association of the overall Project Report.
 - (b) The performance indicators referred to above in sub-paragraph (a) consist of the following:
 - (i) kilometers of electricity and distribution lines constructed or rehabilitated under the Project;
 - (ii) number of substations constructed or rehabilitated under the Project;
 - (iii) number of combined monthly line interruptions per 100 km for 66 kV, and 33 kV lines;
 - (iv) number of households connected as a result of the Project;
 - (v) KPLC's operating efficiency ratio (KPLC's operating expenses divided by its operating revenue);
 - (vi) annual transmission and distribution losses (percentage of energy purchased by KPLC);
 - (vii) the Project Implementing Entity's annual Current Ratio, Debt Service Ratio, and Self Financing Ratio;
2. The Project Implementing Entity shall provide to the Recipient not later than 3 months after the Closing Date, for incorporation in the report referred to in Section 4.08 (c) of the General Conditions all such information as the Recipient or the Association shall reasonably request for the purposes of such Section.

B. Financial Management, Financial Reports and Audits

1. The Project Implementing Entity shall maintain a financial management system and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, both in a manner adequate to reflect the operations and financial condition of the Project Implementing Entity, and to register separately the operations, resources and expenditures related to its Respective Part of the Project.
2. The Project Implementing Entity shall have its financial statements referred to above audit by independent auditors acceptable to the Association, in accordance with consistently applied auditing standards acceptable to the Association. Each audit of these financial statements shall cover the period of one fiscal year of the Project Implementing Entity. The audited financial statements along with a Management Letter for each period shall be furnished to the Association not later than six months after the end of the period.

Section III. Procurement

All goods, works and services required for the Project Implementing Entity's Respective Part of the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the provisions of Section III of Schedule 2 to the Financing Agreement.

Section IV. Other Undertakings

1. The Project Implementing Entity shall:
 - (a) maintain the KPLC Project Account, until the completion of the Project, in a commercial bank acceptable to the Association for purposes of the Project, on terms and conditions satisfactory to the Association;
 - (b) replenish said 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; and
 - (c) ensure that the funds deposited into the said account in accordance with paragraph (b) of this Section shall be used exclusively to finance Eligible Expenditures under the Project.
2. The Project Implementing Entity shall enter into an amended and restated subsidiary agreement ("Subsidiary Loan Agreement") with the Recipient 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 the Project Implementing Entity's subsidiary loan repayable by the Project Implementing Entity, 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 the Financing Agreement, such equivalent to be determined as of the date or respective dates of repayment.

3. Except as the Recipient in consultation with the Association shall otherwise agree, the Project Implementing Entity shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any of its provisions.
4. On or about April 28, 2010 or any other date agreed with the Association, the Project Implementing Entity shall undertake in conjunction with the Association, the Recipient and the Co-financiers a comprehensive mid-term review of the Project during which it shall exchange views generally on all matters relating to the progress of its Respective Part of the Project, performance of its obligations under this Agreement and having regard to the performance indicators referred to in Section II. A.1 (b) of the Schedule to this Agreement.
5. Except as the Association shall otherwise agree, the Project Implementing Entity shall, for each of its fiscal years starting in FY2008/09 and in each succeeding fiscal year: (i) produce funds from internal sources equivalent to not less than 25% of the three-year annual average of the Project Implementing Entity's capital expenditures (for that year, the preceding fiscal year and the next fiscal year); (ii) maintain a ratio of current assets to current liabilities of not less than 1.0; and (iii) ensure that its estimated net revenues shall be at least 1.2 times the estimated maximum debt service requirements of the Project Implementing Entity for any such fiscal year on all debt of the Project Implementing Entity.

(a) For the purposes of this Section:

- (i) The term "funds from internal sources" means the difference between:
 - (A) the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction, net non-operating income and any reduction in working capital other than cash; and
 - (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for

depreciation and other non-cash operating charges and income taxes), debt service requirements, all cash dividends and other cash outflows other than capital expenditures, increase in working capital other than cash.

- (ii) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
- (iv) The term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next fiscal year.
- (v) The term "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.
- (vi) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vii) The term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations, averaged over a three-year period covering the year concerned and the year preceding and the year succeeding such year.
- (viii) The term "current assets" means cash, all assets which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable

securities, inventories and prepaid expenses properly chargeable to operating expenses within the next fiscal year.

- (ix) The term "debt" means any indebtedness of KPLC maturing by its terms more than one year after the date on which it is originally incurred.
- (x) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations adjusted to take account of the Project Implementing Entity's tariffs in effect at the time of the incurrence of debt even though they were not in effect during the twelve-month period to which such revenues relate and net non-operating income; and
 - (B) the sum of all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Project Implementing Entity, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

- 6. (a) The Project Implementing Entity shall take all necessary measures to ensure that, until completion of the Project, its accounts receivable on electricity sales shall be maintained at or below 60 days of revenues.
- (b) The Project Implementing Entity shall submit quarterly reports to the Association on settlement of electricity bills by the Recipient's Ministries and Departments, and adopt appropriate measures to ensure compliance with paragraph (a) of this Section.