

CONFORMED COPY

CREDIT NUMBER 2966 KE

KPC Project Agreement

(Energy Sector Reform and Power Development Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

KENYA POWER COMPANY LIMITED

Dated April 3, 1998

CREDIT NUMBER 2966 KE

PROJECT AGREEMENT

AGREEMENT, dated April 3, 1998, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and KENYA POWER COMPANY LIMITED (KPC).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Republic of Kenya (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to eighty-six million six hundred thousand Special Drawing Rights (SDR 86,600,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that KPC agrees to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and KPC, a portion of the proceeds of the credit for Part D of the Project provided for under the Development Credit Agreement will be relented to KPC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS KPC, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. KPC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out Part D of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and power generation practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for Part D of the Project.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for Part D of the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to the Development Credit Agreement.

Section 2.03. (a) KPC shall carry out 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 the KPC Project Agreement and Part D of the Project.

(b) For the purposes of Section 9.07 of the General Conditions, and without limitation thereto, KPC shall:

(i) 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, of such scope and in such detail as the Association shall reasonably request, for the future operation of Part D of the Project; and

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

Section 2.04. KPC shall duly perform all its obligations under the KPC Subsidiary Loan Agreement. Except as the Association shall otherwise agree, KPC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the KPC Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) KPC shall, at the request of the Association, exchange views with the Association with regard to the progress of Part D of the Project, the performance of its obligations under this Agreement and under the KPC Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) KPC shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of Part D of the Project, the accomplishment of the purposes of the Credit or the performance by KPC of its obligations under this Agreement and under the KPC Subsidiary Loan Agreement.

Section 2.06. KPC shall participate in the Midterm Review referred to in Schedule 4 to the Development Credit Agreement and shall thereafter implement the action plan with respect to Part D of the Project.

ARTICLE III

Management and Operations of KPC

Section 3.01. KPC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and power generation practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. KPC shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and power generation practices.

Section 3.03. KPC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) KPC shall maintain records and accounts adequate to reflect, in accordance with sound accounting practices, its operations and financial condition.

(b) KPC shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) 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 copies of its financial statements for such year as so audited, and (B) 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 financial statements as well as the audit thereof, as the Association shall from time to time reasonably request.

Section 4.02. (a) Except as the Association shall otherwise agree, KPC shall produce, for each of its fiscal years after its fiscal year ending on June 30, 1997, funds from internal sources equivalent to not less than 20% for FY 1997/98 and 25% thereafter of the three-year annual average of KPC's capital expenditures (for that year, the preceding fiscal year and the next fiscal year).

(b) Before December 31, KPC shall, in each of its fiscal years, on the basis of forecasts prepared by KPC and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the following fiscal year and shall furnish to the Association a copy of such review upon its completion.

(c) If any such review shows that KPC would not meet the requirements set forth in paragraph (a) for KPC's fiscal years covered by such review, KPC shall promptly take all necessary measures in order to meet such requirements.

(d) 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 and net nonoperating income; and

(B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of depreciation and other noncash operating service requirements, all cash dividends, other cash distributions of surplus and other cash outflows other than capital expenditures.

(ii) The term "net nonoperating 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 "debt service requirements" means the aggregate amount of repayments and other charges (including sinking fund payments, if any) of, and interest on, debt.

(iv) The term "capital expenditures" means all expenditures on account of fixed assets, including interest charged to construction, related to operations.

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

Section 4.03. (a) Except as the Association shall otherwise agree, KPC shall not incur any debt unless a reasonable forecast of the revenues and expenditures of KPC shows that the estimated net revenues of KPC for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times the estimated debt service requirements of KPC in such year on all debt of KPC, including the debt to be incurred.

(b) For the purposes of this Section:

(i) The term "debt" means any indebtedness of KPC maturing by its terms more than one year after the date on which it is originally incurred.

(ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or modification of its terms other instrument providing for such debt or for the agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(iii) The term "net revenues" means the difference between:

(A) the sum of revenues from all sources related to operations and net nonoperating income; and

(B) the sum of all expenses related to operations, including payments in lieu of depreciation, other noncash interest and other charges on debt. administration, adequate maintenance, taxes and taxes, but excluding provision operating charges and

(iv) The term "net nonoperating income" means the difference between:

(A) revenues from all sources other than those related to operations; and

incurred in (B) expenses, including taxes and payments in lieu of taxes, the generation of revenues in (A) above.

repayments (v) The term "debt service requirements" means the aggregate amount of (including sinking fund payments, if any) of, and interest on, debt.

not earlier (vi) The term "reasonable forecast" means a forecast prepared by KPC than twelve months prior to the incurrence of the debt in question, which both the Association and KPC accept as reasonable and as to which the Association has notified KPC of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of KPC.

Section 4.04. KPC 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.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of KPC thereunder shall terminate on the earlier of the following two dates:

- in (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date twenty years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify KPC of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Association:

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

Cable address:

Telex:

INDEVAS
Washington, D.C.

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

For KPC:

Central Office
Electricity House
P.O. Box 30099
Nairobi, Kenya

Telex:

22253
Nairobi

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of KPC or by KPC on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the Managing Director or such other person or persons as the Managing Director shall designate in writing, and KPC shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Callisto Madavo

Regional Vice President
Africa

KENYA POWER COMPANY LIMITED

By /s/ Samson K. Chemai

Authorized Representative

