KPLC Project Agreement
(Energy Sector Recovery Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

THE KENYA POWER AND LIGHTING COMPANY LIMITED

Dated , 2004
CREDIT NUMBER 3958 KE

PROJECT AGREEMENT

AGREEMENT, dated , 2004, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and THE KENYA POWER AND LIGHTING COMPANY LIMITED (KPLC).

WHEREAS (A) by the Development Credit Agreement of even date herewith between the 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 fifty five million two hundred thousand Special Drawing Rights (SDR 55,200,000), on the terms and conditions set forth in the Development Credit Agreement, but only on conditions that KPLC agree 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 KPLC, part of the proceeds of the Credit as provided for under Section 3.01 (c) (ii) of the Development Credit Agreement will be made available to KPLC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS KPLC, 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, the Preamble to this 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. (a) KPLC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end it shall carry out Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D the Project set forth in Schedule 2 to the Development Credit Agreement with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility and
environmental practices, provide or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the carrying out said Parts of the Project;

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Association and KPLC shall otherwise agree in consultation with the Borrower, KPLC shall carry out Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement in accordance with the Implementation Program set forth in Schedule 4 to the Development Credit Agreement and the provisions of this Agreement, and to this end, KPLC shall obtain authority from the Borrower to manage and operate Special Account C referred to in Part B of Schedule 1 to the Development credit Agreement.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants’ services required for Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement 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. Without limitation to its obligations under Section 2.01 of this Agreement, KPLC shall:

(a) open and maintain in Kenya Shillings, until the completion of the Project, a Project Account in a commercial bank acceptable to the Association, under terms and conditions satisfactory to the Association, to finance KPLC’s contribution to the expenditures for Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement;

(b) promptly make an Initial Deposit of no less than the equivalent of seventy thousand dollars ($70,000) in Kenya Shillings into the Project Account to finance KPLC’s initial contribution to the expenditures for Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement;

(c) deposit into the Project Account such amounts as are estimated to be required at any given time for the ensuing three-month period and as shall be agreed upon between KPLC and the Association to finance KPLC’s contribution to the expenditures for Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement; and

(d) ensure that the funds deposited into the Project Account in accordance with paragraphs (b) and (c) of this Section shall be used exclusively to finance the KPLC’s contribution to the expenditures for Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D
of the Project set forth in Schedule 2 to the Development Credit Agreement which are not otherwise financed from the proceeds of the Credit.

Section 2.04. (a) KPLC 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 Project Agreement and Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement.

(b) For the purposes of Section 9.06 of the General Conditions and without limitation thereto, KPLC 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 Association and KPLC, a plan designed to ensure the continued achievement of the Project objectives; and

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

Section 2.05. KPLC shall duly perform all its obligations under the KPLC Subsidiary Loan Agreement. Except as the Association shall otherwise agree, KPLC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the KPLC Subsidiary Loan Agreement or any provision thereof.

Section 2.06. Without limitation to its obligations elsewhere in this Agreement, KPLC shall:

(a) establish and maintain, until the completion of the Project, an Environmental and Social Management Unit with adequate staffing and on the basis of terms of reference satisfactory to the Association; and

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

Section 2.07. (a) KPLC shall, at the request of the Association, exchange views with the Association with regard to the progress of Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement, the
performance of its obligations under this Agreement and under the KPLC Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) KPLC shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement, the accomplishment of the purposes of the Credit, or the performance by KPLC of its obligations under this Agreement and under the KPLC Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of KPLC

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

Section 3.02. KPLC shall at all times operate and maintain its buildings, office space, 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 public utility practices.

Section 3.03. KPLC 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) KPLC shall establish and maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Association, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to Parts A.1, A.5, B.1 (b), B.3, B.5, B.10 and D of the Project set forth in Schedule 2 to the Development Credit Agreement and KPLC’s general operations.

(b) KPLC shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related
statements) for each FY audited, in accordance with auditing standards acceptable to the Association, 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 the financial statements referred to in paragraph (a) of this Section, for such year as so audited, and (B) an opinion on such statements and report of such audit, by the 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 such records, accounts and financial statements, and the audit thereof, and concerning said auditors, as the Association may from time to time reasonably request.

Section 4.02. (a) Without limitation upon KPLC’s reporting obligations set out in Sections V and VI of Schedule 4 to the Development Credit Agreement, KPLC shall prepare and furnish to the Association FMR, in form and substance satisfactory to the Association, which:

(i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explains variances between the actual and planned uses of such funds;

(ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and

(iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Association not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Association not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.
Section 4.03.(a) Except as the Association shall otherwise agree, KPLC shall, for each of its fiscal years starting in FY2004/05 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 KPLC’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 the estimated net revenues shall be at least 1.2 times the estimated maximum debt service requirements of KPLC for any such fiscal year on all debt of KPLC.

(b) 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 KPLC'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.

(xi) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of KPLC, 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.

Section 4.04. (a) KPLC 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). KPLC shall submit quarterly reports to the Association on settlement of electricity bills by the Borrower’s Ministries and Departments, and adopt appropriate measures to ensure compliance with paragraph (a) of this Section.

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 KPLC thereunder shall terminate on the earlier of the following two dates:

(i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or

(ii) the date fifteen 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 KPLC 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, telex or facsimile 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. Deliveries made by facsimile transmission shall also be confirmed by mail. 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: Facsimile:
INDEVAS 248423 (MCI) or (202) 477-6391
Washington, D.C. 64145 (MCI)

For The Kenya Power and Lighting Company Limited (KPLC):

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

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

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 KPLC, or by KPLC on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the Managing Director of KPLC or such other person or persons as
KPLC shall designate in writing, and KPLC 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 Nairobi, Kenya, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

THE KENYA POWER AND LIGHTING COMPANY LIMITED

By

Authorized Representative