Project Agreement
(Additional Financing for Kenya Electricity Expansion Project)

between

KENYA ELECTRICITY GENERATING COMPANY LIMITED

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated 29th June, 2016
PROJECT AGREEMENT

AGREEMENT dated 29th June, 2016, entered into between INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association") and KENYA ELECTRICITY GENERATING COMPANY LIMITED ("Project Implementing Entity") in connection with the Financing Agreement ("Financing Agreement") of same 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 its respective Parts 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 Parts 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 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-five (25) years after the date of this Agreement.
ARTICLE IV — REPRESENTATIVE; ADDRESSES

4.01. The Project Implementing Entity’s Representative is the Managing Director.

4.02. The Project Implementing Entity’s Address is:

Stima Plaza
Kolobot Road
Parklands
P. O Box 47936
Nairobi 00100
Kenya

Telephone: 254-020-3666000
Facsimile: 254-020-3741172

4.03. The Association’s Address is:

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

Cable: INDEVAS
Telex: 248423(MCI)
Facsimile: 1-202-477-6391
Washington, D.C.
AGREED at Nairobi, Kenya, as of the day and year first above written.

KENYA ELECTRICITY GENERATING COMPANY LIMITED

By

[Signature]
Authorized Representative

Name: Albert Mugo
Title: Managing Director / CEO

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

[Signature]
Authorized Representative

Name: Diouf Late
Title: Country Director - Africa Region
SCHEDULE

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

Section I. Implementation Arrangements

A. Institutional Arrangements

1. The Project Implementing Entity shall maintain, until the completion of the Project, a Project Implementation Team (PIT), comprising a team leader, a steam field engineer, an electrical engineer, a mechanical engineer, a civil engineer, a procurement officer, an accountant, an environmental specialist, and any other specialists as may be required for the effective implementation of its Respective Parts of the Project in each case with terms of reference, qualifications and experience satisfactory to the Association.

2. The PIT shall be responsible for implementing the Project Implementing Entity’s Respective Parts of the Project including undertaking all procurement, contract management, financial management of Project funds, preparation of progress reports, updating of Project costs, preparation of procurement and financing plans and coordinating of Co-Financiers financing Part A of the Project.

B. Anti-Corruption

1. 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

1. The Project Implementing Entity shall ensure that the Project is carried out in accordance with the provisions of the ESMF, IPPF and the RPF.

2. Whenever an ESIA, ESMP, IPP and/or RAP shall be required for any proposed Project activity in accordance with the provisions of the ESMF and/or the RPF, the Project Implementing Entity shall:

(a) prior to the commencement of such activity, proceed to have such ESIA, ESMP, IPP and/or RAP, as the case may be: (i) prepared in accordance with the provisions of the ESMF, IPPF and the RPF; (ii) furnished to the Association for review and approval; and (iii) thereafter adopted and disclosed as approved by the Association, in a manner acceptable to the Association;

(b) thereafter take such measures as shall be necessary or appropriate to ensure compliance with the requirements of such ESIA, ESMP, IPP or RAP; and
in the case of any resettlement activity under the Project involving Affected Persons, ensure that no displacement (including restriction of access to legally designated parks and protected areas) shall occur before necessary resettlement measures consistent with the RAP have been executed, including, in the case of displacement, full payment to Affected Persons of compensation and of other assistance required for relocation, prior to displacement.

3. The Project Implementing Entity shall not amend, abrogate or waive, or permit to be amended, abrogated or waived, the ESMF, IPPF the RPF and any ESIA, ESMP, IPP and/or RAP adopted in accordance with the provisions of paragraph 2 of this Part, unless the Association has provided its prior approval thereof in writing, and the Project Implementing Entity has complied with the same consultation and disclosure requirements as applicable to the original adoption of the said instruments.

4. Without limitation on its other reporting obligations under this Agreement, the Project Implementing Entity shall collect, compile and submit to the Association on a quarterly basis (or such other frequency as may be agreed with the Association) consolidated reports on the status of compliance with the ESMF, RPF, and ESIA, ESMP, IPPs and RAPs, as applicable, giving details of: (a) measures taken in furtherance of the said instruments; (b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of the said measures; and (c) remedial measures taken or required to be taken to address such conditions.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. 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 agreed with the Association and set forth in the Project Implementation Plan. Each such Project Report shall cover the period of three months, and shall be furnished to the Recipient not later than two (2) 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.

2. The Project Implementing Entity shall provide to the Recipient not later than three (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.
3. Without limitations to the provisions of paragraph 1 above, the Progress Reports shall comprise as part of the Report, the interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association, and include *inter alia*, the status of: (a) overall project implementation including actual progress made against the Project Implementation Plan; (b) monitoring of project costs, financing plan and disbursement of each financier’s loans; and (c) achievement of the results monitoring indicators for the Respective Parts of the Project. Each such Project Report shall cover the period of three months, and shall be furnished to the Recipient not later than 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 Progress Reports.

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 audited 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 for each period shall be furnished to the Association along with a Management Letter not later than six (6) 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. Except as the Association shall otherwise agree, the Project Implementing Entity shall, for each of its fiscal years starting in FY 2016/2017 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 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 the Project Implementing Entity maturing by its terms more than one (1) 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 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.