Amended and Restated Project Agreement

(Electricity Access Scale-up and Sector-Wide Approach Development Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

ENERGY UTILITY CORPORATION LIMITED

Dated June 09, 2016
AMENDED AND RESTATED PROJECT AGREEMENT

AGREEMENT dated 01-06-2016 entered into between INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”) and ENERGY UTILITY CORPORATION LIMITED (“Project Implementing Entity”) (“Project Agreement”) in connection with the Amended and Restated Financing Agreement (“Financing Agreement”) dated March 6, 2013 (as amended) between the REPUBLIC OF RWANDA (“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 objective of the Project. To this end, the Project Implementing Entity shall carry out implementation 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 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 implementation 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 (20) years after the date of this Agreement.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

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

4.02. 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.

4.03. The Project Implementing Entity’s Address is:

Energy Utility Corporation Ltd
Head Office
KN 82 St.3
P.O. Box 537
Kigali, Rwanda

Facsimile:
(+250) (0) 252573802
AGREED at, , as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: 
Authorized Representative

Name: Yasser E.

Title: Country Manager

ENERGY UTILITY CORPORATION LIMITED

By: 
Authorized Representative

Name: Jean Clave KC Ltd

Title: MD
SCHEDULE

Execution of the Project

Section I. Implementation Arrangements

A. Institutional Arrangements

The Project Implementing Entity shall, through its Managing Director, be responsible for Project implementation, management, and monitoring and evaluation, including administrative and financial management, and the procurement and disbursement processes.

B. Anti-Corruption

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

C. Project Implementation Manual

1. The Project Implementing Entity: (a) shall carry out the Project in accordance with the Project Implementation Manual; and (b) except as the Association shall otherwise agree, shall not assign, amend, abrogate, or waive, or permit to be assigned, amended, abrogated or waived, said Manual or any provision thereof.

2. In the event of any conflict between the provisions of the Project Implementation Manual and those of this Agreement, the provisions of this Agreement shall prevail.

D. Safeguards

1. The Project Implementing Entity shall ensure that the Project is carried out in accordance with the provisions of the ESMF and the RPF and, except as the Association shall otherwise agree, the Project Implementing Entity shall not assign, amend, abrogate, or waive, or permit to be assigned, amended, abrogated, or waived, the aforementioned, or any provision thereof.

2. Wherever required under the ESMF or the RPF, the Project Implementing Entity shall, for the purposes of any activity under the Project, and prior to
implementation thereof, proceed to have an EMP and/or RAP, as the case may be:

(a) prepared in form and substance satisfactory to the Association,

(b) except as otherwise agreed with the Association, submitted to the Association for review and approval, and

(c) thereafter, adopted and locally disclosed.

3. The Project Implementing Entity shall take all measures necessary on its part to regularly collect, compile and submit to the Association, on a quarterly basis, reports on the status of compliance with the ESMF, the RPF, the EMP and/or the RAP, as the case may be, giving details of:

(a) measures, if any, taken in furtherance of the ESMF, the RPF, the EMP and/or the RAP, as the case may be;

(b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of ESMF, the RPF, the EMP and/or the RAP, as the case may be; and

(c) remedial measures taken or required to be taken to address such conditions.

4. The Project Implementing Entity shall maintain, until completion of the Project, at least two (2) environmental and social specialists, with qualifications, experience, and terms of reference satisfactory to the Association.

5. In the event of any conflict between the provisions of the ESMF, the RPF, the EMP and/or the RAP and those of this Agreement, the provision of this Agreement shall prevail.

E. Project Implementation Support Agreement

1. The Project Implementing Entity and EDCL to shall enter into a Project Implementation Support Agreement, on terms and conditions satisfactory to the Association, setting out mutual responsibilities regarding the implementation of the Project including the obligation of EDCL to transfer the assets once completed.

2. Notwithstanding the provisions of the foregoing sub-section 1 of this Section E, the Project Implementation Support Agreement shall incorporate the financial
management, procurement, safeguards and monitoring and evaluation responsibilities of the Project Implementing Entity as set out in Section I.C above.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. (a) The Project Implementing Entity shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators set forth below in sub-paragraph (b) of this paragraph. Each Project Report shall cover the period of four (4) months, and shall be furnished to the Recipient and the Association not later than 45 days after the end of the period covered by such report.

   (b) The performance indicators referred to above in sub-paragraph (a) consist of the following:

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<thead>
<tr>
<th>No.</th>
<th>Indicator</th>
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<tbody>
<tr>
<td>1.</td>
<td>Number of households connected to electricity</td>
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<tr>
<td>2.</td>
<td>Percentage of public institutions with access to electricity (disaggregated by type of institution)</td>
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<tr>
<td>3.</td>
<td>Number of monthly interruptions per kilometer of medium-voltage line (rolling average)</td>
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<tr>
<td>4.</td>
<td>Average cost per electricity connection (as measured against an agreed connection cost index)</td>
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<tr>
<td>5.</td>
<td>Project Beneficiaries, of which female</td>
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2. The Project Implementing Entity shall provide to the Recipient not later than nine (9) months before 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, including the operations, resources, and expenditures related to the Project.

2. Without limitation on the provisions of Part A of this Section, the Project Implementing Entity shall prepare and furnish to the Association, as part of the Project Reports, not later than forty-five (45) days after the end of the period covered by such report, interim un-audited financial reports for the Project covering the period of four (4) months, in form and substance satisfactory to the Association.

3. 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 (1) fiscal year of the Project Implementing Entity. The audited financial statements for each period shall be furnished to the Association not later than six (6) months after the end of the period.

Section III. Procurement

All goods, works, and services required for 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 Amended and Restated Financing Agreement.

Section IV. Other Undertakings

A. Financial Performance

1. (a) The Project Implementing Entity shall earn, for each of its fiscal years after its fiscal year ending on December 31, 2015, an annual return of not less than zero percent (0%) of the average current net value of its fixed assets in operation.

   (b) Before June 30 in each of its fiscal years, the Project Implementing Entity shall, on the basis of forecasts prepared by the Project Implementing Entity and satisfactory to the Association, review whether
it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that the Project Implementing Entity would not meet the requirements set forth in paragraph (a) for the Project Implementing Entity's fiscal years covered by such review, the Project Implementing Entity shall promptly take all necessary measures (including, without limitation, adjustments of the structure and/or levels of its tariffs) in order to meet such requirements.

(d) For the purposes of this Section:

(i) The annual return shall be calculated by dividing the Project Implementing Entity's net operating income for the fiscal year in question by one half of the sum of the current net value of the Project Implementing Entity's fixed assets in operation at the beginning and at the end of that fiscal year.

(ii) The term "net operating income" means total operating revenues less total operating expenses.

(iii) The term "total operating revenues" means revenues from all sources related to operations.

(iv) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a straight-line basis at a rate of not less than seven percent (7%) per annum of the average current gross value of the Project Implementing Entity's fixed assets in operation, or other basis acceptable to the Association, but excluding interest and other charges on debt.

(v) The average current gross value of the Project Implementing Entity's fixed assets in operation shall be calculated as one half of the sum of the gross value of the Project Implementing Entity's fixed assets in operation at the beginning and at the end of the fiscal year, as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to the Association.
(vi) The term "current net value of the Project Implementing Entity's fixed assets in operation" means the gross value of the Project Implementing Entity's fixed assets in operation less the amount of accumulated depreciation, as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to the Association.

2. (a) The Project Implementing Entity shall produce, for each of its fiscal years after its fiscal year ending on June 30, 2010, funds from internal sources equivalent to not less than ten percent (10%) of the annual average of the Project Implementing Entity’s distribution capital expenditures incurred, or expected to be incurred, for that fiscal year and the next following fiscal year, including consumer contributions in aid of the construction1.

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

(c) If any such review shows that the Project Implementing Entity would not meet the requirements set forth in paragraph (a) for the Project Implementing Entity’s fiscal years covered by such review, the Project Implementing Entity shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its tariffs) 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

1 Consumer contributions in aid of construction may be made in cash or in kind. In the latter case, the amount to be included in fixed assets as the value of the contribution would be included in both “funds from internal sources” (paragraph (d) (i) (A)) and “capital expenditures” (paragraph (d) (v)).
contributions in aid of construction\(^2\), 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), debt service requirements, all cash dividends and other cash distributions of surplus, increase in working capital other than cash, and other cash outflows other than capital expenditures.

(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 12 months, including accounts receivable, marketable securities, inventories, and pre-paid 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 12 months, including

\(^2\) Consumer contributions in aid of construction may be made in cash or in kind. In the latter case, the amount to be included in fixed assets as the value of the contribution would be included in both “funds from internal sources” (paragraph (d) (i) (A)) and “capital expenditures” (paragraph (d) (v)).
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.

(viii) 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.

3. The Project Implementing Entity shall maintain, throughout Project implementation, its accounts receivable from public sector consumers and large and special consumers who are not on pre-payment meters to less than 90 days of billing.

4. (a) The Project Implementing Entity shall, no later than six (6) months after the Effective Date, establish, and thereafter maintain, throughout Project implementation, a distribution capital reserve account with a sufficient balance to ensure funding for its debt service requirements and renovation and other investment needs not supported under the Project.

(b) For the purposes of this Section, 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.

B. Annual Work Plans and Budgets

The Project Implementing Entity shall:

(a) furnish to the Association for approval as soon as available, but in any case not later than May 31 of each year, the annual work plan and budget
for the Project for each subsequent year of Project implementation, of such scope and detail as the Association shall have reasonably requested; and

(b) thereafter, ensure that the Project is carried out in accordance with said plans and budgets as approved by the Association.

C. Semi-Annual Reviews

The Project Implementing Entity shall review, jointly with the Recipient and the Association, every six (6) months until completion of the Project, the most recent Project Report furnished to the Association, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of said Report and the Recipient’s and the Association’s views on the matter.