



KENYA POWER & LIGHTING COMPANY LIMITED

TENDER NO: KP1/9AA-2/OT/44/ID/15-16

**TENDER FOR HIRING OF 2.0 MW TEMPORARY THERMAL
POWER PLANT OF AT MANDERA POWER STATION**

FEBRUARY 2016

i

TABLE OF CONTENTS

1. IMPORTANT NOTICE	1
2. PROJECT DESCRIPTION AND INFORMATION TO BIDDERS	2
3. PROCEDURE FOR MAKING SUBMISSIONS	6
4. REQUIREMENTS FOR THE CONSORTIUM, JOINT VENTURE OR PARTNERSHIP	6
5. QUERIES	7
6. REQUIRED INFORMATION	7
7. EVALUATION OF SUBMISSIONS	9
8. EXECUTION OF AGREEMENTS	10
9. DISQUALIFICATION OF SUBMISSIONS	10
10. SUBMISSION OF BID SUBMISSIONS/ NUMBER OF COPIES	11
11. CONFIDENTIALITY	11
12. SUBMISSIONS LATE SUBMISSION, MODIFICATION OR WITHDRAWAL	11
13. PERMITTING PROCEDURES AND REQUIREMENTS	12
14. PROJECT TERM	12
15. HIGHLIGHTS OF DRAFT TEMPORARY POWER PURCHASE AGREEMENT	12
16. TRANSMISSION	
17. LEGAL FRAMEWORK	14
ANNEX 1: TENDER FORM	15
ANNEX 2: PROJECT BID SECURITY FORM	21
ANNEX 3: FORM OF POWER OF ATTORNEY	22
ANNEX 4: DRAFT TEMPORARY POWER PURCHASE AGREEMENT	I
ANNEX 5: TIME TABLE FOR IMPLEMENTATION	61

SECTION I - INVITATION TO TENDER

DATE: FEBRUARY 2016

TENDER NO. KP1/9AA-2/OT/44/ID/15-16 FOR HIRING OF 2.0 MW TEMPORARY THERMAL POWER PLANT AT MANDERA POWER STATION.

- 1.1 The KenyaPower&LightingCompany Limited hereinafter referred to KPLC invites bids from eligible Tenderers for **Hiring of 2.0 MW Temporary Thermal Power Plant at Mandera Power Station.**
Interested eligible Tenderers may obtain further information from the General Manager, Supply Chain , KPLC at Stima Plaza, 3rd Floor, Kolobot Road, P.O. Box 30099 – 00100 Nairobi, Kenya.
- 1.2 **Obtaining tender documents.**
 - 1.2.1 Tender documents detailing the requirements may be viewed at KPLC E-Procurement Web Portal found on the KPLC website (www.kplc.co.ke) beginning on **Thursday 18th February, 2016**
 - 1.2.2 Prospective bidders may also download the tender document from KPLC's website (www.kenyapower.co.ke) free of charge.
- 1.3 **Submission of Tender documents**
Completed Tenders are to be **saved as PDF** documents marked **KP1/9AA-2/OT/44/I/15-16 FOR HIRING OF 2.0 MW TEMPORARY THERMAL POWER PLANT AT MANDERA POWER STATION**, and submitted in the KPLC E-Procurement Web Portal found on the KPLC website (www.kplc.co.ke) so as to be received on or before **10th March, 2016 at 10.00 a.m.**
- 1.4 Prices quoted should be net inclusive of all taxes and delivery costs to the required site (where applicable) and must be in Kenya Shillings or a freely convertible currency in Kenya and shall remain valid for One Hundred and Twenty (120) days from the closing date of the tender.
- 1.5 Tenders will be opened electronically promptly thereafter (**on 10th March, 2016, 10.30 a.m.**) in the presence of the Tenderer's or their representatives who choose to attend in KPLC Auditorium at Stima Plaza, Kolobot Road, Parklands, Nairobi.
- 1.6 There will be a mandatory site/pre-bid meeting on **Thursday 25th February, 2016** at 11.00 at the KPLC Mandera Substation- Mandera County.

THE KENYA POWER & LIGHTING COMPANY LIMITED

1. IMPORTANT NOTICE

To address the current power shortfall in Mandera, the Government of Kenya (GoK) has requested Kenya Power & Lighting Company Limited (KPLC) to hire a 2.0 MW Diesel Temporary Power Plant to be located at KPLC Mandera Power Station. The duration of the project will be for a period of **one year** effective from commissioning date.

Mandera power station is located 1200km North East of Nairobi city. The Government of Kenya, GoK has mandated Kenya Power & Lighting Company Limited (KPLC) to oversee all implementation modalities up to the commissioning of the hired 2MW Temporary supply. The contracted capacity has to be in place and fully operational within **two (2) weeks** from the date of contract signing. Prospective Temporary Power Providers (TPPs), either as individual firms or consortia, must be fully experienced or have the necessary **financial, technical and human resources** to implement such projects within the stipulated time.

The information contained in this Tender, except where the context requires otherwise, has been based on the assumption that the proposed project is implemented as described herein. Whilst KPLC considers that the assumptions on which this document is based are reasonable, it must be recognized that the reliance that you place on them is a matter of commercial judgment for the bidders alone.

The salient features of the contract for this tender reflect the terms of current draft. These are provided as being indicative only and drafts of such agreements may be subject to further modifications. While KPLC has sought to ensure that salient provisions in the draft contracts have been described in this document, no responsibility shall be taken by KPLC for your failure to examine the final draft contracts in their entirety.

Queries relating to the information contained in this document shall be directed only to the contact persons referred to herein. No other person has been authorized to give any information or to make any representation in respect of this TENDER or the Project and, if given or made, such information or representation may not be relied upon as having been authorized by KPLC.

2. PROJECT DESCRIPTION AND INFORMATION TO BIDDERS

2.1. General

2.1.1 The Government of Kenya through KPLC intends to award a contract for the provision of **2.0 MW power** capacity to the Temporary Power Provider (TPP), under **short-term Temporary Power Purchase Agreements (TPPA)** for a period of **1 year (12 Months)** for, installation and supply of appropriately sized plant to be installed at Mandera Power Station Site.

2.1.2. Bidders will be expected to provide and install all plant and equipment, including fuel pipes, fuel service tank, transformers, cables, switchgear, protection and metering equipment for off-take at 11KV. This will be done in liaison with KPLC. The bidders must indicate in their bid, power generation voltage. It should be noted that the Kenyan Power System operates at a frequency of 50Hz.

Site visit and bidders' conference is mandatory and KPLC will conduct site visit on the following date, **Thursday , 25th February , 2016 at 11:00 AM** bidders will make the visit at their own cost in order to familiarize themselves with the site conditions. Bidders are also advised that Mandera town is situated in Mandera County in the North Eastern part of Kenya. Bidders who fail to attend the site visit and Bidders' conference shall be disqualified.

Bidders are required to put forward their submissions on the type and quality of fuel requirements for the Mandera 2.0 MW, Temporary Power Plant. The fuel in use is Automotive Gas Oil (AGO) whose specification is given in **Schedule 10**. KPLC will be responsible for the supply of fuel to the Provider's site. However, Bidders will provide their own engine lubricants and a minimum of **20,000 litre** service tank.

2.1.3. Bidders are required to put forward their proposals on the capacity charge, energy charge and specific fuel consumption.

2.1.4. The Bidders are invited to select and offer their own configuration for the Plant Unit sizes, layout and type. KPLC has no preference for the type of Units adopted. Bidders are expected to base their selection considering the evaluation criteria adopted in this tender recognizing the value to KPLC of the cost of energy and the availability of the Plant on an emergency basis.

2.1.5. The plants are intended to supplement the generation capability of the KPLC system for the current period where there is a supply-Demand imbalance. It is therefore important to KPLC that the plants have a high level of reliability and availability to secure supplies during the term of contract.

2.1.6. The Plant Operator will liaise with the Mandera Control Centre on a regular basis to agree on outage planning, daily generation requirements and other operational issues.

2.1.7. The Selected Bidder will become the signatory to an agreement requiring it to supply, transport the Plants to Mandera power station carry out site installation, connect the Power Plant to KPLC's **11 kV switchgear** to

operate and maintain the Power Plant so as to deliver the net electrical output from the Power Plant to the station bus bars.

- 2.1.8. The purpose of this tender is to ensure a uniform and impartial evaluation and selection through competitive bidding of the Provider. For this reason, KPLC requires that all items on the Tender Form be completed without exceptions or alterations.
- 2.1.9. All Submissions must be completed in the prescribed format. Additional or separate data, which each Bidder may submit for clarification of its tender, will be accepted without prejudice to the tender and will be considered in its applicable context. Clarity in the Submission is critical.

The Bidder(s) must submit a Bid Security (in a separate sealed envelope) at the time of submitting its tender. The Bid Security must be issued for the benefit of the "Kenya Power & Lighting Company Limited" by a first class bank acceptable to KPLC in the amount **US\$ 3,500 (three Thousand United States Dollars only)** and must take the form set out in Annex 2. For international banks, a corresponding Kenyan bank is required. The Selected Bidder(s) will be required to lodge with KPLC a **Performance Security of 10% of the contract sum.**

- 2.1.10. The Bid Security shall be valid up to 30 days after tender closing date. The Bid Security of the Selected Bidder shall be maintained in full force and effect until such Bidder has executed an agreement with KPLC. The Selected Bidder(s) will be required to lodge with KPLC a **Performance Security** equivalent to **10%** of the **Contract Sum**.
- 2.1.11. The Bid Security of each Bidder that is not designated, as the Selected Bidder will be returned within **Fifteen (15)** days following KPLC's designation of Selected Bidder.
- 2.1.12. The Bid shall remain valid for one hundred and twenty (120) days from the date of bid submission.

2.1.13. Bid security shall be forfeited if the person submitting the tender;

- (a) withdraws the tender after the deadline for submitting tenders but before the expiry of the period during which tenders must remain valid;
- (b) refuses to enter into a written contract upon being awarded tender as required or fails to furnish any required performance security.

2.1.14. KPLC shall immediately release any tender security if:

- (a) the tender is cancelled;
- (b) the procuring entity determines that none of the submitted tenders is responsive; or
- (c) a contract for the procurement is entered into.

2.1.15. The Bidder shall be deemed to have carefully examined all of the terms, conditions and specifications of this tender, and also to have fully informed itself as to all conditions affecting the Project. Failure to do so is at the Bidder's risk, and no claim will be considered at any time for reimbursement of any expenses incurred as a result of any misunderstanding with regard to the conditions imposed by this tender.

2.1.16. Advance Payment of 10% of the Contract Sum may be made to the successful bidder against an Advance payment bank guarantee upon signing of the contract and the amount will be recovered in Nine (9) equal instalments from the monthly invoices.

2.1.17. All monthly Charges will be paid within Forty (40) days of the receipt of the invoiced amount for the previous month's generation.

2.1.18. Non-availability of energy due to failure to achieve Maximum Continuous Rating (MCR) at the guaranteed availability will be penalized at 125% of equivalent energy cost (based on fixed and non-fuel variable cost).

2.1.19. All payments to Bidders shall be made through an Account already set up by KPLC in a Commercial Bank.

2.2 KPLC's Activities

2.2.1 KPLC shall obtain generation licence for use by the plant Provider.

2.3 Information to be supplied by bidders (mandatory)

2.4.1 Guaranteed period in weeks for “plant in operation” from the date of contract signing.

2.4.2 Maximum Continuous Rating (MCR) of the plant offered in MW at an altitude of about **146 meters** above sea level, and mean ambient high temperature of **41^oC** and a low of **18^oC** at the proposed Mandera site. The humidity at the site ranges from maximum of 60% to low of 34% with average of 46% annually. Bidders are required to verify the actual site conditions.

2.4.3 Guaranteed plant availability factor. A Load Factor of 100% must be guaranteed.

2.4.4 Guaranteed monthly capacity supply.

2.4.5 Unit sizes proposed.

2.4.6 Type of each Plant and whether new, second hand or refurbished; if plant is not new details of operation history.

2.4.7 Sourcing of Equipment, and name of the manufacturer of main items of the plant

2.4.8 Complete list of main items of plant being offered together with rating and size.

2.4.9 Type of fuel used together with quality specification and guaranteed Specific Fuel Consumption (SFC) in kg/kWh at MCR. This consumption rate will be used for payment of fuel charges and shall not exceed **0.223Kg/KWh** for Automotive Gas Oil.

2.4.10 The specific fuel consumption shall be used to calculate fuel usage adjustment amount and the amount will be

covered in the capacity purchase agreement.

2.4.11 All fixed charges in US\$/KW/Month (assume a 30-days month) at Plant 100% availability per day for the duration of the contract, supply and installation of Plant on Site, all Civil, Site preparations and other related works, staffing, Operation & Maintenance, Mobilizing and Demobilizing Costs and any other Charges.

2.4.12 Bids will be evaluated on the Lowest Priced (tariff) per KWh. The Price will include Capacity Charge per month, Non-fuel Energy Charge per KWh if any and fuel cost per KWh. Bidders must provide a defined number of availability hours per calendar month, e.g. 720 hours in order to facilitate Capacity Charge related tariff computation. Non-fuel variable costs including lubricating oil and spares in US Cts/KWh, if applicable.

2.4.13 Cost schedules for items 2.4.11 and 2.4.12 above. The costs of Mobilization, Demobilization and Site preparations **MUST** each be indicated separately.

3 PROCEDURE FOR MAKING SUBMISSIONS

The Bidder may submit the tender either as a firm, a consortium, or a joint venture.

4 REQUIREMENTS FOR THE CONSORTIUM, JOINT VENTURE

Each partner in a consortium or joint venture shall be capable of accepting joint and several responsibilities for the obligations. All Submissions shall indicate the legal name of each partner so that they shall be bound by any resulting contract with KPLC.

4.1 One of the partners shall be nominated as the leading partner whose shares or interests in the equity of the consortium, or joint venture shall be the largest and the authorization shall be evidenced by submitting a Power of Attorney (see **Annex 3** hereto) signed by legally authorized signatories of each partner.

4.2 All partners shall be liable jointly and severally for the execution of the Tender Form in accordance with the provisions of this tender, and a relevant statement to this effect shall be included in the above-mentioned authorization as well as in the Tender Form.

5 **QUERIES**

Queries with respect to all aspects of this tender may be addressed, in writing, to:

Mr. Benard Ngugi Ngugi and Mr. Hezron Ngiela and copied to Mr. Richard Nderitu

Kenya Power & Lighting Company Limited,

Stima Plaza, Phase III, Kolobot Road, Parklands,

P.O. Box 47936 - 00100,

Nairobi, Kenya.

Tel: (254-20) 3666983/3666412, Fax: (254-20) 248848

Email: jngugi@KPLC.co.ke; hngiela@KPLC.co.ke

Cc. rnderitu@KPLC.co.ke, tenders@KPLC.co.ke

Request of clarification must be received five days prior to this tender closure.

6 **REQUIRED INFORMATION**

- 6.1 All Bidders must provide the information requested in the Tender Form, along with a marked-up copy of the Temporary Power Purchase Agreement (TPPA) contained in **Annex 4** of this tender.
- 6.2 All Submissions must also include a complete statement of the following items:
 - 6.2.1 A bidder should demonstrate proven track record for successful implementation of such projects.
 - 6.2.2 A bidder must give evidence that the thermal plant for which a bid is being made is readily available in good working condition and can be supplied, installed and be fully operational within the stipulated period. Detailed specification of the plant being offered, its condition and where it is to be sourced, must be submitted with the offer.
 - 6.2.3 Description of the management, organization structure, CVs of the key staff, details of consortium (if any) and indicative programme must be submitted with the offer.

- 6.2.4 Financial capability to undertake a project of this magnitude demonstrated by an annual turnover of at least US\$ 200,000.00 and liquid assets or line of credit for at least US\$50,000.00 to provide for working capital. Financial statements and audited accounts for the last 2 years should be provided.
 - 6.2.5 Undertaking that the bidder has had no major litigations over the past 2 years.
 - 6.2.6 Readiness to establish branches, for firms not registered in Kenya under the Companies Act (Chapter 486 of the Laws of Kenya).
 - 6.2.7 The Bidder is required to identify the Project's proposed participants, including the owner and operator and the proposed arrangements for transportation and installation of the Power Plants. Any partners and/or parent companies of the participants must be identified. Documentation of each participant's experience in projects of this size and nature and type is required. Evidence of any shareholder agreement is required, such as a completed management plan, a Letter of Understanding among the participants or a signed Shareholders Agreement reflecting commitment of all participants. Company details are required to include a history of the company and information on senior officers and directors.
- 6.3 This information is required to highlight the following points:
- 6.3.1 Whether the bidder is a consortium and, if so, information on each member of the consortium, consisting of general information, organization and past experience, as well as economic and financial information.
 - 6.3.2 Information shall also be given about the tasks and responsibility of each member of the consortium and the consortium leader.
 - 6.3.3 In the case of a consortium, the division of shares in the equity capital of the project company, between the consortium members.
 - 6.3.4 The Bidder is required to show the technical capability, experience and expertise (either directly or through the use of other parties such as consultants or contractors etc.) to

transport, install and operate the Power Plants. The Bidder is also required to provide details of its project management and implementation plan. The plan shall indicate the time allowed for Customs clearance, which shall not be less than seven days.

7 EVALUATION OF SUBMISSIONS

7.1 Conditions of clause 2.3 and 6 shall form the preliminary evaluation

7.2 The price evaluation will be based on comparison of unit cost of energy in **US cents per KWh** under a specific operating regime and with adjustments for delivery period and **Plant 100% availability per day** as detailed below:

7.3 For the purpose of cost comparison an equivalent energy cost (including fixed and variable components) at the guaranteed availability will be used at the MCR with the specific fuel consumption in Kg/KWh as stipulated by the bidder.

7.4 For evaluation of the fuel cost the parameters used will be based on the landed costs of fuel as per the Kenya Oil Industry Tender for **January 2015**.

7.5 For commissioning of plant later than **two (2) weeks** upon contract award, a penalty rate of **US\$0.15/KW/day for the first two (2) weeks and thereafter US\$0.085/KW/day** will be used for the purposes of evaluation and applicable penalty.

7.6 KPLC plans to keep all acceptable Submissions open for negotiation until such time as KPLC has signed agreements with a Selected Bidder.

7.7 The Selected Bidder and unsuccessful Bidders will be notified by KPLC within 30 days of the tender submission

7.8 KPLC reserves the right, without qualification, to select any Submission or to reject any and all Submissions, or to waive any formality or technicality in respect of Submissions received. Bidders who submit tenders do so without recourse against KPLC, for either rejection by KPLC or failure to execute an agreed Agreement for any reason whatsoever.

7.9 KPLC shall not reimburse any Bidder for any cost or expenses incurred in the preparation or submission of a Tender and/or in

negotiations of an agreed TPPA.

- 7.10 KPLC reserves the right to enhance the scope of supply at the same site or any other suitable site should the hydrology conditions dictate so.

8 EXECUTION OF AGREEMENTS

- 8.1 The Draft TPPA will form the basis of the contract to be executed by the Selected Bidder and KPLC.
- 8.2 By submitting a Tender to KPLC, the Bidder signifies its intention to enter into an agreement in the type and form of the Draft TPPA (as modified) and to perform in accordance with the terms and conditions as set forth therein. Any additions, deletions, and/or modifications that a Bidder wishes to be made in the Draft TPPA must be marked up in the Tender submission. Bidders are strongly encouraged to minimize the required changes sought to the Draft EPP. Any marked up changes shall be negotiated during the contract negotiations.

9 DISQUALIFICATION OF SUBMISSIONS

- 9.1 A Tender shall be disqualified and excluded from further consideration for reasons, including, but not limited to the following:
- 9.2 failure to submit under the required cover as described in paragraph 3 above; and also inaccordance to clause 7
- 9.3 receipt by KPLC of a Tender after the Tender submission Deadline;
- 9.4 failure to submit supporting documentation or any other clarification or any documents requested by KPLC within the required time frame;
- 9.5 failure to provide valid bid security as provided in **Annex 2**;
- 9.6 failure to submit a complete Tender Form as provided in **Annex 1**;
- 9.7 wilful misrepresentations in the Tender;
- 9.8 illegal conduct or attempts to influence KPLC's evaluation of a Tender;
- 9.9 Determination by KPLC that the Bidder will be unable to fulfil the terms or conditions of the Tender.

9.10 Failure to attend Mandatory Site Visit and Bidders' conference on the stated date and time.

10 SUBMISSION OF BID SUBMISSIONS/ NUMBER OF COPIES

Submission of Bid Submissions

One CDROM and three (3) hard copies of Bid Submissions in sealed envelopes and marked "Bid Submissions for Hiring of 2MW Temporary Power Plant for Mandera" should be submitted to the following address:

**General Manager,
Kenya Power & Lighting Company Limited (KPLC),
7th floor, Stima Plaza,
Kolobot Road, Parklands,
P.O. Box 30099- 00100,
Nairobi, Kenya.**

Date of Submission

All tenders, accompanied by a bid security of: **US\$ 3,500,000 must be received on or before Thursday 10th March, 2016 by 10.00am (10.00hrs).**

The tenders will be opened immediately thereafter at **KPLC Auditorium, Ground Floor at 10.30hrs.** Bidders or their Representatives are welcome to attend the tender opening.

11 CONFIDENTIALITY

Tenders may include proprietary or confidential information. KPLC will take reasonable precautions and use reasonable efforts to protect such information, provided that such information is clearly identified as proprietary or confidential on the page on which it appears. KPLC reserves the right to release such information to its agents, consultants and advisers for purposes of evaluating the Tender. KPLC, its agents, consultants and advisers will not be liable for any damages resulting from any disclosure before during or after the solicitation process.

11.1 TENDERS LATE SUBMISSION, MODIFICATION OR WITHDRAWAL

11.2 Any Tender received after the Tender Deadline will not be considered,

11.3 Any modification of a Tender is subject to the same conditions as mentioned above. A Tender may also be withdrawn provided that the withdrawal request is made in person by a duly authorized officer of the Bidder prior to the Tender Deadline.

- 11.4 Revisions and amendments to this tender, if any, will be announced by **an addendum**. If the revisions and amendments involve substantial changes, the Tender Deadline may be postponed by such number of days as KPLC determines necessary to enable Bidders to revise their Tenders. In such cases, the addendum will include an announcement of the new Tender Deadline.

12 PERMITTING PROCEDURES AND REQUIREMENTS

KPLC will be responsible for obtaining all necessary **consents, permits, licenses and approvals for operation of the plant to enable it to meet all appropriate legislation and regulations.**

13 PROJECT TERM

- 13.1 Bidders are required to provide information on the environmental aspect of their plants as part of their tenders.
- 13.2 The TPPA shall be for **one year, (12) Months Term** and shall only be renewed by mutual agreement.

14 HIGHLIGHTS OF THE DRAFT TEMPORARY POWER PURCHASE

15 AGREEMENT

15.1 Introduction

The principal contractual document governing the project will be the agreed TPPA. The Draft TPPA is provided as Annex 4. The principal features of this contract are described below. This summary is not exhaustive and no responsibility shall be taken by KPLC for any failure to examine the draft contract in its entirety.

15.2 Objectives and Purpose

The main purpose of the Draft TPPA is to set out the terms on which the Selected Bidder will install and operate the Power Plant and deliver the capacity and output of the Power Plant to KPLC. The Draft TPPA imposes an obligation on the Selected Bidder to **operate** and maintain the Power Plant with an agreed level of availability with a view to providing the contracted Plant capacity and ensuring that the operating characteristics are maintained throughout its term. In return, KPLC agrees to pay hire charges for contracted availability.

The Draft TPPA will be entered into between KPLC and the Selected

Bidder for a term of **one year, (12) Months Term** following installation and operation which may be extended by mutual agreement.

15.3 Arrangements prior to Commercial Operation

Following the signing of the Agreed TPPA, the Selected Bidder will be obliged to transport, install and commission the Power Plants into operation within **two (2) Weeks** of the Signature Date. The Provider shall be responsible for **clearing the Plant consignments through Customs at the Port of Mombasa.**

15.4 Full Commercial Operation Date and liquidated Damages

The Draft TPPA requires that the plant enters commercial service within two weeks of signing the Agreed TPPA and includes provisions requiring the Selected Bidder to pay KPLC liquidated damages if the Power Plant enters service late. If the Power Plant fails to enter commercial service within two weeks of signing the Agreed TPPA, the Agreed TPPA may be terminated by the KPLC.

15.5 Contracted Output

Availability shall be calculated with regard to whether the Power Plant can generate its contracted output. **The Selected Bidder will declare actual available capacity on a daily basis** and this together with totally **unpredicted outages** shall be used to determine **actual daily available capacity**, which shall be used to **compute monthly availability**. The Selected Bidder shall receive payment on a monthly basis, subject to **adjustments with reference to actual availability**, which shall be monitored on a monthly rolling basis. **If monthly availability falls below the contracted availability, then the Draft TPPA provides for a reduction in the payments for hire charge.**

15.6 Despatch and Maintenance Scheduling

Actual despatch shall be controlled from Mandera Control centre and the Selected Bidder shall advise the Control Centre daily, one day ahead, as to the capacity available for despatch. The Control Centre shall issue despatch instructions to the Selected Bidder.

15.7 Plant Testing

The Draft TPPA provides for tests on the Contracted Capacity and availability to be successfully completed before the Power Plant may enter commercial service.

16 LEGAL FRAMEWORK

Bidders will be responsible for familiarizing themselves with the laws of the Republic of Kenya.

ANNEX 1: TENDER FORM

Bidder: _____ Date: _____
Address: _____

1. GENERAL

- 1.1 In compliance with the Tender, **dated 16th February 2016**, ("TENDER"), the Bidder offers to supply and install the power plant and associated facilities to provide contracted plant output on an emergency basis, in accordance with the terms and conditions of the Draft TPPA.
- 1.2 The Bidder has undertaken an evaluation of KPLC's requirements applicable to providing the contracted plants output and all other matters, which may in any way, affect the Project or the cost thereof.
- 1.3 The Bidder agrees that time is of the essence with respect to performance of its obligations set forth in the Draft TPPA.

1.3.1 Project Development Experience

- 1) Identify the firms, including the Bidder, who will be participating in the Project as shareholders or partners, including parent organizations offering guarantees.
- 2) Include copies of the audited financial statements (e.g. income statement, balance sheet and cash flow) for the past three years from each of the Bidder's major shareholders, partners, members or managing entities, as applicable. If such statements are not available, the Bidder must submit
 - (i) an explanation for not including such information, and
 - (ii) other information or references which allow KPLC to assess the creditworthiness and financial condition of such major shareholders, partners, members or management entities. A shareholder, partner, member or managing entity is considered "major" if it owns or is proposed to own more than 10% of the share capital or economic interest in the Bidder.
- 3) Please list in the table below the names and locations of similar power projects implemented or being implemented by the Bidder.

For "Status", identify as either "Operational" (OP), "Finalized" (FN), or "Under Installation" (UI). Please also indicate Bidder's role and ownership structure.

Name of Project, Location, Capacity (MW), Fuel, Status

Project Name:		Country	
Name of Client:		Location	
Fuel:	Capacity (MW):	Value:	Status:
Description of Actual Services provided:		Ownership structure:	

- 4) Has a contractor and any subcontractor been selected for installation and operation? If so, indicate their names and describe their prior experience with projects of similar size and technology.
- 5) Will the Bidder supply, install and operate the Project?
- 6) Provide an experience statement of its management and operations work undertaken by the proposed Project Operator.

1.3.2 Technical capability

- (1) Provide a management plan, including:
 - (i) expected operational staffing levels (including contractor utilization); and
 - (ii) description of the relevant capability and experience of the principal parties responsible for the installation and operation of the Project.
- (2) Provide a time schedule for the Project indicating key milestones and events including:
 - (i) if the plants shall have been commissioned into full operation by **11th April, 2015.**
 - (ii) delivery of major equipment;

- (iii) transportation, installation and erection;
- (iv) commissioning and testing; and
- (v) commercial operation

1.3.3 Capital Structure and Financial Capacity

Demonstrate adequate funding for undertaking the project

1.3.4 Design Proposals

- (1) Provide outline design proposals for the Project including:
 - (i) Number and size of generating units;
 - (ii) Station layout;
 - (iii) Electrical interconnection arrangements;
 - (iv) Cooling arrangements;
 - (v) Fuel storage arrangements and supply of engine;
 - (vi) Lubricants;
- (2) Provide information on the performance of the Power Plant at design conditioning including:
 - (i) Gross and net power output; and
 - (ii) Gross and net heat rate (LHV basis).
 - (iii) Design Specific Fuel Consumption (SFC) in kg/kWh
- (3) Has the amount of water needed for Power Plant operation been determined? If so, show quantities.
- (4) Has the design been constructed before? Has equipment been used under similar arrangement before? If so when and where?

1.3.5 Operation and Maintenance

- (i) Provide details of the proposed arrangements for the management of the Power Plant including outline staffing plans and extent of maintenance sub-contracting.

1.3.6 Environmental Implications

- (i) Specify the quality and characteristics of solid and liquid wastes.
- (ii) Each statement must be where possible supported by appropriate exhibits. KPLC reserves the right to determine whether the submitted exhibits provide satisfactory evidence of the level of development indicated by the Bidder.

<u>Item</u>	<u>Exhibit Submitted</u>
(a) Project Development Experience	
(b) Technical Capability	
(c) Capital Structure and Financial Capability	
(d) Outline Design Proposals	
(e) Operation and Maintenance	
(f) Environmental impact including emission rates (kg/kWh), SO_2 , NO_x particulates, CO_2 , others	

2. PROJECT SCHEDULE AND MILESTONE DATE

- 2.1 The Bidder is required to submit details of the transportation and erection programme for inclusion in the Agreed TPPA containing the following information:
- 2.2 Implementation Programme (Indicate in weeks after Signature Date of the Agreed TPPA)
 - (i) Delivery to site:
 - a) Transportation to the port of Mombasa;
 - b) Time allowance for clearance through Customs;
 - c) Inland transportation to the Sites;
 - (ii) Erection
 - (iii) Commissioning

- (iv) Commencement of Testing of the Units
- (v) Commercial Operation
- (vi) Anticipated Full Commercial Operation Date:

3. BIDDER'S REPRESENTATIVE

Bidder's representative for the Project:

Name of Representative

Position

Telephone

Business Mailing Address

Province/Country

E-mail address

Facsimile (Fax)

Physical address

4. FACILITY

4.1 Contracted Plant Capacity and Output (as defined in the Draft TPPA)
___ MW

4.2 Rated Power Factor _____ Lagging

4.3 Agreed average monthly Station Availability (A Vb) _____
(Where A Vb is defined in the TPPA)

Bidders should note that the units may be required to generate at 100% load factor and should, therefore, provide sufficient number of units to meet this level of Availability.

5. PRICING

This Proposal is for a contract term of twelve months from the expected Full Commercial Operation Date (as defined in the Draft TPPA).

6. TERMS AND CONDITIONS

This Tender either [specify (a) or (b)]

(a) incorporates by reference the Draft TPPA, or

(b) incorporates a marked-up Draft TPPA showing the Bidder's proposed changes.

7. NON-COLLUSION

The Bidder hereby undertakes and affirms that neither it nor any of its representatives has engaged or will engage in any activity, which directly or indirectly has to any extent lessened competition between the Bidder and any other entity for the supply of capacity and energy sought by this tender .

8. TENDER ACCEPTANCE AND AWARD

The undersigned agree(s), upon acceptance of this Tender by KPLC, mailed or otherwise furnished within the acceptance period, to execute the Agreed TPPA as negotiated.

"Name _____ of _____ Bidder:

(Type or Print)

Country _____ /Province _____ of _____ Incorporation:

Business _____ Address:

Full _____ Postal _____ Address:

Telephone: _____

Facsimile: _____

By: _____

Title: _____

Date: _____

ANNEX 2: TENDER/BID SECURITY FORM

(Must be on letterhead of Bank)

WHEREAS (hereinafter called “the Tenderer”) has submitted his tender dated for **the Temporary Thermal Power Plant of 2.0 MW at Mandera Power Station.**

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called “the Bank”), are bound unto(hereinafter called “the Procuring Entity”) in the sum of..... for which payment well and truly to be made to the said Procuring Entity, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day of20.....

THE CONDITIONS of this obligation are:

- 1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified by the tenderer on the Tender Form;
Or
- 2. If the tenderer, having been notified of the acceptance of his tender by the Procuring Entity during the period of tender validity:
 - (a) fails or refuses to execute the Contract Form if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

We undertake to pay to the Procuring Entity Procuring Entity up to the above amount upon receipt of his first written demand, without the Procuring Entity having to substantiate his demand, provided that in his demand the Procuring Entity will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to **29th June 2015** and any demand in respect thereof should reach the Bank not later than the said date.

[date]

[signature of the Bank]

[witness]

[seal]

ANNEX 3: FORM OF POWER OF ATTORNEY

WHEREAS we have decided to bid as a consortium/joint venture/partnership,

(*name of the authorizing company*), incorporated under the laws of _____, with its legal address at _____, hereby duly authorizes _____ Corporation

(*name of the authorized company*), whose registered address is _____, to lawfully represent and act on behalf of it as the leading partner of the consortium/joint venture/partnership to sign bids, conduct negotiations, sign contracts, incur liabilities and receive instructions for us and on our behalf during the execution of the Capacity Purchase Agreement, and execute all the necessary matters related thereto, in connection with the Power Plant. We hereby confirm that we are bound by joint and several liabilities for the execution of the tender in accordance with the rules set out in the TENDER.

IN WITNESS THEREOF, we have hereunto set out respective hands this _____ day of _____ 2015.

SEALED HEREIN

By:

(*the authorizing company*)

Signature:

(*name and title*)

AND

By:

(*the authorized company*)

Signature:

(*Name and title*)

IN WITNESS OF:

By:

(Notary/Attorney at Law)

Signature:

(name and title)

**ANNEX 4: DRAFT TEMPORARY POWER PURCHASE
AGREEMENT**



**TEMPORARY POWER SUPPLY PROJECT:
TEMPORARY POWER PURCHASE AGREEMENT**

BETWEEN

KENYA POWER & LIGHTING COMPANY LTD (KPLC)

AND

PROVIDER

**FOR THE SUPPLY OF 2.0MW TEMPORARY THERMAL POWER AT
MANDERA,**

FEBRUARY 2016

Temporary Power Project, 2015: TPPA

TABLE OF CONTENTS

CLAUSE 1	DEFINITIONS AND INTERPRETATION	5
CLAUSE 2	SCOPE OF THE PROJECT.....	11
CLAUSE 3	EFFECTIVE DATE.....	11
CLAUSE 4	SUPPLY AND INSTALLATION OF PLANT	12
CLAUSE 5	COMMISSIONING AND COMMENCEMENT OF	15
GENERATION.....		15
CLAUSE 6	OPERATION AND DESPATCH	18
CLAUSE 7	REPAIR AND MAINTENANCE	21
CLAUSE 8	EXPIRY OF THE TERM.....	21
CLAUSE 9	METERING.....	22
CLAUSE 10	INVOICING AND PAYMENT	23
CLAUSE 11	RISK & INSURANCE.....	26
CLAUSE 12	UNDERTAKINGS AND WARRANTIES OF THE	27
PARTIES.....		27
CLAUSE 13	FORCE MAJEURE.....	28
CLAUSE 14	TERMINATION AND DEFAULT.....	29
CLAUSE 15	INDEMNIFICATION AND LIABILITY	32
CLAUSE 16	CONFIDENTIALITY	33
CLAUSE 17	DISPUTE RESOLUTION	33
CLAUSE 18	MAINTENANCE OF OPERATING RECORDS	35
CLAUSE 19	MISCELLANEOUS	36
CLAUSE 20	GOVERNING LAW.....	39
SCHEDULE 1		40
PLANT TO BE SUPPLIED BY THE PROVIDER.....		40
SCHEDULE 2		41
SITE AND DELIVERY POINT		41
SCHEDULE 3		46
SCHEDULE 4		47
COMMISSIONING AND OPERATING		47
PROCEDURES.....		47
SCHEDULE 5		50
CALCULATION OF AVAILABILITY.....		50
AND ENERGY CHARGES		50
SCHEDULE 6		53
REPRESENTATIVES		53
AND ADDRESSES FOR NOTIFICATIONS		53
SCHEDULE 7		54
SCHEDULE 8		55
FORM OF PERFORMANCE BOND		55
AGREEMENT		55
SCHEDULE 9		57
FORM OF ADVANCE PAYMENT BOND		57

SCHEDULE 10	59
FUEL SPECIFICATION	59
SCHEDULE 11	60
AFFIDAVIT	60

TEMPORARY POWER PURCHASE AGREEMENT

FOR

TEMPORARY POWER SUPPLY AT MANDERA POWER STATION

THIS AGREEMENT is made on this.....day of..... 2016

BETWEEN

- 1) Kenya Power & Lighting Company Limited (KPLC), P.O. Box 30099 - 00100, Stima Plaza, Kolobot Road, Nairobi, Kenya and,
- 2) The Provider

INTRODUCTION

(A) Due to power supply-demand imbalance in Mandera Kenya, KPLC requires the Temporary provision of 2.0MW of electrical capacity at Mandera Power Station.

(B)The provider has agreed to provide such electrical capacity on the terms set out in this Agreement.

AGREEMENT

CLAUSE 1 DEFINITIONS AND INTERPRETATION

1.1 Defined terms

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them:

"Accounts" means the accounts established by KPLC in terms of Clause 10.5.

"Agreement" means this Temporary Power Purchase Agreement together with all schedules attached.

"Availability" means the ability of the Plant, at a particular instance or over a particular period of time, to provide capacity to KPLC and the terms **"Available"** and **"Unavailable"** shall be construed accordingly.

"Availability Charge" means that part of the Facility Charge payable by KPLC to the Provider in respect of Available Capacity in accordance with Clause 6.7.

"Available Capacity" means the Capacity Available in any Settlement Period, unless there has been a failure to achieve the requirements of a Dispatch Instruction in respect of the Plant in that

"Settlement" Period in which event the Available Capacity shall be the average Availability achieved in response to valid Dispatch Instructions for that Settlement Period.

"Available Capacity Shortfall Amount" means the amount, calculated in terms of Schedule 5, and payable in the event of a failure to achieve Guaranteed Availability under Clause 6.7.

"Capacity" means the capacity of the Plant, expressed in Schedule 1 in kW, to generate and deliver electricity, other than during any period during which an outage occurs as a result of any failure or inability if KPLC to receive delivery of electrical energy from the Plant however arising except where that failure is as a result of an event which is caused by the Provider.

"Commencement Date" means the date upon which the Provider has completed the installation of the Plant and all commissioning in terms of Clause 5.1.

"Default" means anyone or more of the events specified in Clause 14.1 and 14.2.

"Delivery Point" means the point of common coupling at which electrical output from the Plant is delivered to the KPLC Network being the point specified in Schedule 2.

"Dispatch Instruction" means an instruction given by or on behalf of KPLC in relation to the operation of the Plant in accordance with the procedures in Schedule 4.

"Dispatch Procedures" means the procedures for the despatch of electrical output from the Plant set out in Schedule 4.

"Effective Date" has the meaning ascribed thereto in Clause 3.1.

"Energy Charges" means that part of the Facility Charge calculated by reference to the net electrical output at the Delivery Point, calculated under the procedures in Schedule 5.

"Expert" means the person appointed in terms of Clause 17.2.

"Facility Charge" means the Availability Charge and the Energy Charge payable by KPLC to the Provider under this Agreement calculated pursuant to Clause 6.7.

"Force Majeure" means any event or circumstance which was not reasonably foreseeable (by a person acting in accordance with Prudent Operating Practice) at the date of this Agreement which materially affects either Party in a manner which prevents that Party from materially complying with its obligations under this Agreement, and is not within the reasonable control (directly or indirectly) of the Party affected, and such event or circumstance or its effects cannot be prevented, mitigated, avoided or removed by such Party acting in accordance with Prudent Operating Practice.

Such events shall include:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
- (b) an act of God including but not limited to lightning, fire, earthquakes, volcanic activity, floods, storms, cyclones, typhoons, or tornadoes;
- (c) epidemics or plagues;
- (d) explosions;
- (e) labour disputes including strikes, works to rule or go-slows or lockouts that extend beyond the Plant or are widespread or nationwide;
- (f) geological, archaeological or paleontological conditions, in each case which were not discovered on the Site prior to the date of this Agreement;
- (g) expropriation (including any series of events collectively constituting creeping expropriation), confiscation or compulsory acquisition of all or a portion of the properties or assets of the Provider, which properties or assets are required by the Provider to perform or fulfill its obligations under the Project Documents; and
- (h) any change in the Legal Requirements after the date of this Agreement but shall not include as events or circumstances:

- (i) late delivery to the Provider of machinery, equipment, materials, spare parts or consumables;
- (ii) a delay in the performance of any contractor;
- (iii) normal wear and tear of or random flaws in, materials and equipment or breakdowns of equipment; and
- (iv) unavailability of funds,

but which may be the consequences of an event or circumstance of Force Majeure as defined.

"GOK" means the Government of Kenya

"Guaranteed Availability" means the amount identified as such in Schedule 1.

"KPLC" means Kenya Power & Lighting Company Limited, which is an electric power producer, licensed in terms of the Electric Power Act, 1997.

"KPLC" means The Kenya Power & Lighting Company Limited, which is an electric power distributor, licensed in terms of the Electric Power Act, 1997.

"KPLC Connection Facilities" has the meaning ascribed to it in Schedule 2.

"KPLC Network" means the high voltage transmission system operated by KPLC, together with all the distribution system(s) and equipment connected to such transmission and distribution systems.

"kW" means kilowatts.

"kWh" means kilowatt hours being three million six hundred thousand (3,600,000) Joules as defined in ISO 1 000.1992(E).

"Legal Requirement" means any statute, law, regulation or other legislation, or any decree, order or directive of any duly authorized governmental body having jurisdiction in respect of this Agreement or either Party.

"Liquidated Damages for Delay" means KPLC's genuine pre-estimate of the loss it will suffer in the event of delay being a sum per day, calculated:

(a) for the first four (4) weeks following the Scheduled Date for Commencement at the rate of USD 0.04 per kW per day of the Capacity; and

(b) for the following month the rate of USD 0.085 per kW per day of the Capacity.

"Metering System" means the equipment for metering the operation and output of the Plant, to be supplied by the Provider under Clause 4.1.

"MW" means megawatts, being one thousand (1,000) kW.

"MWh" means megawatt hours, being one thousand (1,000) kWh.

"Parties" means KPLC and the Provider, and **"Party"** means either of them.

"Performance Bond" means an on demand performance bond in the amount of 10% of the contract sum drawn on First class bank acceptable to KPLC in the form attached in Schedule 8.

"Plant" means the Provider's generating unit and related facilities, including Metering System, as described in Schedule 1.

"Project Documents" means, collectively, this Agreement and the Support Services Agreement.

"Prudent Operating Practice" means in relation to either Party, standards of practice obtained by exercising that degree of skill, diligence, prudence and foresight, which could reasonably be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances including the supply of the Plant or facility similar in size and operational characteristics.

"Scheduled Date for Commencement" means Four (4) weeks from the contract signature date or such other date as may be agreed from time to time under Clause 5.4.

"Settlement Period" means a period of thirty (30) minutes beginning on the hour or the half-hour, as the case may be.

"Site" means that area of land described in Schedule 2 to be made available to the Provider pursuant to Clause 4.3.

"Support Services Agreement" means the agreement between KPLC, KPLC and the Provider for the operation of the Plant by KPLC, to be entered into by the Provider in terms of Clause 2.2.

"Term" means the period of Nine (9) months extendable from the Commencement Date, or such shorter period in the event of termination in terms of Clause 14, or as extended from time to time in terms of 3.2.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) reference to a working day is a reference to any day which is not a Saturday, Sunday or official public holiday in Kenya;
- (b) reference to a day, month or year is a reference to a calendar day, month or year;
- (c) references to *"this Agreement"* or to any other agreement or document is a reference to this agreement or, as the case maybe, the relevant agreement or document as amended, supplemented or novated from time to time and includes a reference to any document which amends, varies, is supplemental to or novates the terms of this Agreement or, as the case may be, the relevant agreement or document;
- (d) references to Clauses, Schedules, Sections and Figures are references to Clauses, schedules, sections and figures of, to or contained in this Agreement;
- (e) words in the singular shall be interpreted as including the plural and vice versa, and words denoting natural persons shall be interpreted as referring to corporations and any other legal entities and vice versa;
- (f) the term *"including"* shall be construed without limitation;
- (g) references to "act" shall include missions to act;
- (h) in the event of any conflict between the Clauses and the Schedules, the Clauses shall prevail;
- (i) headings are for convenience only and shall not affect the construction of this Agreement;

- (j) where a Party is to use its "*reasonable*" or "*best endeavors*", that Party shall use all the resources available to it which a reasonable person, committed to affect the intended outcome, would use;
- (k) where an obligation is required to be performed by a specified time and is not so performed, such obligation shall continue (until performed) notwithstanding that the time specified for its performance has elapsed; and
- (l) KPLC shall have no claims or recourse in contract, under this Agreement, against any person other than the Provider.

CLAUSE 2 SCOPE OF THE PROJECT

2.1 TEMPORARY POWER PURCHASE AGREEMENT

KPLC has contracted in this Agreement to purchase Capacity at the Delivery Point, and the Provider has contracted to provide the Capacity in accordance with this Agreement.

2.2 Project Documents

The Provider is not a licensed electric power producer in terms of the Electric Power Act, 1997, and therefore the following Project Documents will be entered into:

- a. this Agreement, for the purchase of Capacity at the Delivery Point; and
- b. as soon as Practicable thereafter the Support Service Agreement between KPLC and power provider to enable KPLC to comply with its obligations in relation to the operation, repair and maintenance of the Plant.

CLAUSE 3 EFFECTIVE DATE

3.1 Effective Date

- (a) This Agreement shall come into force and effect, save where the context clearly requires otherwise, on the Effective Date.
- (b) The Effective Date shall be the date upon which the last of the following has been achieved:
 - (i) delivery by the Provider of the Performance Bond to KPLC in accordance with Clause 10.2;

- (ii) inclusion of this Temporary Power Purchase Agreement in the existing Account as established by KPLC for the purposes of the Temporary Supply Agreement.
- (iii) the signature of the Project Documents by all parties to those documents;
- (iv) proof of payment of the advance payment in terms of Clause 10.1 in accordance with the Provider's instructions under Clause 10.7.

3.2 Term

- (a) The Term shall commence on the Commencement Date, as provided in Clause 5.1(d).
- (b) The term shall be for a period of **one year (12) months**.
- (c) The Provider shall provide Capacity to KPLC at the Delivery Point for the Term in accordance with this Agreement.
- (d) On the expiry of the Term, this Agreement shall cease to have effect, save where expressed or the context clearly requires otherwise.

3.3 Extension of Term

The parties shall mutually agree on terms and conditions of any extension of contract.

CLAUSE 4 SUPPLY AND INSTALLATION OF PLANT

4.1 Supply of Plant, Equipment and Labour

The Provider shall procure the Plant and shall deliver the Plant to the Site, install and commission it. This shall extend to:

- (a) satisfying itself as to access to the Site, and the delivery of the Plant, all related equipment and other infrastructure to the Site;
- (b) the carrying out of all temporary works, civil engineering and site preparation works;
- (c) the installation of the Metering System and all related equipment identified in Schedule 1;

- (d) the provision of all equipment, consumables, goods and materials;
- (e) the supply of all staff labour and specialist advisers; and
- (f) the supply of all other goods and provision of all other services, necessary for the Provider to provide the Capacity and to comply with its obligations under the Project Documents.

4.2 Importation

KPLC will obtain, subject to the Provider submitting all requisite applications and related documentation, exemption from all import duties, value added taxes (VAT) and the Import Declaration Form (IDF) fee for the importation of the Plant, all spares and related equipment. The Provider will however be responsible for the execution of temporary import bonds where necessary without any references to KPLC.

4.3 Site

- (a) KPLC will obtain a license for the Provider to have access to and possession of the Site on the terms set out in Schedule 7. The license shall be without a fee, shall commence on the Effective Date, and shall continue for the Term (and such further period reasonably required for the Provider to comply with its obligations under this Agreement, not exceeding three (3) months).
- (b) The Provider acknowledges that the license may not carry with it exclusive possession of the Site, and other independent power providers and KPLC will also require access to the Site. The Provider agrees to co-operate with KPLC and such other occupiers as the need arises as detailed in the Support Services Agreement, including for the delivery and safe and secure storage of fuel supplies on the Site. KPLC agrees to ensure that any other third party authorized by KPLC access to the Site does not interfere with:
 - (i) the performance by the Provider of its obligations under the Project Documents; and
 - (ii) the safe and efficient operation of the Plant in accordance with the Project Documents.

- (c) The Provider further acknowledges that it has had the opportunity to inspect the Site prior to the date of this Agreement, and that it accepts the Site in its condition at the date of this Agreement, save for pre-existing chemical or other contamination not evident on a reasonable examination.
- (d) The Provider shall be responsible for carrying out all site preparation works, civil works and ground works, whether foreseen or otherwise, at its own cost.
- (e) The Provider shall also be responsible for the safe handling of all fuel downstream of the KPLC meter at the point of measurement from KPLC's bulk fuel storage on the Site, including any fire safety facilities, necessary for the Provider to meet its obligations under this Agreement at its own cost.

4.4 Installation

- (a) The Provider shall install the Plant and all related facilities and equipment on that part of the Site identified in Schedule 2.
- (b) Prior to carrying out any works on the Site, or installing the Plant or any related facilities and equipment, the Provider shall submit:
 - (i) its installation method statement, identifying how the Plant and related facilities and equipment are to be installed at the Site; and either
 - (ii) its confirmation that the programme set out in Schedule 3 remains valid; or
 - (iii) an updated programme identifying those areas where the programme has had to be modified and explaining the reasons for such modification to KPLC for its approval within three (3) working days (such approval not to be unreasonably withheld). If KPLC requires any reasonable amendments to the programme or the installation method, the Provider shall promptly incorporate such changes and resubmit the amended statement for approval within three (3) working days.

4.5 Programme

- (a) The Provider shall use its best endeavours to comply with the programme attached as Schedule 3.
- (b) If the progress of the supply and installation of the Plant does not comply with the programme, the Provider shall submit to KPLC for its approval within three (3) working days (such approval not to be unreasonably withheld) a revised programme, showing if possible, the achievement of the Commencement Date by the Scheduled Date for Commencement.

4.6 Connection to KPLC Network

The Provider shall liaise with KPLC for the connection of the Plant to the KPLC Network at the Delivery Point. KPLC will procure that at least seven (7) days before the series of dates referred to in Clause 5.2 (b) to precede the Scheduled Date for Commencement at which various Capacities would be Available, all the necessary arrangements on the KPLC side of the Delivery Point for the Provider to complete the installation of the Plant to a standard to enable it to be connected to the KPLC Network at the Delivery Point.

CLAUSE 5 COMMISSIONING AND COMMENCEMENT OF GENERATION

5.1 Commissioning of Plant and Commencement Date

- (a) The Provider will keep KPLC advised of the likely dates for commissioning. When the Provider is of the opinion that the Plant will be ready for commissioning, it shall serve not less than 24 hours' notice to that effect on KPLC. The Provider shall thereafter carry out the commissioning of the Plant in consultation with KPLC, which shall extend to providing them with such background and supporting information in relation to commissioning as they may reasonably require and KPLC providing load from the KPLC Network to enable the Provider to carry out its commissioning. KPLC shall pay Energy Charges for all electricity generated and exported onto the KPLC Network during such commissioning and testing.
- (b) When the Provider is of the opinion that commissioning of the various Capacities of the Plant has been completed,

and that the Plant can safely provide the Capacity in accordance with this Agreement, it shall serve notice to that effect on KPLC, together with such reasonable supporting evidence, including test results, reasonably required by the KPLC.

- (c) KPLC may attend upon all commissioning testing, and make all such other inquiries and investigations as may be required to ensure that commissioning has been completed and the Commencement Date achieved.
- (d) The Commencement Date shall be the date upon which the commissioning of all of the Plant and related equipment has been achieved in terms of paragraph (a) above, as certified by the Provider and KPLC. Any disagreement about whether or not commissioning has been achieved in terms of paragraph (a) above, shall be referred to the Expert for determination, and liquidated damages for delay shall be in abeyance pending determination by the Expert.

5.2 Early Supply

- (a) The Provider may commission the Plant in stages, and commence the provision of Capacity prior to the Commencement Date on such terms and conditions as the Parties agree. In such event the relevant provisions of this Agreement and the Support Services Agreement shall apply to such Capacity, in so far as they are relevant to such early supply, and the Parties agree to give effect to the intent of those provisions as evidenced by this Agreement.
- (b) The Provider has included in the programme set out in Schedule 3, a series of dates preceding the Schedule Date for Commencement at which various Capacities would be Available.

5.3 Scheduled Date for Commencement

The Provider shall do everything necessary under this Agreement for the Commencement Date to be achieved by the Scheduled Date for Commencement.

5.4 Extension of Time

If the Provider will not achieve the Commencement Date by the Scheduled Date for Commencement by reason of:

- (a) any act of prevention or delay by KPLC, including a failure to provide load from the KPLC Network for commissioning and testing purposes in terms of Clause 5.1; or
- (b) Any event of Force Majeure,

then the Scheduled Date for Completion shall be revised to the extent of such delay. The Provider agrees to notify KPLC of any event which may delay the Commencement Date, whether or not such event gives rise to an entitlement to an extension of time under this Clause 5.4, and KPLC agrees to assist the Provider in avoiding or mitigating such delay. Any disagreement about the Provider's entitlement to extensions of time shall be referred to the Expert for determination.

5.5 Liquidated Damages for Delay

- (a) For each day that the Commencement Date has not been achieved after the Scheduled Date for Commencement in accordance with Clause 5.1, then the Provider shall pay to KPLC Liquidated Damages for Delay. Such Liquidated Damages shall be KPLC's sole and exclusive remedy under this Agreement and at law for the Provider's failure to achieve the Commencement Date by the Scheduled Date for Commencement.
- (b) The Liquidated Damages for Delay shall be adjusted on a pro rata to the extent that the Provider is able to achieve the delivery of part of the Capacity prior to achievement of the requirements for the Commencement Date.

- (c) KPLC shall be entitled to set off all amounts of Liquidated Damages for Delay due under this Agreement against any Facility Charges due to the Provider. If no Facility Charges are then due to the Provider, and the Provider has not promptly complied with a request for payment, KPLC shall be entitled to demand payment of all liquidated damages properly claimed under this Clause 5.5 under the Performance Bond.

CLAUSE 6 OPERATION AND DESPATCH

6.1 Fuel Procurement

KPLC shall procure and deliver to the Site all fuel necessary to commission and test the Plant and to provide the Capacity under this Agreement. The Provider shall keep KPLC advised of its fuel consumption rates, and of its fuel requirements on a **weekly and daily basis as provided in Schedule 4**, so as to enable KPLC to maintain a supply of fuel to the Site.

6.2 Guaranteed Specific Fuel Consumption Per KWh

- (a) The Provider guarantees that the Plant shall operate at the Guaranteed Specific Fuel consumption identified in Schedule 1.
- (b) Each month the Provider shall identify, in the monthly invoices to be submitted under Clause 10.4, the heat rate achieved by the Plant for the previous month. The invoice shall include the following adjustment, where appropriate:
 - (i) where the Specific Fuel Consumption for the month of Supply exceeds the Guaranteed Specific Fuel Consumption, an additional fuel levy to be paid by the Provider; or
 - (ii) **Where the Specific Fuel Consumption for the previous month is less than the Guaranteed Specific Fuel Consumption, the fuel savings to be paid to the Provider, calculated in accordance with Schedule 5, at the average delivered price for fuel achieved by KPLC during the month of supply. KPLC shall make the fuel pricing information available to the Provider in a timely fashion to enable the Provider to prepare and submit the invoices and related information to KPLC in accordance with Clauses 10.3 and 10.4.**

6.3 Permits and Authorizations

- (a) Subject to the Provider submitting all relevant background and supporting information required by KPLC, and save as provided

otherwise in the Project Documents, KPLC shall procure all permits, consents, licences and authorizations to enable the Provider to deliver, install and commission the Plant at the Site, and to provide the Capacity and to comply with its obligations under the Support Services Agreement in accordance with all Legal Requirements. KPLC shall provide copies of all such permits, consents, licences and authorizations to the Provider as soon as they have been granted.

- (b) The Provider shall comply with the conditions attaching to such permits, consents, licences and authorizations, provided that where compliance with such conditions imposes obligations and causes the Provider to incur cost beyond what would be reasonably anticipated for Prudent Operating Practice, KPLC shall reimburse such cost to the Provider.
- (c) KPLC shall indemnify the Provider for all costs, penalties or fines which may be imposed for a failure by **KPLC to obtain for the Provider any of the permits**, consents, licences and authorizations referred to in paragraph (a) above.

6.4 Despatch Procedures

- (a) The Provider acknowledges that the export of electricity generated at the Plant onto the KPLC Network will be governed by Despatch Procedures.
- (b) The Provider acknowledges that KPLC will despatch electricity onto the KPLC Network in accordance with the Despatch Instructions issued under the Despatch Procedures.
- (c) **Operation of the Plant by KPLC in accordance with the Support Services Agreement** will not absolve the Provider from its obligations to provide Capacity under this Agreement, at Guaranteed Availability.

6.5 Environmental Requirements

The Provider shall at all times comply with internationally established environmental good practice (as evidenced by the National Environmental Management Authority (NEMA) guidelines), and in particular shall not:

- (a) create a nuisance with any adjoining land occupiers;
- (b) release any contaminants into the atmosphere;

- (c) cause any spillage or waste of any contaminants or noxious substances; or
- (d) Create a hazard beyond what would normally be expected from a Plant of this nature operated in accordance with Prudent Operating Practice.

6.6 Guaranteed Availability

- (a) The Provider guarantees that the Plant will achieve the Guaranteed Availability in each successive two (2) month period of the Term.
- (b) In the event that the Plant fails to achieve the requirements of a Despatch Instruction (whether as a result of a failure by the Provider to comply with the provisions of this Agreement or the Support Services Agreement or for any other reason save for any act or omission of KPLC or an event of Force Majeure), the Provider shall pay to KPLC, by way of liquidated damages for such failure (as a contribution towards KPLC's estimated losses), a sum representing 125% of the Available Capacity Shortfall Amount. Such liquidated damages shall be KPLC's sole and exclusive remedy under this Agreement and at law for the Provider's failure to achieve the requirements of a Despatch Instruction.
- (c) KPLC shall be entitled to set off all liquidated damages claimed under this Clause 6.6 against any other amounts payable by KPLC to the Provider under this Agreement. If no Facility Charges are then due to the Provider, and the Provider has not promptly complied with a request for payment, KPLC shall be entitled to demand payment of all liquidated damages claimed under this Clause 6.6 under the Performance Bond.

6.7 Facility Charge

KPLC shall, following the Commencement Date, pay to the Provider the Facility Charge, which shall be comprised of:

(a) *Availability Charges*

KPLC shall pay the Availability Charges, calculated in accordance with the provisions of Schedule 5; and

(b) *Energy Charges*

KPLC shall pay the Energy Charges for the net electrical output available at the Delivery Point, calculated in accordance with the provisions of Schedule 5.

CLAUSE 7 REPAIR AND MAINTENANCE

7.1 Maintenance

The Provider shall liaise with KPLC and KPLC in relation to the timing and duration of all routine and scheduled maintenance, and shall use its best endeavours to ensure that all such maintenance is carried out in such a way as to reduce so far as practicable the impact of any reduction of the Available Capacity and any inconvenience to the KPLC Network.

7.2 Forced Outage

In the event of a forced outage, or that unscheduled maintenance becomes necessary, the Provider shall make such staff and expertise available as necessary to enable return the Plant to full generation as soon as practicable.

7.3 Spares

The Provider shall procure and maintain at the Site a stock of spares and consumables to minimize disruption to generation as much as is practicable, for the purposes of complying with its repair and maintenance obligations under this Agreement without charge to KPLC and shall replenish its stock of spares, unless such spares are consumed within a period from the expiry of the Term which makes it unlikely that they will be unreasonable to require the Provider to replace such spares.

CLAUSE 8 EXPIRY OF THE TERM

8.1 Decommissioning

- (a) Within three (3) months following the expiry of the Term, the Provider shall decommission, dismantle and remove the Plant from the Site.
- (b) The Provider shall also remove the Plant, all spares and any other equipment upon which GOK has provided an exemption from any duties, taxes or levies under this Agreement, from the Republic of

Kenya within three (3) months following the expiry of the Term and cancel all temporary import bonds.

(c) In the event of:

(i) unreasonable delay in such removal; or

(ii) unreasonable delay in the rectification of any environmental damage in accordance with Clause 8.2; or

(iii) a failure by the Provider to comply with paragraph (b) above, KPLC shall be entitled to demand the cost of such removal or rectification, and/or the duties, taxes or levies attaching to the Plant, spares or other equipment under the Performance Bond.

(d) Any disagreement about decommissioning of the Plant under this Clause 8.1 or environmental rectification in terms of Clause 8.2 shall be referred to the Expert for determination.

8.2 Environmental Rectification

As soon as practicable following the decommissioning and removal of the Plant and related equipment from the Site, the Provider shall remove all contaminants deposited or discharged on or in the vicinity of the Site by the Provider and shall rectify any environmental damage on or in the vicinity of the Site caused by the Provider at its own cost and to the reasonable satisfaction of KPLC. The Site shall be left in a condition, which is no worse than it was at the date of this Agreement, with all the Provider's property and temporary works removed. Site handing over Report is to be made available by KPLC during handover of site to Provider and at the end of the contract when Provider will hand over the site to KPLC.

8.3 Survival

The provisions of this Clause 8 shall survive the termination or expiry of this Agreement.

CLAUSE 9 METERING

Net electrical output of the Plant shall be metered at the Delivery Point in accordance with the provisions of Schedule 4. Where it is not practicable to meter at the Delivery Point, metering at other locations is acceptable with correction of the metered amount to the Delivery Point by rational engineering calculation. A check meter shall be installed for every such meter. In the event that there is discrepancy between the readings of the two meters, the lower reading will be used for billing until such a time as the discrepancy is rectified.

CLAUSE 10 INVOICING AND PAYMENT

10.1 Advance Payment

- (a) The Provider may be paid an advance payment of the sum 10% of the contract sum.
- (b) KPLC may pay the advance to the Provider upon the production by the Provider of an on demand bond for the full amount of the advance drawn on a first class bank acceptable to KPLC in the form set out in Schedule 9.
- (c) The advance shall be repaid by deducting 6 equal instalment from amounts invoiced each month in terms of Clause 10.3. KPLC shall make demand under the bond provided in terms of paragraph (b) above in the following events:
 - (i) in the event that any payment due in terms of Clause 10.7 is insufficient to meet the repayment instalment to be deducted under this paragraph, in which event KPLC shall be entitled to demand the amount of the shortfall under such bond; or
 - (ii) in the event of the termination of this Agreement, in which event KPLC shall be entitled to demand the amount of the advance outstanding at the date of such termination.

10.2 Performance Bond

- (a) The Provider shall submit the Performance Bond equivalent to 10% of the contract sum to KPLC, within seven days, prior to receipt of advance payment following the date of this Agreement. The bond shall be for the Term, plus the period for rectification of the Site, removal of the Plant and related equipment and the rectification of any environmental damage in terms of Clauses 8.1 and 8.2, plus two month.
- (b) KPLC may demand payment under the Performance Bond at any time, and on any number of occasions up to the full amount secured by the Performance Bond (in aggregate), in the event of a Default by the Provider to cover the anticipated costs arising from such Default, or as otherwise provided in this Agreement.
- (c) Once the costs arising from the event following which demand was made under the Performance Bond have been determined, KPLC shall account to the Provider for all amounts called under the Performance Bond, or any other security provided under this

Agreement, and in no circumstances shall the Performance Bond or any other security provided under this Agreement be called or demand made under it as a penalty.

- (d) Upon the extension of the Term in terms of Clause 3.3, the provider shall submit a replacement bond to KPLC for a period representing the remainder of the Term prior to the extension, plus an additional period comprising the period of the extension plus four (4) months, to reflect the extended term (but otherwise on the terms of the bond being replaced) as soon as practicable following the extension of the Term. Notwithstanding anything expressed or to be implied to the contrary in this Agreement, KPLC may suspend payments to the Provider until the replacement bond referred to in this paragraph (d) has been submitted by the Provider. KPLC shall release the original bond to the Provider immediately upon submission of the replacement bond.
- (e) The Performance Bond and all other securities held under this Agreement shall be released by KPLC as soon as it becomes apparent following the expiry of the Term that the Provider has complied with its obligations under this Agreement or upon the expiry date of the Performance Bond, whichever is the earlier.

10.3 Invoices

The Provider may apply at the beginning of each month for payment by submitting an invoice for the Facility Charges for the previous month. KPLC shall review such invoice and shall, within ten (10) days of receipt:

- (a) approve such invoice for payment; or
- (b) request further information reasonably required to enable it to properly consider such invoice and to verify any supporting material; or
- (c) approve any part of the invoice, withholding approval in respect of any part for which application is rejected, or for it requires further clarification or it disputes; or
- (d) reject the invoice on reasonable grounds.

When reviewing applications, KPLC shall be entitled to request, and the Provider shall make available to KPLC, any supporting or background material reasonably necessary to enable such invoice to be properly and fully considered. Upon provision of further information, KPLC shall consider and respond to the Provider in terms of paragraphs (a) to (d) above within five (5) days.

10.4 Content of Invoice

The invoice shall contain the following information in relation to the preceding month:

- (a) details of Availability for each Settlement Period;
- (b) details of fuel consumed;
- (c) net electrical output measured at the Delivery Point;
- (d) calculation of the Availability Charge and the Energy Charge, with supporting documentation;
- (e) deductions of advance payments and any other amount properly due to KPLC;
- (f) details of any costs incurred, and for which the Provider is entitled to reimbursement under this Agreement,
- (g) any other matter required to be included under this Agreement.

If any invoice is incomplete, or does not contain the supporting information identified in this Clause 10.4, KPLC will review and consider the invoice to the extent that it can under Clause 10.3, but shall be entitled to withhold its approval and payment of that invoice until all information required in paragraphs (a) to (f) above has been provided.

10.5 Accounts

- (a) The use of the account set up by KPLC for the purposes of the existing Temporary Supply Agreement shall be extended to serve this contract.
- (b) The Accounts shall be exclusive to the Project, and shall not be applied to any other purpose or during the Term whatsoever.
- (c) KPLC anticipates that the funds to be deposited into the Accounts under paragraph (b) above will be sufficient to meet all payments due to the Provider under this Agreement Pending the deposit of such funds, and in the event of a shortfall in such funds, KPLC shall immediately procure sufficient further funds to make up such shortfall so that the Accounts will at all times be credited with sufficient funds to meet payments to the Provider as they become due.

10.6 Default Interest

- (a) In the event that either Party defaults in any payment due to the other, such payment shall bear interest at a rate, which is **one (1) percentage points** above LIBOR from the due date to the date of payment.
- (b) For the purposes of this Clause 10.6, **LIBOR** means, in respect of any day, the offered rate of interest for US Dollars quoted by banks as the Parties shall from time to time agree, to prime banks in the **London Inter-bank Market at 1100 hours (London time)** for a deposit of a principal sum equivalent to the sum due for a period commencing on such day and ending seven (7) days later, and if that rate is not quoted on any day, the rate last quoted shall be used.

10.7 Payments

- (a) All amounts approved for payment following the review in terms of Clause 10.3 by KPLC shall be authorized for payment from Accounts by KPLC and paid to the Provider within 40 days of receipt of the invoice, which complies in all respects with the requirements of Clause 10.4. All payments shall be made to the Provider to an account nominated by the Provider.
- (b) In the event of a failure by KPLC to pay the Facility Charges to the Provider, whether out of the Accounts or otherwise, fourteen (14) days after the due date under Clause 10.7, the Provider shall be entitled to suspend the provision of Capacity and the Services under the Project Documents, without incurring any further penalty.

CLAUSE 11 RISK & INSURANCE

- (a) The Plant shall remain, at all times, the property and at the risk of the Provider.
- (b) The Provider shall be responsible for insuring for all its risks under this Agreement, at its own option and at its own cost.
- (c) The Provider shall insure for all third party and public liability property damage and personal injury for the sum of **USD 5 Million** noting the interests of KPLC. Such policy shall also note that KPLC is a third party and shall remain valid for the full period of the Provider's liability under the Limitation of Actions Act, Cap 22.

CLAUSE 12 UNDERTAKINGS AND WARRANTIES OF THE PARTIES

12.1 Undertakings and Warranties of the Provider

The Provider warrants and undertakes:-

- (a) the Plant and related equipment is of good condition and sufficient for the purposes of meeting the requirements of this Agreement;
- (b) the Capacity will be Available upon or before the Scheduled Date for Commencement;
- (c) it will provide the Guaranteed Availability during the Term;
- (d) to operate the Plant in accordance with the Support Services Agreement
- (e) it has the resources and the financial strength to comply with its obligations under this Agreement; and
- (f) it is committed to addressing the needs of KPLC arising out of the current power crises in Kenya, as evidenced by this Agreement, and it will comply with its obligations under this Agreement with this mind.

12.2 Undertakings of KPLC

KPLC warrants and undertakes:

- (a) it has the financial capability to meet its obligations under this Agreement;
- (b) it will not do anything to prevent compliance by the Provider and KPLC of their obligations under the Project Documents;
- (c) the Provider is not required to apply for and obtain an electric power production license from the Energy Regulatory Commission in order to execute and deliver the Project Documents and lawfully perform its obligations under the Project Documents and the execution, delivery and performance by the Provider and KPLC of the Project Documents do not require the consent or approval of the Energy Regulatory Commission or any other applicable regulatory or governmental body;
- (d) this Agreement has been duly authorized, executed and delivered and KPLC has all necessary power and authority to execute,

deliver and perform its obligations under this Agreement and this Agreement is a legal, valid and binding agreement, enforceable against KPLC in accordance with its terms;

- (e) subject to the Provider completing and submitting all requisite applications and supporting documents, that importation duties and licences for the Plant and related equipment will be waived;
- (f) to assist with obtaining entry visas, staff visas and work permits; and
- (g) to provide the Site and to enter into all agreements and to do all it can to give effect to the provisions of the Project Documents, including providing assistance to the Provider with arranging its access to the Site.

CLAUSE 13 FORCE MAJEURE

13.1 Effect of Force Majeure

If a Party is prevented from or delayed in performing an obligation under this Agreement by reason of Force Majeure the affected Party shall:

- (a) be relieved from the consequences of its failure to perform that obligation, to the extent that such failure arises as a result of the event of Force Majeure;
- (b) promptly notify the other Party of the occurrence of the event; and
- (c) use all reasonable endeavours to overcome the consequences of the event.

13.2 Force Majeure Termination

If an event of Force Majeure continues beyond a period of fourteen (14) days, the Parties shall meet in good faith with a view to determining mutually acceptable terms for continuing this Agreement notwithstanding the effects of the event of Force Majeure provided that if at the end of twenty eight (28) days, no solution is found, either Party shall be entitled to terminate this Agreement by giving notice of not less than seven (7) days to the other Party.

CLAUSE 14 TERMINATION AND DEFAULT

14.1 The Provider's Default

For the purposes of this Agreement a Default by the Provider shall be:

- (a) The failure by the Provider to lodge the Performance Bond with KPLC in accordance with Clause 10.2;
- (b) the failure by the Provider to commence and proceed with the preparation of the Plant for shipping and the supply, installation and commissioning of the Plant in accordance with the programme in Schedule 3;
- (c) the failure by the Provider to install all the plant and equipment identified as forming the Plant and otherwise specified in Schedule 1;
- (d) the failure by the Provider to have the Plant installed, commissioned and ready to provide the Capacity by the Scheduled Date for Commencement;
- (e) the failure by the Provider after the Commencement Date to meet 70% of the Capacity for more than 14 consecutive days;
- (f) the wilful and unexcused failure by the Provider to comply with the provisions of this Agreement;
- (g) the breach by the Provider of any of its other material obligations under this Agreement;
- (h) the Provider is the subject of the following:
 - (i) a court order or decree adjudging insolvency;
 - (ii) appointment of a receiver or manager over a substantial part of the Provider's assets;
 - (iii) order winding up or liquidation of its affairs;
 - (iv) an application for voluntary winding up or liquidation of the Provider;
 - (v) any admission by it or its officers or directors of its inability to pay its debts generally as they become due;
 - (vi) any other analogous event occurring in any jurisdiction

unless such event is capable of being set-aside in thirty (30) days;

- (i) any statement, representation or warranty made by the Provider herein proving to have been incorrect, in any material respect, when made or when deemed to have been made; and
- (j) breach by the Provider of any covenant under any of the other Project Documents that remains unremedied 14 days after notice to remedy the same has been given by KPLC to the Provider in accordance with the terms of the Project Documents.
- (k) if the Provider, in the judgment of KPLC, has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement in contravention of the affidavit in Schedule 11. For the purpose of this sub-clause:

'corrupt practice' means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in Agreement execution.

'fraudulent practice' means a misrepresentation of facts in order to influence a procurement process or the execution of this Agreement to the detriment of KPLC, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive KPLC of the benefits of free and open competition.

14.2 KPLC's Default

For the purposes of the Project Documents a Default by KPLC shall be:

- (a) the breach by KPLC of any of its material obligations under this Agreement;
- (b) failure by KPLC to make any payment within 14 days of due date, without reasonable justification in terms of this Agreement;
- (c) the wilful and unexcused failure by KPLC to comply with the provisions of this Agreement;
- (d) any statement, representation or warranty made by KPLC herein proving to have been incorrect, in any material respect, when made or when deemed to have been made;

- (e) breach by KPLC of any covenant under any of the other Project Documents that remains unremedied 14 days after notice to remedy the same has been given by the Provider to KPLC in accordance with the terms of the Project Documents; and
- (f) any attempt to obstruct the payment of any sum of money due and owing, save where payment of such sum is subject to a bona fide dispute.

14.3 Default Notice

Upon the occurrence of a Default, the non-defaulting Party may give notice to the defaulting Party of the occurrence of such Default. If:

- (a) the Default is not capable of remedy; or
- (b) the Default is capable of remedy and the defaulting Party does not, where such Default is capable of remedy within a fourteen (14) day period, remedy the Default; or
- (c) the Default is capable of remedy but not within a fourteen (14) day period, the defaulting Party does not furnish to the other Party a detailed programme ("*remedial programme*"), which is acceptable to the other Party, acting reasonably in the circumstances, for the remedy as promptly as is practicable of the Default and the defaulting Party fails to remedy the Default in accordance with the remedial programme; then the non-defaulting Party may give notice to the defaulting Party that such Default is an "*event of default*"

14.4 Termination

- (a) Upon the occurrence of an event of default the non-defaulting Party may upon not less than Fourteen (14) days notice to the defaulting Party terminate this Agreement.
- (b) In event that the consultant contracted by KPLC for retrofitting of renewable energy to the diesel mini-grids make recommendations of putting up an alternative Power generation system provided it gives a three month notice or such other period as may be agreed between the parties

14.5 Survival of Rights

The expiry or termination of this Agreement shall not affect any rights or obligations, which may have accrued prior to such expiry or

termination and shall not affect obligations of each of the Parties under this Agreement, which are expressed to continue after such expiry or termination.

CLAUSE 15 INDEMNIFICATION AND LIABILITY

15.1 Liability

Each Party shall be liable to the other Party for the loss directly and foreseeable resulting from any breach by the defaulting party of its obligations under this Agreement.

15.2 Own loss

Notwithstanding Clause 15.1, each Party shall be responsible for, and shall indemnify the other Party against claims in respect of, loss of or damage to persons or property incurred by the first Party and its contractors, employees and agents resulting from the act or omission of the other Party in the performance of or otherwise in connection with this Agreement.

15.3 Excluded liability

To the extent permitted by law, the Parties shall not be liable to each other except as provided in this Agreement.

15.4 Economic Losses

Save as expressly provided otherwise in this Agreement, in no case shall either Party be liable to the other for any indirect or purely economic losses or damages.

15.5 Limitation of Liability

Notwithstanding anything to the contrary expressed or to be implied in this Agreement, the liability of either Party to the other under this Agreement shall in no circumstances exceed **US\$1,700,000 (USD One thousand Seven Hundred Thousand).**

- (a) payment and repayment of the advance payment in terms of Clause 10.1;
- (b) payment of amounts due for invoices: under Clause 10.7;
- (c) Liquidated Damages for Delay under Clause 5.5, up to the maximum amount set out in the definition of Liquidated Damages for Delay set out in Clause 1.1;

(d) liquidated damages for failure to achieve guaranteed availability under Clause 6.6 up to a maximum of the lower of 5% of the contract sum or US \$1,700,000; and

(e) Liability arising under Clause 15.2.

CLAUSE 16 CONFIDENTIALITY

16.1 Confidential Information

Each Party agrees that it shall, and shall ensure that its consultants, contractors, employees, officers and directors shall, hold in confidence this Agreement and all information, documentation, data and know-how disclosed to a Party and designated in writing as 'confidential' both before and after the date of this Agreement (for the purposes of this 15.5, "*confidential information*"), and shall not disclose to any third party or use any confidential information other than in connection with the performance of its obligations under this Agreement without the other Party's prior written approval, provided that:

(a) this Clause shall not apply to confidential information which is in the public domain other than by reason of a breach of this Clause 16.1, or was already in the rightful possession of the recipient Party, or was obtained by the recipient Party in good faith from a third party entitled to disclose it; and

(b) a Party may disclose confidential information in accordance with any Legal Requirement to do so and to any Expert and arbitrator.

16.2 Survival

The provisions of this Clause 16 shall survive the termination or expiry of this Agreement.

CLAUSE 17: DISPUTE RESOLUTION

17.1 Dispute

Any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement including the interpretation of this Agreement, its validity and any purported breach or termination (for the purposes of this Clause 17 "*dispute*") shall be determined in accordance with this Clause 17. All disputes shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in accordance with the said Rules, which Rules are deemed to be incorporated by reference into this Clause 17.

17.2 Expert

Where in this Agreement, a matter is to be referred to the Expert, the following provisions shall apply:

- (a) the Expert shall be an independent professional person with relevant experience and willing to act, agreed by the Parties, or if not agreed within fourteen (14) days of proposal by either Party, appointed by the Chairman of the International Chamber of Commerce (ICC);
- (b) Each Party may make such written submissions as it wishes to the Expert within seven (7) days of a dispute or other matter arising which is to be referred to the Expert and shall simultaneously provide a copy to the other Party, and at the end of such seven (7) day period each Party shall have a period of seven (7) days to make counter-submissions to the Expert (with a copy to the other Party) in reply to the other Party's written submissions;
- (c) Either Party may, with the consent of the Expert and at a time and place decided by the Expert, make an oral presentation to the Expert in the presence of the other Party commenting on or explaining matters previously submitted to the Expert in writing;
- (d) the Expert shall render his determination in writing within seven (7) days of the completion of the oral presentation given in accordance with Clause 17.2(c) and give reasonable details of the reasons for his determination;
- (e) the Expert shall act as an expert and not as an arbitrator;
- (f) the costs of the Expert shall be borne as determined by the Expert or, in default of such determination, equally by the Parties.

17.3 Arbitration

It is hereby agreed that:

- (a) the seat of the arbitration shall be determined by the ICC;
- (b) there shall be a single arbitrator;
- (c) the language of the arbitration shall be English;
- (d) the award rendered shall apportion the costs of the arbitration;
- (e) the award shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision; and

- (f) the award in such arbitration shall be final and binding upon the Parties and judgment thereon may be entered in any Court having jurisdiction for its enforcement; and the Parties renounce any right of appeal from the decision of the arbitrator insofar as such renunciation can validly be made.

If there is a conflict between this Agreement and the said Rules, this Agreement shall prevail.

17.4 Exclusivity

Neither Party shall have any right to commence or maintain any legal proceeding concerning a dispute until the dispute has been resolved in accordance with Clauses 17.1 and 17.3, and then only to enforce or execute the award under such procedure.

17.5 Confidentiality

The Parties shall each secure that all arbitrators shall agree to be bound by the provisions of 16.1 of this Agreement as a condition of appointment.

17.6 Continuance of Obligations

The Parties shall continue to perform their respective obligations under this Agreement during any arbitration proceeding, provided that the right to terminate pursuant to Clause 14 shall not be restricted by this Clause 17.6.

CLAUSE 18: MAINTENANCE OF OPERATING RECORDS

- (a) Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data required hereby or elsewhere in this Agreement, the Provider shall maintain an accurate and up-to-date operating log, in a format reasonably acceptable to KPLC, at the Plant with records of:

(i) real and reactive power production for each half hour and 11kV bus voltage at all times;

(ii) changes in operating status, scheduled outages, forced outages and partial forced outages, noting times and causes; and

(iii) any unusual conditions found during inspections

all such records and data shall be maintained for a minimum of sixty (60) months after the creation of such records or data provided that each Party shall not dispose of or destroy any such records or data after such sixty (60) month period unless the Party desiring to dispose of or destroy such records or data gives thirty (30) days

prior notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice does not object thereto in writing within ten (10) days. If a written objection is received within such ten (10) day period, the objecting Party shall have a period of sixty (60) days after the date of such written objection within which to inspect and copy the records or data proposed to be disposed of or destroyed, which records and data shall be made available within such sixty (60) day period by KPLC or the Provider as the case may be, at such Party's offices in Nairobi. After the expiration of such sixty (60) day period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

- (b) Either Party shall have the right, upon ten (10) days prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation and Dispatch of the Plant at any time during normal office hours during the period such records and data are required hereunder to be maintained.

CLAUSE 19: MISCELLANEOUS

19.1 Assignment

- (a) The Provider acknowledges and agrees that KPLC may, upon prior notification in writing, assign and subcontract any or all of its rights under this Agreement.
- (b) The Provider shall not assign any of its rights under this Agreement without the prior consent in writing of KPLC.
- (c) No assignment, transfer or subcontracting of any rights or obligations under this Agreement by either Party shall relieve that Party of any of its rights or obligations under this Agreement.

19.2 Sub-Contractors

The Provider shall be entitled, with the consent of KPLC (such consent not to be unreasonably withheld or delayed), to engage third parties as contractors for the performance of its obligations under this Agreement in the Republic of Kenya. The Provider may engage third parties as contractors for such of its obligations as are to be performed outside the Republic of Kenya without the necessity for the consent of KPLC.

19.3 Variation

This Agreement may not be varied nor any of its provisions waived except by an agreement in writing signed by the Parties.

19.4 Waivers of Rights

No delay or forbearance by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy.

19.5 Notices

Except for communications in accordance with the Despatch Procedures, any notice or other communication to be given by one Party to the other under or in connection with this Agreement shall be given in writing and may be delivered or sent by prepaid mail or facsimile to the recipient at the address, and marked for the attention of the person, specified in Schedule 6 or such other address or person from time to time designated by notice to the other in accordance with this Clause 19.5; and any such notice or communication shall be deemed to be received upon delivery, or five (5) days after posting, or when sent by facsimile upon confirmation of uninterrupted transmission by a transmission report provided that any notice given by facsimile shall be confirmed by letter sent by hand or post, but without prejudice to the original facsimile notice if received in accordance with this Clause 19.5.

19.6 Effect of Illegality

If for any reason whatsoever any provision of this Agreement is or becomes or is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, then in any such case the Parties will negotiate in good faith with a view to agreeing one or more provisions to be substituted therefore which are not invalid, illegal or unenforceable and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

19.7 Entire Agreement

The Project Documents contain and expressly refer to the entire agreement between the Parties with respect to its subject matter and supersede all previous agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.

19.8 Counterparts

This Agreement may be executed in two counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute but one and the same instrument.

19.9 Sovereign Immunity

Each party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitutes private and commercial acts rather than public or governmental acts;
- (b) agrees that, should any legal proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (sovereign or otherwise) from such legal proceedings shall be claimed by or on behalf of itself or with respect to its assets, to the maximum extent permitted by law.

CLAUSE 20: GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the laws of Kenya.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed the day and year before written.

SIGNED FOR AND ON BEHALF OF KENYA POWER & LIGHTING COMPANY LIMITED

.....

...
(Signature)

Managing Director & CEO

.....

...
(Signature)

Company Secretary

SIGNED FOR AND ON BEHALF THE PROVIDER

.....

...
(Signature)

Director

.....

...
(Signature)

Witness

SCHEDULE 1

PLANT TO BE SUPPLIED BY THE PROVIDER

SPECIFICATION FOR 2.0MW PLANT FOR MANDERA

GENERAL

Descriptive information, operating conditions stated or parameters within these schedules shall not limit the Provider's obligations to comply with the performance obligations and terms of the Project Documents.

Capacity 2.0MW at Mandera

Guaranteed Availability 1.0

Maximum NO_x emissions at full load is 16.75g/kWh

Maximum noise levels from any plant item, outside enclosure is 89 dB (A) at 1 m

Operating Principles

The plant will consist of 2.0MW. The operating principle is as specified by the provider {see attached provider's Equipment Datasheets and drawings}

SCHEDULE 2
SITE AND DELIVERY POINT

1. Site

The 2.0MW Power Station will be located at Mandera Power Station and a sketch of the site layout is available.

2. Delivery Point

The delivery point is at 11 kV bus bar in the station switch room.

3. KPLC Connection Facilities

A sketch of a single line diagram for connection to the Mandera regional grid is attached. Refer to Provider sketch _____.

4. KPLC Network

The provider will liaise with Mandera Control Centre and Kenya Power National Control Centre with respect to co-ordinate the protection settings, inter-tripping and other necessary settings for the attachment to the regional network.

Other requirements,

(a) The network should normally operate in the following ranges

Voltage: 11,000 V +/- 2%

Frequency: 50 Hz +/- 2%

Loss of Mains tripping will be initiated if network voltage or frequency drifts outside above ranges.

(b) Inter-tripping signal from outgoing feeder circuit breaker to the provider 11 kV switchgear to be initiated by short-circuit, over-current or earth fault functions or any other relevant protection fitted on the regional network circuit breakers.

Annexure to Schedule 2 of the Capacity Purchase Agreement

The following have been indicated by KPLC for guidance of the Provider in the execution of the Temporary power plant. The provider should ascertain from KPLC any other parameters that are material to the performance of the Provider's responsibilities.

(a) **Single Line Diagram**

A sketch of a single line diagram (SLD) showing the proposed interconnection to the local grid is attached. The SLD shows some of the

relevant technical parameters and connections to be provided by the provider and KPLC.

(b) Site Location sketch

A sketch of the proposed location of the Provider's site area at the Mandera Power Substation is attached.

(c) Power Factor/ Reactive power capability

The power factor range for the Provider's equipment shall be 0.8 lagging to unity (with respect to the load) at the capacity of the plant. Operations shall be limited at all times to within the capacity, in MVA, of the relevant equipment indicated on the SLD.

(d) Fault ratings

The provider would request a study to be carried out to determine the fault level.

(e) Governing and AVR

It is anticipated that the plant will be dispatched at a set load as provided in a dispatch instruction.

Governor Ranges:	+/-0.25%
AVR Ranges:	+/-0.5% RMS

(f) Synchronization

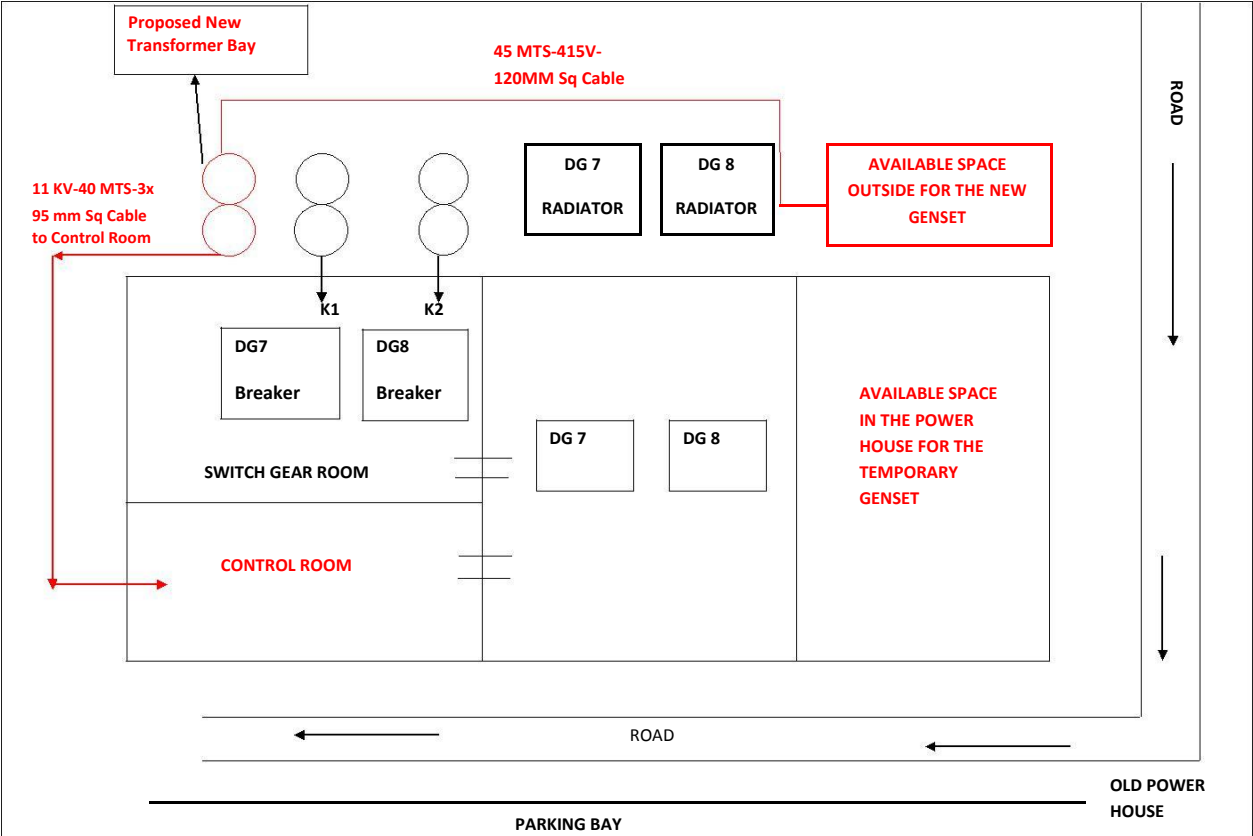
Synchronization of each Unit with the grid will be by the provider.

(g) Particular Scope Items to be provided by the Provider

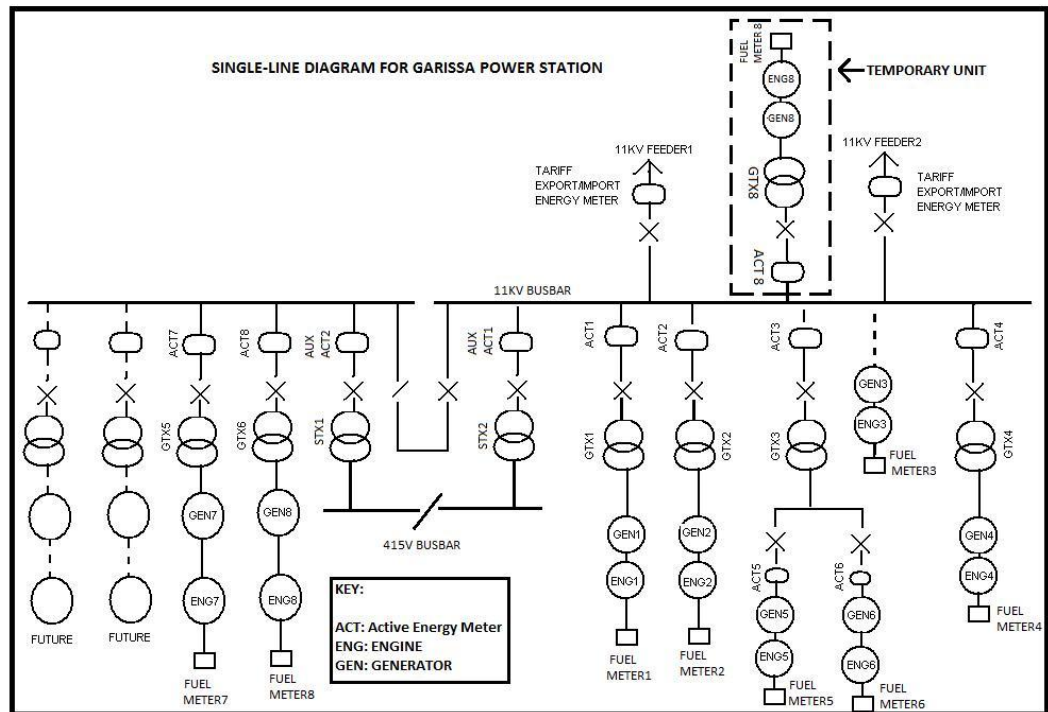
The following shall be provided by the provider where necessary:

- Construction power supply
- Protection for the provider's equipment including reverse power, over/ under speed, overload, excitation, over/under temperature, voltage/current deviations, coolant loss, etc.
- Inter-tripping cabling, details TBA by KPLC.

SITE LAYOUT SKETCH



SINGLE LINE DIAGRAM



SCHEDULE 3

PROGRAMME

1. Description of Key Activities and any Milestones

Refer to attached provider's programme.

2. Routine and Scheduled Maintenance

Refer to attached standard the provider maintenance programmes and procedures

SCHEDULE 4 COMMISSIONING AND OPERATING PROCEDURES

1. Commissioning and testing

Commissioning and testing procedures will be developed in the early stages of the contract.

2. Custody transfer metering

Custody transfer meters shall be provided at each point where flow of electricity, fuel or other relevant substance is transferred between the parties (the meter owner and other party). The meter owner shall own and be responsible for the custody transfer metering as indicated on the sketches attached.

Meters will be calibrated and sealed to prevent interference. The meters shall be read and logged no less frequently than daily by the Meter Owner. The Meter Owner shall Liaise with the other party and allow the other party to attend during meter readings.

The Meter Owner shall keep the meters maintained and calibrated. The energy meters must be able to “freeze” the end month mid-night readings. Energy meters should also be able to log readings every thirty (30) minutes. The accuracy of the meters shall be class 0.2. They shall be bidirectional, four quadrant capable of capturing export and import energy in different registers and fully compliant with the latest IEC standards/protocol.

The Other Party may require that the calibration of the meters be checked by the Meter Owner. If the Other Party requires the meters to be checked and the meters are found to be within calibration, Other Party shall reimburse the cost of testing.

If a meter is found to be inaccurate, to the extent it is reasonably possible to correct the metered parameter by (in decreasing order of precedence) the use of check –meters (where fitted), manual calculation of a calibration correction factor determined during meter-testing or calculation from other plant parameters, then the metered amounts read prior to the rectification of the metering accuracy shall be so corrected. In no case shall a correction be applied for a metered amount for an invoicing period for Facility Charges after the date of approval for payment by KPLC with respect to that metered amount unless a party

has notified the other party that the meter is required to be tested prior to the date of approval for payment.

3. Despatch Procedures

In order to assist with the scheduling of the Plant to meet the requirements of KPLC the Parties agree that the following procedures will be adhered to:

General Expectation : Generally KPLC expect that the overall requirement would be despatched at **Plant 100% availability per day** for the term.

Month Ahead Notification: Not less than fourteen days before the expected commencement date and thereafter at not less than monthly intervals, KPLC shall advise the provider of the estimated requirements, on a day-by-day basis, for electrical output during that month and also, provisionally, for the following month, but KPLC shall not be bound by these figures.

Week Ahead Notification: Not less than forty-eight (48) hours before the beginning of the week prior to the expected commencement date and thereafter not less than forty-eight (48) hours on an half -hour-by-half-hour basis, for electrical output during that week and also, provisionally, during the following week, but KPLC shall not be bound by these figures.

Day Ahead Notification: Not less than seven hours before the start of the expected commencement date and thereafter not less than seven hours before the start of the each day, KPLC output, for the following day. The firm requirements shall not be binding upon KPLC and KPLC may subsequently alter its requirements.

Despatch prior to the commencement Date: The parties agree that where a portion of the capacity is completed and commissioned prior to the commencement date, that KPLC may, at its discretion, despatch that portion of the capacity that the provider advises may be dispatched.

Despatch during commencement or testing: The provider shall keep KPLC informed of the expected commissioning and testing dates, times and loads for each unit of the plant and shall advise KPLC immediately it is necessary to change any of the dates, times or loads for the commissioning or testing. KPLC shall despatch the plant unit to the extent requested if the provider gives at least two hours notice of the requirement for the test or commissioning procedure and load,

and shall use its best endeavours to despatch the load as requested if shorter notice is provided.

Actual operation: Actual operation levels requested of the provider will be determined by the requirements for operation in accordance with economic despatch and, if applicable, automatic generation control and may be substantially different from the information provided in accordance with this schedule.

Notice of change of operation levels: In connection with its rights to despatch the plant in accordance with this agreement, KPLC will provide the provider with at least thirty minutes advance notice of changes in operating levels to be achieved by the plant. The provider agrees to comply with requests made with shorter notice periods to the extent practicable.

Operation in Accordance with Despatch

The plant shall be operated in accordance with the despatch instructions within a despatch tolerance band of $\pm 3\%$.

Recording of Telephoned Communications

Each party hereby authorizes the other party to record all telephoned voice communications relating to Declared Capacity control and Despatch of the Plant received from the other Party pursuant to this agreement and where such recording is undertaken, shall supply, at the request of the Party, a copy or transcript of any such recording.

Each party shall nevertheless keep a written log of Despatch Instructions issued/received.

4. Maintenance

See schedule 3

5. Fuel procurement, delivery and management

KPLC shall procure and arrange delivery of fuel to the bulk storage tanks to be provided by KPLC at the site. The provider shall inform KPLC, or other party designated by KPLC, of its estimated fuel requirement each day, in kg or tonnes, for each of the next seven days and the subsequent week according to the latest despatch information provided in item [3] above. The Provider shall not be liable for the estimate provided.

6. Decommissioning

A de-commissioning procedure shall be developed by the provider prior to the completion of the contract.

SCHEDULE 5

CALCULATION OF AVAILABILITY AND ENERGY CHARGES

1. Availability Charge

Availability Charge Payment, per month in US \$ (United States Dollars)

= **Sum of Available Capacity over All Settlement Periods in the
invoicing period x AC /NSP**

Where:

AC = Available Capacity

NSP = number of settlement periods in the invoicing period,

Available Capacity, in kW, shall be determined each settlement period but shall not exceed the capacity identified in schedule 1,

AC₁ = US\$/kW/month for each month of the first twelve months of the Term,

AC₂ = US\$/kW/month for each month after the first twelve months of the Term as stated below:

DAYS IN MONTH	AC₁	AC₂
28		
29		
30		
31		

2. Energy Charge

For each invoicing period, the energy charge payment (ECP) in US\$ shall be

ECP = NVRxME/100

Where:

NVR = Non-fuel Variable Rate

NVR₁ = [] US cents /kWh for each month of the first six months of the Term,

ME = Net metered energy in kWh delivered to the delivery point in the invoice period as determined by the metering system.

3. Calculation of Available Capacity Shortfall Amount for the purposes of the Availability Guarantee

For the purposes of Clause [6.7(b)], the Available Capacity Shortfall Amount, in GBP, shall be:

The sum over all the settlement periods in the relevant period in which both

- (DIE > ME), and
- (ME ≤ x capacity x 0.5),

of :

$$\frac{(RE-ME)}{0.5} \times \frac{ACx3}{NSPR} + (RE-ME) \times \frac{NVR}{100}$$

Less the sum over all the settlement periods in the relevant period in which:

- DI > Capacity

of:

$$\frac{(XC-Capacity) \times ACx3}{NSPR} + (XC-Capacity) \times 0.5 \times \frac{NVR}{100}$$

But in no case shall the available capacity shortfall amount be less than nil.

Where:

GA= Guaranteed Availability Capacity

DI= the last valid despatch instruction amount with respect to the relevant settlement period, in kW,

[0.5 = the duration of the settlement period, in hours] [3 = number of months in the relevant period]

DIE = DI x 0.5, in kWh = Dispatch capacity

RE = lesser of DIE and (GA x Capacity x 0.5)

NSPR = the number of settlement periods in the relevant

period XC = larger of ME/0.5 and capacity

4. Calculation of Fuel Usage Adjustment Amount

The Fuel Usage Adjustment (FUAA), in US \$, shall be:

$$FUAA = (MFU-FR \times ME) \times FC/1000$$

Where:

$$FR = [] \text{ kg/kWh}$$

MFU = Metered fuel usage, as measured by the fuel custody transfer meter to the provider, in kg, corrected where necessary for fuel density based on average temperature and pressure to be expected at the meter for the relevant period,

FC = Mean GASOIL 0.05% FOB A.G. fuel cost to KPLC in US\$/Tonne delivered, in the invoice period. KPLC shall make available fuel invoices for inspection where requested by the provider.

For the avoidance of any doubt, FUAA may be negative which would result in an FUAA payment from KPLC to the provider in this circumstance.

SCHEDULE 6

**REPRESENTATIVES
AND ADDRESSES FOR NOTIFICATIONS**

1. KPLC

- (a) Representative
Managing Director & CEO:
OR
Company Secretary:
- (b) Address for Notification
Stima Plaza, Kolobot Road, Parklands
P.O. Box 47936-00100
Nairobi
Kenya

2. Provider

- (a) Representative
- (b) Address for Notification

SCHEDULE 7

FORM OF SITE LICENCE

1. Definition of Site

The Site comprises that part of KPLC's Mandera Power Station together with the right of access identified in Schedule 2.

2. Authorized Use

The Provider shall be entitled to use the Site and authorize third party contractors and subcontractors for the provision of Capacity in accordance with the Project Documents, and all related activities; including:

- (a) constructing access roads to the Site;
- (b) delivering and installing the Plant and all related parts;
- (c) carrying out of all temporary, civil engineering and site preparation works;
- (d) operating and maintaining the Plant; and
- (e) other activities required to be performed by the Provider under the Project Documents.

3. Deed

KPLC shall grant to the Provider a Site License by way of a Deed.

Site Condition Report for the purpose of Clause 8.2

SCHEDULE 8
FORM OF PERFORMANCE BOND

BY THIS BOND dated the Day of2015

[.....]Whose registered office is at [.....] ("*the Bondsman*") is irrevocably and unconditionally bound to **The Kenya Power & Lighting Company Ltd. (KPLC)** in the sum of [.....] ("*the Bonded Sum*") for payment of which sum the Bondsman binds itself in accordance with the provisions of this Bond.

BACKGROUND

A By an agreement dated [.....] ("**the Agreement**") made between KPLC and [*Insert name of Provider*] ("**the Provider**"), the Provider has agreed to provide electrical capacity and to provide services ("**the Services**") upon the terms and conditions contained in the Agreement.

B Pursuant to the terms of the Agreement, the Provider has agreed to procure the provision to KPLC of a Bond in the terms set out in this Deed.

AGREEMENT

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Agreement.
2. The Bondsman shall upon demand made by KPLC in writing but otherwise without proof or conditions (both as to the default and the amount claimed) pay an amount up to and equal to the Bonded Sum. KPLC may make more than one demand, provided that the aggregate of all demands shall not exceed the Bonded Sum.
3. The liability of the Bondsman under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by the Bondsman and the Bondsman hereby waives notice of:
 - (a) any suspension of the Services, variation to or amendment of the Agreement (including without limitation extension of time for performance or adjustment to the amount payable to the Provider under the Agreement) or any concession or waiver by KPLC in respect of the Provider's obligations under the Agreement;
 - (b) the termination of the Agreement solely as a result of default by the Provider under the Agreement;

- (c) any forbearance or waiver of any right of action or remedy KPLC may have against the Provider or negligence by KPLC in enforcing any such right of action or remedy; .
 - (d) any other bond, security or guarantee held or obtained by KPLC for any of the obligations of the Provider under the Agreement or any release or waiver thereof;
 - (e) any act or omission of KPLC pursuant to any other arrangement with the Bondsman.
4. The liability of the Bondsman under this Bond shall cease on whichever of the following events first occurs:
- (a) payment by the Bondsman of the Bonded Sum in full to KPLC; or
 - (b) *[Insert a date which is 3 months after the expiry of the Term of the Agreement]*
5. All documents arising out of or in connection with this Bond shall be served:
- (a) upon KPLC, at [.....], marked for the attention of [.....]; and
 - (b) upon the Bondsman at [.....], Nairobi, Kenya.
KPLC and the Bondsman may change their respective nominated addresses for service of documents to another address in Nairobi but only by prior written notice to each other. All demands and notices must be in writing
6. This Bond shall be governed by and construed according to the laws for the time being in force in Kenya and the Bondsman agrees to submit to the jurisdiction of the courts in Kenya.

IN WITNESS this Bond was executed as a deed on the date set out above.

SCHEDULE 9
FORM OF ADVANCE PAYMENT BOND

BY THIS BOND dated the day of..... 2015

[.....] whose registered office is at [.....] ("***the Bondsman***") is irrevocably and unconditionally bound to KPLC in the sum of [.....] ("***the Bonded Sum***") for payment of which sum the Bondsman binds itself in accordance with the provisions of this Bond.

BACKGROUND

A By an agreement dated [.....] ("***the Agreement***") made between KPLC and [*Insert name of Provider*] ("***the Provider***"), the Provider has agreed to provide electrical capacity and to provide services ("***the Services***") upon the terms and conditions contained in the Agreement.

B Pursuant to the terms of the Agreement, KPLC has made an advance payment to the Provider of nine (9) equal monthly deductions from payments otherwise due to the Provider under the Agreement, or in one sum on termination in the event that the Agreement is terminated.

C The Provider has agreed to procure the provision to KPLC of a Bond in the terms set out in this Deed to secure repayment of the advance payment.

AGREEMENT

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Agreement.
2. The Bondsman shall upon demand made by KPLC in writing but otherwise without proof or conditions (both as to the default and the amount claimed) pay an amount up to and equal to the Bonded Sum. KPLC may make more than one demand, provided that the aggregate of all demands shall not exceed the Bonded Sum.
3. The liability of the Bondsman under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by the Bondsman and the Bondsman hereby waives notice of:

- (a) any suspension of the Services, variation to or amendment of the Agreement (including without limitation extension of time for performance or adjustment to the amount payable to the Provider under the agreement) or concession or waiver by KPLC in respect of the provider's obligation under Agreement;
- (b) the termination of the Agreement solely as a result of default by the Provider under the Agreement;
- (c) any forbearance or waiver of any right of action or remedy KPLC may have against the Provider or negligence by KPLC in enforcing any such right of action or remedy;
- (d) any other bond, security or guarantee held or obtained by KPLC for any of the obligations of the Provider under the Agreement or any release or waiver thereof;
- (e) any act or omission of KPLC pursuant to any other arrangement with the Bondsman.

4. The liability of the Bondsman under this Bond shall cease on whichever of the following events first occurs:

- (a) payment by the Bondsman of the Bonded Sum in full to KPLC; or
- (b) *[Insert a date, which corresponds, to a month after the expiry of the Term]*

5. All documents arising out of or in connection with this Bond shall be served:

- (a) upon KPLC at [.....], marked for the attention of [.....];
and

- (b) upon the Bondsman at [.....], Nairobi, Kenya.
KPLC and the Bondsman may change their respective nominated addresses for service of documents to another address in Nairobi but only by prior written notice to each other. All demands and notices must be in writing

6. This Bond shall be governed by and construed according to the laws for the time being in force in Kenya and the Bondsman agrees to submit to the jurisdiction of the courts in Kenya.

IN WITNESS this Bond was executed as a deed on the date set out above.

SCHEDULE 10

FUEL SPECIFICATION

KPLC shall provide AGO fuel specified by the provider as attached

<u>EST</u>			<u>LIMITS</u>	<u>TEST METHOD</u>	
				ASTM D	IP
Density at 20°C	Kg/m ³		815-865	4052	365
Flash PMCC	°C	min	66	93	34
Sulphur	%m	max	0.05	4294	336
Cloud point	°C	max	12 (a)	2500	219
CFPP	°C	max	6 (b)		
CCI		min	48	4737	380
Water	°v	max	0.05	95	74
Distillation				86	123
Rec at 365°C	°v	min	90		
FBP	°C	max	400		
Viscosity at 40°C	cS		1.6-5.5	445	71
Colour		max	3.5	1500	
Copper corrosion		max	1	130	154
Sediment	%m	max	0.01	473	53
Ash	%m	max	0.01	482	4
Strong Acid No.	mgKOH/g	max	Nil	974	139
Total Acid No.	mgKOH/g	max	0.5	974	139
RCR on 10% Res	%m	max	0.15	524	14

Cloud point may exceed 12 if CFPP is max 5

I) CFPP may exceed 6 if cloud point is max 9.

II) The sulphur specifications for AGO shall be 500 ppm

SCHEDULE 11
AFFIDAVIT

(Sworn by the Provider as a testimony that he has not been and shall not be involved in corrupt and/or fraudulent activities.)

ANNEX 5: PROPOSED TIME TABLE FOR IMPLEMENTATION

<u>Event</u>	<u>Latest Proposed Date</u>
Tender Deadline	10th March 2016
Evaluation of Bids	8th April 2016
Award of Contract	22nd April 2016
Commercial Operation	6th May 2016