

No. 12762

---

**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT,  
KENYA, SWEDEN, EAST AFRICAN POWER  
AND LIGHTING COMPANY LIMITED  
and TANA RIVER DEVELOPMENT  
COMPANY LIMITED**

**Joint Financing Agreement—*Kamburu Hydroelectric Project* (with schedules). Signed at Washington on 7 June 1971**

*Authentic text: English.*

*Registered by the International Bank for Reconstruction and Development on 19 September 1973.*

---

**BANQUE INTERNATIONALE POUR  
LA RECONSTRUCTION ET LE DÉVELOPPEMENT,  
KENYA, SUÈDE, EAST AFRICAN POWER  
AND LIGHTING COMPANY LIMITED  
et TANA RIVER DEVELOPMENT  
COMPANY LIMITED**

**Contrat de financement conjoint — *Projet hydro-électrique de Kamburu* (avec annexes). Signé à Washington le 7 juin 1971**

*Texte authentique : anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le développement le 19 septembre 1973.*

JOINT FINANCING AGREEMENT<sup>1</sup>

AGREEMENT, dated June 7, 1971, between REPUBLIC OF KENYA (hereinafter called Kenya), the KINGDOM OF SWEDEN (hereinafter called Sweden), INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank), THE EAST AFRICAN POWER AND LIGHTING COMPANY LIMITED (hereinafter called EAP&L), a limited liability company established and operating under the laws of Kenya, and TANA RIVER DEVELOPMENT COMPANY LIMITED (hereinafter called the Borrower), a limited liability company established and operating under the laws of Kenya.

WHEREAS (A) By a development credit agreement with Kenya of even date herewith,<sup>2</sup> Sweden has agreed to make available to Kenya for relending to the Borrower, a credit in an aggregate principal amount of thirty-one million five hundred thousand Swedish Kronor (SKr31,500,000) equivalent at present parity rates as nearly as possible to six million dollars (\$6,000,000) or forty-three million Kenya Shillings (KSh43,000,000) for the purpose of assisting in the financing of the Project described in Schedule 1 to this Agreement;

(B) By an agreement with the Borrower of even date herewith,<sup>3</sup> the Bank has agreed to make to the Borrower a loan guaranteed by Kenya in an aggregate principal amount in various currencies equivalent to twenty-three million dollars (\$23,000,000) for the same purpose;

(C) EAP&L is a bulk purchaser of electrical energy from the Borrower for the purposes of its power distribution business in Kenya and as such purchaser is willing to enter into an agreement with the Borrower with a view to assisting in the financing of the said Project;

(D) EAP&L agrees to undertake the obligations set forth in this Agreement in relation to EAP&L;

(E) Kenya has indicated its intention to consider a possible restructuring of the power industry in Kenya and has agreed to consult closely with Sweden and the Bank on the carrying out of any such restructuring; and

(F) The parties hereto have agreed on the allocation, withdrawal and use of the proceeds of such credit and loan and the execution of the Project to be financed thereby, as well as on other matters, as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

*Article I. DEFINITIONS*

*Section 1.01.* Unless the context otherwise requires, the following terms wherever used in this Agreement shall have the following meanings:

(a) The term "Swedish Credit Agreement" means the agreement between Sweden and Kenya referred to in Recital (A) to this Agreement, as from time to time amended.

<sup>1</sup> Came into force on 23 December 1971, upon notification by the Bank to the Parties concerned.

<sup>2</sup> See p. 153 of this volume.

<sup>3</sup> See foot-note 3, p. 114 of this volume.

(b) The term “Bank Loan Agreement” means the loan agreement between the Bank and the Borrower referred to in Recital (B) to this Agreement, as from time to time amended.

(c) The term “Swedish Credit” means the credit provided for in the Swedish Credit Agreement.

(d) The term “Bank Loan” means the loan provided for in the Bank Loan Agreement.

(e) The terms “Swedish Credit Account” and “Bank Loan Account” mean the respective accounts established under the Swedish Credit Agreement and the Bank Loan Agreement.

(f) The term “Project” means the Project described in Schedule 1 to this Agreement.

(g) The term “subsidiary” means any subsidiary as defined in the Companies Act (Cap. 486) of Kenya.

(h) The term “Relending Agreement” means the agreement of even date herewith between Kenya and the Borrower providing for the relending of the proceeds of the Swedish Credit, as from time to time amended.

(i) The term “KPC” means Kenya Power Company Limited, a limited liability company established and operating under the laws of Kenya.

## *Article II.* ALLOCATION AND WITHDRAWALS OF PROCEEDS OF SWEDISH CREDIT AND BANK LOAN

*Section 2.01.* Subject to the rights of suspension and cancellation set forth in the Swedish Credit Agreement and the Bank Loan Agreement and subject to the provisions of Section 2.02 of the Bank Loan Agreement, the amount of the Swedish Credit and the Bank Loan may be withdrawn from the Swedish Credit Account and the Bank Loan Account, respectively, in accordance with the provisions of this Agreement and with the allocation of the proceeds of the Swedish Credit and Bank Loan set forth in Schedule 2 to this Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement between Sweden, the Bank and the Borrower.

*Section 2.02.* (a) Subject to Section 2.05 (a) (ii) hereof, the Borrower shall be authorized to withdraw on behalf of Kenya from the Swedish Credit Account and entitled to withdraw on its own behalf from the Bank Loan Account such amounts as shall have been paid (or, if the Bank shall so agree, as shall be required to meet payments to be made) for the reasonable cost of goods and services required for the Project.

(b) Subject to paragraph (c) hereof, withdrawals shall be apportioned by the Bank between the Swedish Credit and the Bank Loan, as nearly as practicable in the circumstances and taking into account the limitations provided for in Article 1, Section 2, of the Swedish Credit Agreement, in the ratio of 23:77 or such other ratio as shall be agreed between Sweden and the Bank.

(c) Withdrawals in respect of the amount of the Bank Loan allocated to interest and other charges accrued on or before June 30, 1974 or such other date as shall be agreed as listed in Category V of the table to paragraph 1 of Schedule 2 to this Agreement, shall be made from the Bank Loan Account only.

(d) Except as shall otherwise be agreed between Sweden, the Bank and the Borrower, no withdrawals shall be made on account of expenditures in the currency of Kenya, or for goods produced in, or services supplied from, the territories of Kenya.

*Section 2.03.* (a) The Borrower may withdraw any amount of the Swedish Credit or the Bank Loan by delivering to the Bank a written application in such form and containing such statements and agreements as the Bank shall reasonably request. Applications for withdrawal, with the necessary documentation, as hereinafter provided shall, except as the Bank and the Borrower shall otherwise agree, be made promptly in relation to expenditures for the Project.

(b) The Borrower shall furnish to the Bank such documents and other evidence in support of the application as the Bank shall reasonably request, whether before or after the Bank has approved any withdrawal requested in the application.

(c) Each application and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Bank that the Borrower is entitled to withdraw from the Swedish Credit Account or the Bank Loan Account the amount applied for and that such amount is to be used only for the purposes specified in this Agreement.

*Section 2.04.* Subject to Section 2.02 (c) of this Agreement, every application by the Borrower for withdrawal shall be deemed to be a request to withdraw funds on behalf of Kenya from the Swedish Credit Account and on behalf of the Borrower itself from the Bank Loan Account.

*Section 2.05.* (a) When the Bank has approved an application by the Borrower for withdrawal, the Bank shall:

- (i) pay the amount, if any, which the Borrower is entitled to withdraw from the Bank Loan Account to or on the order of the Borrower in accordance with the provisions of the Bank Loan Agreement;
- (ii) promptly notify the Sveriges Riksbank, acting as agent for Sweden, in the manner and to the extent set forth in this Agreement, that it has received an application for withdrawal from either the Swedish Credit Account and/or the Bank Loan Account in the aggregate amount specified in such notice, that it has approved payment of the portion, if any to be withdrawn from the Bank Loan Account in the amount set forth in such notice, and that the portion, if any, to be withdrawn from the Swedish Credit Account in the amount set forth in such notice is eligible for payment by the Sveriges Riksbank to the payee indicated therein; provided, however, that in respect of reimbursement of expenditures paid by the Borrower, Kenya shall be stated to be the payee.

(b) Upon receipt of such notice of the Bank, the Sveriges Riksbank shall, subject to the rights of suspension and cancellation of the Swedish Credit set forth in the Swedish Credit Agreement, pay the amount so to be withdrawn from the Swedish Credit Account in the currency and to the payee stated in the notice and immediately advise Kenya and the Borrower of each such payment.

*Section 2.06.* If at any time the amount of the Swedish Credit or of the Bank Loan should be fully withdrawn or cancelled, applications by the Borrower for further withdrawals shall be deemed to be requests for withdrawal of the full amount applied for from the Bank Loan Account or the Swedish Credit Account only and the provisions of this Article II shall continue to apply *mutatis mutandis* until the full amount credited or to be credited to such Account shall have been withdrawn or cancelled.

*Section 2.07.* Upon the Borrower's request and upon such terms as shall be agreed between the Bank and the Borrower, the Bank may enter into special commitments to pay amounts to the Borrower or others in respect of the cost of goods or services required for the Project. Any such special commitment by the Bank shall, once it has been notified to Sweden and the Sveriges Riksbank, constitute an obligation on the part of Sweden to pay, notwithstanding any subsequent suspension or cancellation of the Swedish Credit and in conformity with the foregoing Sections 2.05 and 2.06, such portion of the total amount to be disbursed, in fulfillment of such special commitment, as agreed pursuant to Section 2.02 (b) of this Agreement.

*Section 2.08.* If for purposes of this Agreement any proceeds of the Swedish Credit are to be withdrawn in a currency other than Swedish Kronor, the Sveriges Riksbank shall remit the requested foreign currency amount and shall debit the Swedish Credit Account with the Swedish Kronor equivalent of such amount calculated on the basis of the current market selling rate or, if no such rate applies, the par values established by the International Monetary Fund or, if no such values have been established, such rate as shall be reasonably determined by the Sveriges Riskbank in consultation with the Central Bank of Kenya.

### *Article III.* EXECUTION OF THE PROJECT; USE OF PROCEEDS OF SWEDISH CREDIT AND BANK LOAN

*Section 3.01.* The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound public utility, engineering and financial practices.

*Section 3.02.* In order to assist the Borrower in carrying out the Project the Borrower shall continue to employ consultants acceptable to the Bank upon terms and conditions satisfactory to the Bank.

*Section 3.03.* In carrying out the Project, the Borrower shall employ contractors acceptable to the Bank upon terms and conditions satisfactory to the Bank.

*Section 3.04.* (a) The Borrower shall apply the proceeds of the Swedish Credit and the Bank Loan to expenditures on the Project to be financed with the proceeds of the Swedish Credit and the Bank Loan in accordance with the provisions of this Agreement.

(b) Except as Sweden and the Bank shall otherwise agree, the goods and services (other than consultants' services) required for the Project and to be financed out of the proceeds of the Swedish Credit and the Bank Loan shall be procured on the basis of international competition under procedures consistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with, and subject to, the provisions set forth in Schedule 3 to this Agreement.

*Section 3.05.* (a) The Borrower undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Swedish Credit and the Bank Loan against marine, transit and other hazards incident to acquisition, transportation and delivery thereof to the place of use or installation and for such insurance any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such goods.

(b) Except as the Bank shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Swedish Credit and the Bank Loan to be used exclusively for the Project.

*Section 3.06.* (a) The Borrower shall furnish to the Bank, promptly upon their preparation, the plans, specifications and contract documents for the Project and any material modification thereof or additions thereto, in such detail as the Bank shall reasonably request.

(b) The Borrower: (i) shall maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Swedish Credit and the Bank Loan, and to disclose the use thereof in the Project; (ii) shall enable accredited representatives of Sweden and the Bank to inspect the Project, the goods financed out of the proceeds of the Swedish Credit and the Bank Loan and any relevant records and documents; and (iii) shall furnish to Sweden and the Bank all such information as Sweden and the Bank shall reasonably request concerning the Project, the expenditure of the proceeds of the Swedish Credit and the Bank Loan and the goods and services financed out of such proceeds.

#### *Article IV.* MANAGEMENT AND OPERATION OF EAP&L AND THE BORROWER

*Section 4.01.* EAP&L and the Borrower shall respectively at all times: (a) manage their affairs, plan the development of their properties and facilities, and maintain their financial positions, and (b) cause their plant, equipment, properties and facilities to be maintained and all necessary renewals and repairs thereto to be made, all in accordance with sound public utility, engineering, financial and business principles and practices and under the supervision of experienced and competent management.

*Section 4.02.* EAP&L shall notify the Bank about any proposed appointment to the following positions in EAP&L: (a) the General Manager, (b) the Chief Engineer in charge of Generation, (c) the Chief Engineer in charge of Planning, and (d) the Chief Accountant, sufficiently in advance of any such appointment for the Bank to have adequate opportunity to comment on the suitability of the person or persons EAP&L is considering for the respective positions and shall make any such appointments only after consideration of the views expressed by the Bank.

*Section 4.03.* EAP&L and the Borrower shall respectively continue to take out and maintain with responsible insurers or make other provisions satisfactory to the Bank for insurance against such risks and in such amounts as shall be consistent with sound public utility practices.

*Section 4.04.* (a) Except as the Bank shall otherwise agree, the Borrower shall obtain title to all goods financed out of the proceeds of the Swedish Credit and the Bank Loan free and clear of all encumbrances.

(b) Except as the Bank shall otherwise agree, EAP&L and the Borrower shall not sell or otherwise dispose of any of their property or assets which shall be required for the efficient carrying on of their business and undertakings or for the Project.

#### *Article V.* COVENANTS OF KENYA, EAP&L AND THE BORROWER

*Section 5.01.* (a) Kenya undertakes that, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, it will make arrangements satisfactory to the Bank promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

(b) The Borrower undertakes to keep Kenya advised of the progress of the Project and of the estimated expenditures required to carry out the Project.

*Section 5.02.* Except as Kenya, Sweden and the Bank shall otherwise agree, Kenya shall not commit itself to a development program which involves abstraction of water from the Tana River or its tributaries upstream of Seven Forks to an extent which would interfere substantially with the ability of the Borrower to generate power at the Kamburu Power Station as envisaged in the Kamburu Hydroelectric Development Engineering Report dated July 1969, taking into account the increase in rating of the generating units from 25 MW to 30 MW.

*Section 5.03.* (a) Except as Kenya, Sweden and the Bank shall otherwise agree, EAP&L shall take all necessary steps within its power (including but not limited to adjustments to its tariffs for electrical energy) as shall be required to provide EAP&L with net operating income to yield a rate of return on the value of its net fixed assets in operation of not less than 8% per annum, except in respect of the years 1972 through 1974, when the annual rate of return shall not be less than 9.5%.

(b) For the purposes of this Section:

- (i) The annual rate of return shall be calculated by relating the net operating income of EAP&L for the year in question to the average of the value of the net fixed assets of EAP&L in operation at the beginning and at the end of that year.
- (ii) The term “value of the net fixed assets in operation” shall mean the gross book value of fixed assets used for electric utility operations, including any buildings primarily used as offices for electric utility operations and excluding work in progress, less the amount of accumulated depreciation thereon computed under Section 47 (1) (d) (ii) of the Electric Power Act (Cap. 314) of Kenya and any amounts contributed by customers for assets in operation. If the gross book value of fixed assets used for electric utility operations and the amount of accumulated depreciation thereon so computed becomes unrealistic as a result of currency revaluations, changes in prices or similar factors, EAP&L will adjust such values adequately to reflect such changes in accordance with methods satisfactory to the Bank.
- (iii) The term “net operating income” shall mean the difference between:
  - (A) gross revenues from electric utility operations including rents from buildings primarily used as offices for electric utility operations and excluding interest on investments and other income applicable to operations or activities which are not electric utility in character; and
  - (B) the expenses related to electric utility operations including:
    - (1) operation, maintenance, purchased power and administration expenses;
    - (2) the costs of experimental and general research work for the electric utility industry and of preliminary surveys, plans and investigations of utility projects which do not prove to be feasible and are abandoned;
    - (3) taxes, including income taxes related to net operating income; and
    - (4) the allowance for depreciation, prescribed or approved under Section 47 (1) (d) (ii) of the Electric Power Act (Cap. 314) of Kenya, provided that after any adjustment of values pursuant to paragraph (b) (ii) of this Section the allowance for depreciation shall be computed by applying the

rates of depreciation prescribed or approved as aforesaid to the applicable percentage of the adjusted gross value of fixed assets rather than original cost.

- (iv) Interest and other charges on debt are not to be deducted as expenses under paragraph (b) (iii) (B) of this Section but the amount of such charges related to electric utility operations shall be taken into account in calculating the amount of “income taxes related to net operating income” under such paragraph.
- (v) If Kenya makes payment to EAP&L for rural electrification projects, then any such payments to:
  - (A) cover all or part of the capital cost of such projects shall be considered “amounts contributed by customers” under paragraph (b) (ii) of this Section; and
  - (B) indemnify operating losses shall be considered part of “gross revenues” under paragraph (b) (iii) (A) of this Section. For the purposes of this subparagraph the term “operating losses” means amounts by which the expenses of operating such projects, including the allocable costs of generation, transmission and administration as well as direct costs of operation, and excluding depreciation which is not charged on amounts contributed by customers, exceed the revenues collected from customers served by such projects.

*Section 5.04.* Kenya shall take or cause to be taken all actions necessary to permit EAP&L to obtain revenues from the supply of electrical energy sufficient to yield the annual rate of return on EAP&L’s net fixed assets required under Section 5.03 (a) of this Agreement.

*Section 5.05.* (a) Kenya shall during the period of construction of the Project and such other times as it may deem fit take or cause to be taken all governmental action necessary to ensure that EAP&L pays to the Borrower as part of the cost at which EAP&L purchases electrical energy from the Borrower a surcharge in an amount which during the period of construction of the Project is currently estimated to total twenty million Kenya Shillings (KSh20,000,000) and which shall be payable in amounts to be determined each year, which may in the aggregate be more or less than the currently estimated amount, so that the net operating income of the Borrower (taken together with the net operating income of KPC for the purpose of calculating the annual rate of return of the Borrower and KPC under paragraph (b) hereof) shall yield each year an annual rate of return on the net fixed assets in operation of the Borrower and KPC taken together which shall be approximately equal to that earned in such year by EAP&L.

(b) For the purposes of this Section, the annual rate of return of the Borrower and KPC shall be calculated by relating the combined net operating income of the Borrower and KPC for the year in question to the average of the value of the combined net fixed assets of the Borrower and KPC in operation at the beginning and at the end of that year and subparagraphs (ii) (iii), (iv) and (v) of Section 5.03 (b) hereof shall apply.

*Section 5.06.* (a) EAP&L and the Borrower shall continue to maintain records adequate to reflect in accordance with consistently maintained sound accounting practices their respective operations and financial condition.

(b) Without limitation or restriction of their obligations under the foregoing provisions of this Section: (i) EAP&L shall continue to prepare and maintain its accounts on a depreciation accounting basis; and (ii) the Borrower shall, for its fiscal year 1971 and succeeding years, prepare and maintain a set of accounts on a depreciation accounting basis



which shall provide for the allowance for depreciation prescribed or approved under Section 47 (1) (d) (ii) of the Electric Power Act (Cap. 314) of Kenya including retroactively the allowance for depreciation so prescribed or approved in respect of all its fixed assets from the date such assets were introduced into operation to December 31, 1970.

(c) The Borrower shall prepare financial statements (balance sheets, statements of income and expenses, statements of sources and applications of funds and related statements) for each fiscal year on said depreciation accounting basis, and the Borrower shall prepare *pro forma* statements combining financial statements of the Borrower and KPC as so prepared and EAP&L shall prepare *pro forma* statements combining EAP&L's financial statements with those of the Borrower and KPC prepared as aforesaid which *pro forma* statements shall: (i) exclude intercompany payments or items not affecting the consolidated net income or equity capital of EAP&L, the Borrower and KPC; but (ii) identify the portion of said net income and equity capital allocable to EAP&L, the Borrower or KPC.

(d) EAP&L and the Borrower shall: (i) have their individual accounts and their individual and combined financial statements (balance sheets, statements of income and expenses, statements of sources and applications of funds, and related statements) as prepared and maintained under the foregoing provisions of this Section for each fiscal year audited, in accordance with sound auditing principles consistently applied, by independent auditors acceptable to the Bank; and (ii) furnish to Sweden and the Bank as soon as available, but in any case not later than four months after the end of each such year (A) certified copies of their financial statements for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as Sweden or the Bank shall reasonably request; and (iii) furnish to Sweden and the Bank such other information concerning the said accounts and financial statements of EAP&L and the Borrower and the audit thereof as Sweden or the Bank shall from time to time reasonably request.

*Section 5.07.* Except as Kenya, Sweden and the Bank shall otherwise agree, EAP&L and the Borrower and all subsidiaries thereof shall not incur, and Kenya shall ensure that the power companies do not incur, any debt unless the consolidated net revenues of all the power companies for the fiscal year next preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such incurrence, whichever is the greater, shall not be less than 1.5 times the maximum consolidated debt service requirements for any succeeding fiscal year on all the debt of the power companies including the debt to be incurred; provided, however, that if this requirement is not met for a debt proposed to be incurred for a project which has a construction period of four years or longer from the incurrence of the debt to the expected completion date, then the power companies will consult Kenya, Sweden and the Bank before incurring any such debt and if a reasonable forecast of the effects of the Project shows that when the project is completed and in operation the consolidated net revenues of all the power companies would be sufficient to meet this requirement, Kenya, Sweden and the Bank shall agree to the incurrence of such debt. For the purpose of this Section:

(a) The term "debt" means all debt, including debt assumed or guaranteed by the power companies, except intercompany debt and debt incurred in the ordinary course of business and maturing by its terms on demand or less than one year after the incurrence;

(b) The term "incur" with reference to any debt includes any modification of the terms of payment of such debt. Debt shall be deemed to be incurred on the date on which a contract or loan agreement or guarantee agreement is executed;

(c) The term "consolidated net revenue" means the consolidated gross revenue adjusted to take account of tariffs in effect at the time of the incurrence of debt even though

they were not in effect during the entire fiscal year or twelve-month period to which such revenues relate, less consolidated operating, maintenance and administration expenses and taxes, if any, but before provision for depreciation and interest and other charges on debt and excluding for the purposes of this paragraph intercompany revenues and expenses;

(d) The term “debt service requirements” means the aggregate amount of amortization (including sinking fund payments, if any), interest and other charges on debt; and

(e) The term “power companies” means EAP&L, the Borrower, KPC and any other entity (whether incorporated or unincorporated) engaged in the generation, importation, supply, transmission or distribution of electrical energy for sale to the general public in Kenya excluding any such entity whose engagement as aforesaid is only incidental to its principal activities.

*Section 5.08.* After completion of the Project, the Borrower shall cause inspection of the dams, waterways, earthworks and reservoir banks included in the Project to be carried out from time to time in a manner satisfactory to the Bank and the Borrower in order to determine whether there are any deficiencies or potential deficiencies in the condition of such structures and earthworks, or in the quality and adequacy of maintenance or methods of operation of such structures and earthworks which may endanger public safety.

*Section 5.09* To assist in the financing of the Project, EAP&L hereby agrees to make a loan to the Borrower upon terms and conditions satisfactory to Kenya, Sweden and the Bank in an aggregate principal amount of up to eighty-one million three hundred thousand Kenya Shillings (KSh81,300,000) plus capitalized interest during construction of the Project.

*Section 5.10.* Kenya and the Borrower shall not (whether in the course of such a restructuring of the power industry as is referred to in Recital E hereto or otherwise) without the prior approval of Sweden and the Bank take any action which would have the effect of dissolving or disestablishing the Borrower or of merging or consolidating the Borrower with any other entity or entities.

*Section 5.11.* Except as may have been approved by Sweden and the Bank pursuant to Section 5.10 of this Agreement: (a) EAP&L and the Borrower shall not without the prior agreement of the Bank and Sweden amend their Memoranda or Articles of Association in any material respect; and (b) EAP&L and the Borrower shall respectively at all times maintain their corporate existence and rights to conduct their operations and shall take all steps necessary to acquire, maintain and renew all rights, powers, privileges, licences, concessions and franchises which are necessary in the conduct of such operations.

#### *Article VI.* CONSULTATION, INFORMATION AND INSPECTION

*Section 6.01.* Kenya, EAP&L and the Borrower shall cooperate fully with Sweden and the Bank to ensure that the purposes of the Swedish Credit and the Bank Loan will be accomplished. To that end, the parties hereto shall from time to time, at the request of any party, exchange views through their representatives with regard to the performance of their respective obligations under the Relending Agreement, the Bank Loan Agreement and this Agreement as well as the administration, operations and financial condition of EAP&L and the Borrower and other matters relating to the purposes of the Swedish Credit and the Bank Loan.

*Section 6.02.* The parties hereto shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Swedish Credit and the Bank Loan, the maintenance of the service thereof or the

performance by any party of its obligations under the Swedish Credit Agreement, the Bank Loan Agreement, this Agreement and the Relending Agreement.

*Section 6.03.* (a) The Borrower shall enable accredited representatives of Sweden and the Bank to inspect the plants, sites, works, properties and equipment of the Borrower and any relevant records and documents.

(b) EAP&L shall enable accredited representatives of Sweden and the Bank to inspect the plants, sites, works, properties and equipment of EAP&L and any relevant records and documents whenever this should be necessary for the purposes of Section 6.01 hereof.

#### *Article VII.* MISCELLANEOUS

*Section 7.01.* Any notice or request required or permitted to be given or made under this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall have been delivered by hand or by mail, telegram, cable or radiogram to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the party giving such notice or making such request:

For Kenya:

The Treasury  
P.O. Box 30007  
Nairobi, Kenya

Cable address:

Finance  
Nairobi

For Sweden:

(a) insofar as Sveriges Riksbank acts as agent for Sweden pursuant to Article II of this Agreement:

Sveriges Riksbank  
Box 2119  
Stockholm 2, Sweden

Cable address:

Riksbanken  
Stockholm

(b) for all other purposes:

Swedish International Development Authority  
10525 Stockholm 1, Sweden

Cable address:

Sida  
Stockholm

For the Bank:

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Intbafrad  
Washington, D.C.

For EAP&L:

The Secretary  
The East African Power and Lighting Company Limited  
P.O. Box 30099  
Nairobi, Kenya

Cable address:

Electric  
Nairobi

For the Borrower:

The Secretary  
Tana River Development Company Limited  
P.O. Box 7936  
Nairobi, Kenya

Cable address:

Electric  
Nairobi

*Section 7.02.* The Borrower shall furnish to the Bank sufficient evidence of the authority of the person or persons who will sign the applications provided for under Article II of this Agreement or who will, on behalf of the Borrower, take any other action or execute any other documents required or permitted to be taken or executed by the Borrower under this Agreement, and the authenticated specimen signature of each such person.

*Section 7.03.* This Agreement may be executed in several counterparts, each of which shall be an original. All such counterparts shall collectively be but one instrument.

*Section 7.04.* (a) Except as shall be otherwise agreed by the parties hereto, this Agreement shall become effective on the earliest date upon which the Swedish Credit Agreement and the Bank Loan Agreement shall both be in effect.

(b) If the Bank Loan Agreement terminates for failure to become effective in accordance with its terms, this Agreement shall forthwith terminate and the Bank shall promptly notify the other parties of such termination.

*Section 7.05.* This Agreement and all obligations of the parties thereto thereunder shall terminate on the date upon which the Bank Loan Agreement shall have terminated.

*Section 7.06.* Upon termination of the Swedish Credit Agreement or the Bank Loan Agreement only, Sweden or the Bank, as the case may be, shall promptly notify the other parties hereto and, upon such notification, this Agreement shall continue to remain in force and effect only for the purpose of implementation of the Swedish Credit Agreement or the Bank Loan Agreement and of orderly settlement of matters of mutual interest to the parties hereunder, subject to such modifications of this Agreement as shall be agreed among the parties thereto or as shall be reasonably requested by Sweden or the Bank for such purposes.

*Section 7.07.* Unless Sweden otherwise notifies Kenya, the Bank and the Borrower, the Bank shall represent Sweden in all matters relating to the implementation of, including amendments to, this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names, and to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Kenya:

By C. M. MWASHUMBE  
Authorized Representative

Kingdom of Sweden:

By HUBERT DE BESCHE  
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP  
Vice President

The East African Power and Lighting Company Limited:

By C. M. MWASHUMBE  
Authorized Representative

Tana River Development Company Limited:

By C. M. MWASHUMBE  
Authorized Representative

#### SCHEDULE 1

##### DESCRIPTION OF THE PROJECT

The Project consists of:

###### *Part A*

The construction of the first stage of the Kamburu Hydroelectric Power Station on the Tana River with an installed capacity of 60 MW (2 × 30 MW units) together with related step-up station. The principal elements include a rock-fill storage dam and separate three-gate spillway with a reinforced concrete intake and a concrete lined vertical intake shaft turning at its foot into a steel lined tunnel leading to an underground power station designed to house three 30 MW units utilizing 82 meters head and discharging into the River through a tunnel about 3,000 meters long. The two units included in the Project are vertical shaft Francis turbines with main inlet valves and power will be conveyed to the surface switchyard by means of cables.

###### *Part B*

The construction of a 220 kV single circuit transmission line of about 105 km long from Kamburu to the tapping point for the proposed new Nairobi substation and a 132 kV single circuit transmission line of about 1.2 km from this point to the existing Juja substation.

###### *Part C*

The construction of a 132 kV single circuit transmission line of about 14.5 km long from Kamburu to the existing 132 kV step-up substation at the Kindaruma Hydroelectric Power Station.

*Part D*

The construction of necessary extensions to the existing Kindaruma and Juja Road substations.

*Part E*

The services of consultants to carry out engineering design and supervision of construction of the Project.

The Project is expected to be completed by the middle of 1974.

## SCHEDULE 2

ALLOCATION OF PROCEEDS OF SWEDISH CREDIT AND BANK LOAN, EQUIVALENT IN THE AGGREGATE TO US\$29,000,000 ON THE BASIS OF THE PARITY RATE BETWEEN THE SWEDISH KRONOR AND THE US DOLLAR AT THE DATE OF THIS AGREEMENT

1. The table below sets forth the categories of imported goods and services to be financed out of the proceeds of the Swedish Credit and the Bank Loan and the allocation of amounts of the Swedish Credit and the Bank Loan to each category:

<i>Category</i>	<i>Allocation (expressed in US Dollar Equivalent)</i>	
	<i>Bank Loan</i>	<i>Swedish Credit</i>
I. Civil works .....	9,380,000	2,800,000
II. Mechanical and electrical .....	2,975,000	890,000
III. Transmission lines and substations .....	2,050,000	610,000
IV. Engineering, supervision and other consulting services...	1,260,000	380,000
V. Interest and other charges accrued on or before June 30, 1974 .....	2,910,000	—
VI. Unallocated .....	4,425,000	1,320,000
	TOTAL	
	<u>23,000,000</u>	<u>6,000,000</u>

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

- (a) expenditures prior to the date of this Agreement, except that withdrawals may be made from the Swedish Credit and the Bank Loan in respect of Category IV on account of expenditures incurred after January 1, 1970, in an aggregate amount not exceeding the equivalent of six hundred thousand dollars (\$600,000); and
- (b) payments for taxes imposed under the laws of Kenya or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof.

3. Notwithstanding the allocation of an amount of the Swedish Credit or the Bank Loan set forth in the second and third columns of the table in paragraph 1 above:

- (a) If the estimate of the expenditures under any Category shall decrease, the amounts of the Swedish Credit and the Bank Loan then allocated to such Category and no longer required therefor will be reallocated by the Bank by increasing correspondingly the unallocated amounts of the Swedish Credit and the Bank Loan.

(b) If the estimate of the expenditures under any Category shall increase, corresponding amounts will be allocated by Sweden and the Bank, at the request of the Borrower, to such Category from the unallocated amounts of the Swedish Credit and the Bank Loan, subject, however, to the requirements for contingencies, as determined by the Bank, in respect of any other expenditures.

(c) The U.S. dollar equivalent of the Swedish Credit is shown on the basis of the present parity rate between the Swedish Kronor and the U.S. dollar. Should such rate change, any increase of the U.S. dollar equivalent of the Swedish Credit will be reallocated by the Bank to Category VI and any decrease in such equivalent shall, in the first instance, be charged against such Category.

### SCHEDULE 3

#### PROCUREMENT

With respect to contracts for goods and services in Categories I to III of Schedule 2 to this Agreement, the following procedures shall apply:

1. Identical or similar items to be procured will be grouped together wherever practicable for the purposes of bidding and procurement, and such grouping of items shall be subject to the approval of the Bank.

2. With respect to contracts for (i) civil works of \$100,000 equivalent or more, and (ii) contracts for the supply of equipment of \$50,000 equivalent or more:

(a) Before bids are invited, the Borrower shall furnish to the Bank, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedures to be followed for the bidding, and shall make such modifications in the said documents or procedure as the Bank shall reasonably request. Any further modification to the bidding documents shall require the Bank's concurrence before it is issued to the prospective bidders.

(b) After bids have been received and evaluated, the Borrower shall, before a final decision on the award is made, inform the Bank of the name of the bidder to whom it intends to award the contract and shall furnish to the Bank, in sufficient time for its review, a detailed report by the consultants on the evaluation and comparison of the bids received, together with the recommendations for award of the consultants, and the reasons for the intended award. The Bank shall promptly inform the Borrower whether it has any objection to the intended award on the ground that it would be inconsistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits* referred to in Section 3.04 of this Agreement or with the Bank Loan Agreement or the Joint Financing Agreement, and shall state the reasons for any objections it may have.

(c) If the contract shall be awarded over the Bank's reasonable objection, or if its terms and conditions shall, without the Bank's concurrence, materially differ from those on which bids were asked, no expenditure thereunder shall be financed out of the proceeds of the Swedish Credit and the Bank Loan.

(d) Two copies of the contract shall be furnished to the Bank promptly after its execution and prior to the submission to the Bank of the first application for withdrawal of funds from the Swedish Credit Account and the Bank Loan Account in respect of any such contract.

3. With respect to any other contract for goods or services, the Borrower shall furnish to the Bank, promptly after its execution and prior to the submission to the Bank of the first application for withdrawal of funds from the Swedish Credit Account and the Bank Loan Account in respect of any such contract, the analysis of bids and recommendation of award, and two conformed copies of such contract. The Bank shall promptly inform the Borrower if it finds that the award of the contract is not consistent with said *Guidelines for Procurement under World Bank Loans and IDA Credits* referred to in Section 3.04 of this Agreement or with the Bank Loan Agreement or the Joint Financing Agreement and, in such event, no expenditure under such contract shall be financed out of the proceeds of the Swedish Credit and the Bank Loan.