

REPUBLIC OF KENYA
The National Treasury



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Ref: [●][●], 2017

Date: _____ 20__

Amu Power Company Limited

P.O. Box 61872

Nairobi 00200

Kenya

Dear Sirs

**GOVERNMENT OF KENYA LETTER OF SUPPORT FOR 1,050MW LAMU COAL-FIRED
POWER PLANT PROJECT**

1. **Purpose**

1.1 This letter of Support ("**Letter**") is issued by the Government of the Republic of Kenya ("**GOK**") to **Amu Power Company Limited**, a company incorporated under the laws of Kenya, with registered office at 4th Floor, Geminia Insurance Plaza, Kilimanjaro Avenue, Upperhill and of P.O. Box 61872, Nairobi 00200, Kenya (the "**Company**" which expression shall, where the context so requires, include the Company's successors in title and assigns).

1.2 This Letter shall also benefit the banks, financial institutions, credit insurance providers, lenders and any hedging counterparties providing financing, insurance, refinancing or hedging to the Project from time to time (collectively, the "**Financing Parties**"). The Financing Parties shall obtain the benefit of this Letter in accordance with the terms of a deed of adherence ("**Deed of Adherence**"), which shall be executed by the Company, the GOK and the facility agent acting on behalf of the Financing Parties prior to financial close (i.e. the date that the Financing Agreements have been signed and are in full force and effect and funds are committed and available to be drawn thereunder) in accordance with paragraph 20.1 of this Letter or, in the case of any additional Financing Parties, at a later date in accordance with paragraph 20.2 of this Letter.

1.3 It is understood and agreed that this Letter does not constitute a financial sovereign guarantee of the payment obligations of The Kenya Power and Lighting Company Limited ("**KPLC**") to the Company under Section 58 of the Public Finance Management Act Cap 412C, laws of Kenya, as the same may be amended, modified or replaced from time to time. GOK's obligations under this Letter constitute primary obligations of GOK to the Company and the Financing Parties.

2. **Project Agreements:** The Company has entered into a power purchase agreement with KPLC dated _____, 201__ (hereafter referred to as the "**PPA**") for the design, financing, supply, construction, testing, commissioning, operation and maintenance of a 1,050MW (gross) 981.5MW (net) coal-fired power plant to be located in Manda Bay, Lamu County, Kenya.

Save where expressly defined otherwise in this Letter, (i) any capitalized terms used in this Letter without definition shall have the same meaning as ascribed to them in the PPA; and (ii) reference to the PPA shall include the PPA as amended, restated or supplemented from time to time.

3. **Security Interest Granted to the Financing Parties:** The Financing Parties will enter into a Direct Agreement relating to the Project with KPLC and the Company, pursuant to which the Financing Parties will be granted certain cure, step-in and transfer rights relating to the Project, the PPA, the Company and its assets. Separately, the Financing Parties will also take security over the Company (including the shares in the Company) and all of its assets.
4. **Financing:**
 - 4.1 The Company shall submit an audited financial model to KPLC (for and on behalf of GOK) promptly upon the said model having been approved by the Financing Parties (the “**Audited Financial Model**”), describing the cost of financing (including the cost of any credit insurance), designing, procuring, constructing, installing, testing, commissioning, operating and maintaining the Project, which is currently estimated to be US\$ 1,833,000,000 (one billion eight hundred and thirty three million United States Dollars), of which shareholders in the Company (“**Shareholders**”) will provide US\$ 458,000,000 (four hundred and fifty eight million United States Dollars) (the “**Equity Amount**”) with the remaining US\$ 1,375,000,000 (one billion three hundred and seventy five million United States Dollars) (“**Debt Amount**”) to be made available by the Financing Parties subject to and in accordance with the Financing Agreements.
 - 4.2 The parties hereto acknowledge that the Audited Financial Model may be updated by the Company from time to time to reflect changes in the Project, including, without limitation, any potential increase in Equity Amount or (subject to Financing Parties’ consent) Debt Amount arising from either cost overrun of the Project or otherwise, except where, in the case of an increase of the Debt Amount, such increase is caused by, or relates to, any step or action taken or to be taken to remedy any breach or default by the Company under the Financing Agreements, or by KPLC under the PPA.
5. **GOK Acknowledgement:** GOK acknowledges and welcomes the investment and Debt Amount (including any increase in the Debt Amount as described in paragraph 4.2) which will be made by each of the Shareholders and by the Financing Parties subject to and in accordance with the Financing Agreements.
6. **GOK Confirmation:** GOK confirms that the investment and the Debt Amount referred to in paragraph 4 of this Letter are in accordance with GOK’s national policy on energy and private sector participation in the electricity supply sector of Kenya. Furthermore, GOK confirms that in exercising its powers, it and the Governmental Authorities will act in a fair, impartial and non-discriminatory manner and in good faith. GOK further commits to ensure that KPLC is managed sustainably during the life of the Project and, subject to the provisions of clause 12 of this Letter of Support, undertakes to uphold its commitments to the Project in a manner consistent with GOK’s policies in promoting private sector participation in the electricity sector in Kenya.
7. **Political Event**
 - 7.1 Political Event defined
 - 7.1.1 For the purposes of this Letter “**Political Event**” means any event or circumstance whether arising from an action or inaction of GOK or any Governmental Authority or otherwise relating to the foregoing which impairs the implementation or continuation of the Project

and/or which adversely and materially affects the Company, any party under a Project Agreement, any contractor, sub-contractor or supplier to the Company, any Financing Party, KPLC or the Shareholders in the Company (each a "**Project Party**"), including without limitation the following events and circumstances where such events have occurred in or are affecting the Republic of Kenya:

- (i) any blockade, embargo, insurrection, civil commotion or any act of sabotage;
- (ii) any riot, or public unrest or disorder, excluding those (A) that arise solely as a result of labour disputes attributable to the action or inaction of the Company; or (B) are excluded pursuant to paragraph 7.2;
- (iii) any Change in Law which has not been addressed and resolved within the provisions of the PPA;
- (iv) any expropriation, confiscation, cancellation, or compulsory acquisition of, or limitation to, any rights, or all or a portion of any property or assets of, or shares in (or rights pertaining to the shares in or properties or assets of), the Company or any other Project Party or any restriction or limitation on the Company's ability to conduct its business;
- (v) any termination, cancellation or repudiation of the Lease other than for breach by the lessee;
- (vi) war, act of foreign enemy, invasion, armed conflict or military action;
- (vii) any failure or refusal by a Governmental Authority to issue or renew Authorisations or the revocation, termination or suspension of existing Authorisations despite the Company's compliance with requirements;
- (viii) a Change in Tax which has not been addressed and resolved within the provisions of the PPA;
- (ix) an event of Force Majeure affecting KPLC which has not been resolved under the PPA;
- (x) a KPLC Funding FM Event;
- (xi) a failure by GOK to make any payment or perform any other obligation under this Letter; or
- (xii) any reduction to or restructuring of the Company's tariff and/or any reduction to any other amounts payable under the PPA, unless such reduction or restructuring has been agreed in advance in writing by both the Company and the Financing Parties.

7.1.2 Terrorism

- (a) Subject to paragraph 7.1.2(b), the Company shall take out and maintain terrorism insurance with respect to physical loss of, or damage to, or interruption in the operation of, the Plant caused by terrorism ("**Terrorism Insurance**") provided that if the Terrorism Insurance does not cover the loss of business from the interruption of operations of the Plant due to an occurrence of terrorism, the Company shall notify GOK of the unavailability of such cover.
- (b) If the Company notifies the GOK that, in the reasonable opinion of the Company: (i)

Terrorism Insurance is not available to the Company on reasonable commercial terms owing to a lack or absence of capacity in the international insurance or reinsurance market; or (ii) the premiums in respect of Terrorism Insurance are unreasonable having regard to the risks being covered, then with effect from the date of such notice until such time as the Company determines, acting reasonably, that the circumstances described in sub-paragraphs (i) and/or (ii) are no longer continuing and gives notice to the GOK to that effect, the Company shall have no further obligation to take out and maintain Terrorism Insurance. In the event that GoK does not agree with the Company on what are reasonable commercial terms or premiums in respect to Terrorism Insurance are reasonable, the matter will be determined by the Expert.

- (c) If there is an event of terrorism that causes partial loss of, or damage to, or interruption in the operation of, the Plant, such that Clause 14.6 (d) of the PPA would be applicable, (“**Partial Loss**”) the Company shall not make any additional claim for compensation during the period it receives payments in accordance with Clause 14.6 (d) of the PPA.
- (d) If there is an event of terrorism that causes,
 - (i) physical loss of, or damage to, or interruption in the operation of, the Plant, other than Partial Loss, or
 - (ii) Partial Loss and the PPA is terminated in accordance with Clause 14.5 of the PPA,

the Company shall diligently pursue any claim that it may have with respect to such event under the Terrorism Insurance. If the Company has provided notice to GOK under Clause 7.1.2 (a) or (b), the provisions in paragraph (e) below shall apply.

- (e) Without prejudice to sub-paragraphs (a) and (b) of this paragraph, where an act of terrorism affecting the Project Company, the Plant or Project Activities has occurred, the Company shall be entitled, by notice in writing to GOK (a “**Notice of Occurrence of Terrorist Activity**”), to require GOK to purchase the Plant from the Company for a lump sum amount (the “**Terrorism Transfer Amount**”) determined as follows:
 - (i) 100% of the total amount then outstanding and unpaid to each Financing Party under each Financing Agreement, including (without limitation) the principal amount of the Debt Amount, all accrued interest, break costs, hedging payments (including hedging termination amounts) and financing fees and charges payable to the Financing Parties;
 - (ii) 75% of all amounts then outstanding and payable to the Shareholders under the terms of any shareholder loan(s), including (without limitation) the principal amount of such loans and all accrued interest; and
 - (iii) 50% of all amounts paid to the Company by way of subscription of shares in the capital of the Company.

7.1.3 Act of Piracy

- (a) The Company shall take out and maintain insurance with respect to loss of any shipment of Fuel due to acts of piracy.
- (b) If there is an act of piracy within Kenyan Waters that affects the shipment of Fuel to

the Plant, and as result the Company is not able to meet its obligations to KPLC under the PPA in relation to availability and/or generation, the Company shall notify GOK of such event. GOK shall promptly use reasonable endeavours to eliminate the act of piracy within Kenyan waters and if such impact cannot be eliminated, shall meet with the Company, the Financing Parties and KPLC to agree a level and a mechanism for payment by GOK to the Company and/or directly to the Financing Parties (if the Financing Parties so require) of compensation supplemental to payments under the PPA (to the extent there are any) so as to hold the Company and the Financing Parties harmless from the adverse financial impact on the Company and the Financing Parties of such act of piracy, including by compensating the Company for any Capacity Payments that are reduced as a consequence of such act of piracy. If GOK and the Company fail to agree on the level of compensation, the matter shall be referred to the Expert for determination.

7.2 Liability Exclusions

It is hereby agreed and acknowledged that if the Company fails to abide or comply with the terms of any material Authorisations in any material respect (applied in a non-discriminatory manner), where such failure is the sole direct cause of a Political Event, unless such failure to comply has been caused by a Change in Law or the action or inaction of GOK, then such event or circumstance shall not constitute a Political Event.

7.3 Effects of a Political Event

7.3.1 The Company shall promptly notify GOK, KPLC and the Financing Parties of the occurrence of a Political Event through the issuance of a written notice (the “**Political Event Notice**”). Any dispute as to whether or not a Political Event has occurred shall be resolved in accordance with the provisions of paragraph 17(c) of this Letter.

7.3.2 Except in the event of a KPLC Funding FM Event (in which case paragraph 7.3.3 shall apply), on receipt of a Political Event Notice, GOK shall promptly use reasonable endeavours to eliminate the Political Event and if such impact cannot be eliminated, shall meet with the Company, the Financing Parties and KPLC to agree a level and a mechanism for ensuring the payment by GOK to the Company and/or directly to the Financing Parties (if the Financing Parties so require) of compensation supplemental to payments under the PPA (to the extent there are any) so as to hold the Company and the Financing Parties harmless from the adverse financial impact on the Company and the Financing Parties of such Political Event(s), including by compensating the Company for any Capacity Payments that are reduced as a consequence of such Political Event(s).

7.3.3 In the event of a KPLC Funding FM Event, GOK shall pay to the Company, or at the direction of the Financing Parties, to the Financing Parties, any and all amounts that would have been payable under the PPA (including, without limitation, Capacity Payments, Energy Charges, Fuel Charges and any other payments) had such KPLC Funding FM Event not occurred.

7.3.4 Without prejudice to any other rights and remedies of the Company under this Letter or otherwise, in the event of KPLC Funding FM Event, if GOK fails to pay to the Company or at the direction of the Financing Parties, directly to the Financing Parties, any and all amounts that would have been payable under the PPA but for the KPLC Funding FM Event, within thirty (30) days of delivery of the relevant Political Event Notice the Company or the Financing Parties may, subject to the terms of the PRG Project Agreement, draw on the PRG Guaranteed LC for such unpaid amount.

7.3.5 If:

- (i) the effects of any Political Event(s) (other than a KPLC Funding FM Event) have not been eliminated within a period of one hundred and eighty (180) days from the date of the Company's delivery of a Political Event Notice; or
- (ii) a KPLC Funding FM Event has occurred and GOK fails to pay to the Company or at the direction of the Financing Parties, to the Financing Parties, any and all amounts that would have been payable under the PPA but for the KPLC Funding FM Event, within thirty (30) days of delivery of the relevant Political Event Notice, provided, in the case of this sub-paragraph (ii), that if the relevant event or circumstance is a KPLC Funding FM Event, the Company has not received full payment for such amount under the PRG Guaranteed LC,

then, in each case, the Company shall be entitled by notice in writing to GOK to confirm (or, if the Company fails to do so following a request by the Financing Parties, the Financing Parties shall be entitled to confirm) that the PPA will, (subject to the provisions of this Letter), be terminated by the Company prior to expiry of the full Term as a result of the occurrence of a Political Event (a "**Transfer Notice**").

7.3.6 Upon service of the Transfer Notice, GOK shall in accordance with paragraph 7.4 acquire the Plant from the Company. In consideration thereof, GOK shall pay to the Company, or at the direction of the Financing Parties, to the Financing Parties or such other person as the Financing Parties may direct, in lump sum, a net amount, in US Dollars, equal to the sum of the amounts set out in sub-paragraphs 7.3.6(i) through 7.3.6 (vii) below, less any proceeds of insurance held in the Company's restoration account (hereafter referred to as the "**GOK Transfer Amount**"):

- (i) the total amount then outstanding and unpaid to each Financing Party under each Financing Agreement, including (without limitation) the principal amount of the Debt Amount, all accrued interest, break costs, hedging payments (including hedging termination amounts) and financing fees and charges payable to the Financing Parties;
- (ii) all amounts then outstanding and payable to the Shareholders, including under the terms of any shareholder loan(s), including (without limitation) the principal amount of such loans and all accrued interest;
- (iii) all amounts paid to the Company by way of subscription of shares in the capital of the Company together with a return on equity component as set out in the Audited Financial Model which shall be calculated on the assumption that distributions to Shareholders shall be limited in aggregate to an amount equal to the net present value calculated at ten per cent (10%) discount rate of the audited Profits of the Company for the last complete five (5) year period prior to the date of the Transfer Notice; provided that if the Plant has not been in operation for at least five (5) years from the Full Commercial Operation Date on the date of the Transfer Notice, then such sum shall be limited to an amount not exceeding the audited Profits of the Company for the third (3rd), fourth (4th), fifth (5th), sixth (6th) and seventh (7th) years following the scheduled Full Commercial Operation Date of the Plant as reflected in the Audited Financial Model;

where, for purposes of this clause:

'Profit' shall mean the total of income less expenses, excluding the components of other comprehensive income in accordance with IAS1; and

"Comprehensive income" shall mean items of income and expense (including

reclassification adjustments) that are not recognised in profit or loss as required or permitted by other IFRSs.

- (iv) redundancy payments for employees of the Company that have been or will be reasonably incurred by the Company as a direct result of termination of the PPA and any other subcontractor breakage costs;
- (v) value of construction works done up to such termination which have not been paid for but as certified by the Independent Engineer, together with any EPC breakage costs;
- (vi) termination and/or breakage costs payable under, the Operating and Maintenance Agreement, the Turnkey Construction Agreement, the Fuel Supply Agreement and the Lease in connection with the early termination of the PPA as referred to in paragraph 7.3.5.; and
- (vii) any statutory liabilities which rank ahead of senior debt, to the extent such liabilities are not already covered by sub-paragraphs (i) to (vi) above.

7.3.7 The GOK Transfer Amount shall be agreed by the GOK, the Company and the Financing Parties within sixty (60) days of service of the Transfer Notice by the Company, or the Financing Parties, as applicable. Where the GOK Transfer Amount is not agreed as aforesaid, it shall be determined by an Independent Expert appointed in accordance with paragraph 16(c) below on the basis of, without limitation, the then current Audited Financial Model, the relevant corporate documents and shareholder loan agreements, Financing Agreements, employment contracts, the Turnkey Construction Agreement, Operating and Maintenance Agreement and contractor invoices. Any amount agreed or determined pursuant to this sub-paragraph shall be paid by GOK to the Company within one hundred and twenty (120) days of determination or agreement of each such amount.

7.3.8 All payments made by GOK under this Letter (including pursuant to this paragraph 7.3) will be made free of any restriction or condition and without any deduction or withholding (except to the extent required by law) whether by way of set-off or otherwise. If any set off, deduction, or withholding is required by law to be made or levied upon (as the case may be) any payment by GOK under this Letter, the amount of that payment will be increased so that following such set off, deduction or withholding, the payee will receive the amount that would have been received as if such set off, deduction or withholding had not been applicable.

7.4 Transfer of Project Assets

7.4.1 Upon payment of the GOK Transfer Amount in full and in accordance with the agreed payment terms, if the PPA has not already been terminated in accordance with its terms, the PPA will terminate and the Company shall promptly provide GOK or any other transferee, with all necessary documents (excluding the Financing Agreements) to effect the transfer of legal title to the property and assets of the Project.

7.4.2 At the request of GOK or any other transferee, the Company will additionally give GOK or such transferee reasonable assistance in ensuring the transfer or re-execution on substantially similar terms, of any material contract relating to the Project (excluding the Financing Agreements) to which it is party.

8. Prolonged Force Majeure

8.1 In the event that the PPA is terminated in accordance with Clause 14.5(a) of the PPA for Force Majeure affecting the Company, the GOK shall have the right, but not the obligation, to

give notice in writing to the Company (a “**Prolonged FM Notice**”) to purchase the Project from the Company for an amount equal to the total amount then outstanding and unpaid to each Financing Party under each Financing Agreement, including (without limitation) the principal amount of the Debt Amount, all accrued interest, break costs, hedging payments (including hedging termination amounts) and financing fees and charges payable to the Financing Parties, less any proceeds of insurance held in the Company’s restoration account (hereafter referred to as the “**Prolonged FM Transfer Amount**”). The GOK’s right to give a Prolonged FM Notice shall expire thirty (30) days after the termination of the PPA for Force Majeure affecting the Company. It is hereby agreed that GOK’s right under this Clause will be exercised at GOK’s sole discretion and, no Party shall take action, whether by proceedings or otherwise, to compel GOK to act.

8.2 Subject to paragraph 8.1, the provisions of paragraphs 7.3.7 and 7.4 of this Letter shall apply *mutatis mutandis* to the determination and payment of the Prolonged FM Termination Amount, save that for such purposes:

(a) all references to “Transfer Notice” shall be read as being references to the “Prolonged FM Notice”; and

(b) all references to the “GOK Transfer Amount” shall be read as being references to the “Prolonged FM Transfer Amount”.

8.3 For the avoidance of doubt, this paragraph 8 does not apply with respect to Force Majeure affecting KPLC. If there is Force Majeure affecting KPLC, KPLC shall not have the right to terminate the PPA and the Company shall be entitled to exercise its rights as set out in paragraph 7.

9. **Failure of KPLC to Pay the Plant Transfer Amount under the PPA**

9.1 In the event that a Plant Transfer Amount is payable by KPLC to the Company in accordance with Clause 15.5 of the PPA (as applicable), GOK shall, jointly with KPLC, within seven (7) days of determination of the Plant Transfer Amount under the PPA, provide written confirmation to the Company of the Plant Transfer Amount, and the portion that each of GOK and KPLC (without prejudicing KPLC’s operation as a viable commercial enterprise) will pay to the Company.

9.2 Upon receipt of such confirmation in accordance with Clause 9.1, the Company shall invoice GOK in respect of its proportion of the Plant Transfer Amount. GOK shall pay the Company in respect of such amounts on or before the due date for payment as determined under Clause 15.5(d) of the PPA to such account as the Company may notify GOK. If GOK and KPLC fail to provide to the Company the confirmation referred to in paragraph 9.1 within thirty (30) days of determination of the Plant Transfer Amount under the PPA, then GOK and KPLC shall be deemed to have notified the Company that the GOK will pay the entire Plant Transfer Amount to the Company.

9.3 For the avoidance of doubt, interest on the unpaid balance of the Plant Transfer Amount shall continue to accrue at the Default Rate until such time that it is fully paid and shall be borne by KPLC and GOK *pro rata* to the proportion of the Plant Transfer Amount that each has confirmed, or has been deemed to have confirmed, to pay.

9.4 If KPLC does not pay any or all of its portion of the Plant Transfer Amount by the due date described in paragraph 9.2 above, GOK undertakes to pay such unpaid amount together with the interest at the Default Rate no later than sixty (60) days after such due date.

10. **Failure to Take Electricity from the First Commissioning Date**

10.1 In the event that:

- (a) a failure by KPLC to take delivery of electricity generated by the Plant at any time on or after the First Commissioning Date which is caused by the failure of the KETRACO Transmission Interconnector (for any reason including delay of the construction and/or failure in the subsequent operation of the KETRACO Transmission Interconnector) to take delivery of electricity generated by the Plant to KPLC; or
- (b) a delay in the construction and/or failure in the subsequent operation of the KETRACO Transmission Interconnector which results in the Company being unable to test and commission the Plant on or before the First Commissioning Date; or
- (c) a delay in the construction and/or failure in the subsequent operation of the Coal Delivery Infrastructure which results in the Company being unable to test and commission the Plant on or before the First Commissioning Date and/or a failure in the subsequent operation of the Coal Delivery Infrastructure on or after the First Commissioning Date,

in each case, delays the Company in achieving the Full Commercial Operation Date by the Required Full Commercial Operation Date, GOK agrees and acknowledges that it shall pay from the First Commissioning Date and until such time as the relevant circumstance referred to in (a), (b) or (c) is removed (the "**Relevant Period**"), monthly (and pro-rated for any proportion of the month), in arrears, an amount equal to the escalable and non-escalable component of the Capacity Payment based on the Contracted Capacity at the Signature Date which would have been payable by KPLC under the PPA had the Full Commercial Operation Date been achieved as scheduled.

10.2 If the Capacity determined at the end of the month during which the Plant Commercial Operation Tests take place is demonstrated to be different from the Contracted Capacity required under the PPA on the Signature Date, then the Company shall, using the Capacity determined at the end of the month during which the Plant Commercial Operation Tests took place, calculate the non-escalable and the escalable component of the Capacity Payment for the Relevant Period and appropriate adjustments shall be made so as to recover from GOK or pay to GOK (as the case may be) the difference, including interest at the Default Rate. Any amounts payable by GOK or the Company (as the case may be) under this paragraph 10.2 shall be due and payable on the thirtieth (30th) day after the date of delivery of the invoice relating to such payments, except where such thirtieth (30th) day is not a business day in which case the due date shall be the next following business day.

11. **Coal Delivery Infrastructure Failure**

In the event of a Coal Delivery Infrastructure Failure KPLC shall pay to the Company the Capacity Payments which the Company would have received had the Coal Delivery Infrastructure Failure not occurred; PROVIDED THAT if the Coal Delivery Infrastructure Failure exceeds thirty (30) days in an Operating Year, then GOK shall be primarily liable to pay to the Company directly any amounts that would have otherwise been received by the Company under the PPA but for the Coal Delivery Infrastructure Failure (including any Capacity Payments).

12. **KPLC Successor**

12.1 GOK confirms that it will use all such powers as it may have under all applicable laws such

that if KPLC's licence to distribute or purchase electrical power is revoked, not renewed, or is suspended or amended, and this leads to, or results in, any sale or transfer or vesting of the rights and undertaking of KPLC or any part thereof in any successor or transferee, with or without statutory or organisational modification of KPLC, it will ensure, that such successor or transferee is able and capable to assume the rights and obligations of KPLC under the PPA, and any other Project contractual arrangements of KPLC with the Company and/or the Financing Parties (the "**KPLC Project Contracts**"). Where rights are transferred, vested or created in more than one successor, each such successor shall be jointly and severally liable for the obligations of KPLC under the PPA and any other KPLC Project Contract, and the obligations of GOK under this Letter with respect to KPLC shall apply to each such successor, transferee or assignee.

12.2 In the event that KPLC is no longer controlled by GOK (as required under the PRG Project Agreement and the Reimbursement and Credit Agreement), GOK undertakes (A) to take such actions as necessary to assume any rights and obligations of KPLC under the PRG Project Agreement and the Reimbursement and Credit Agreement so as to ensure that the PRG Guaranteed LC may remain in force and effect, or (B) if the PRG Guaranteed LC is terminated due to such cessation of control, either to make available for the benefit of the Company, a replacement letter of credit with the same available amount and drawing conditions as the PRG Guaranteed LC or to provide other equivalent credit support which is reasonably acceptable to the Company and the Financing Parties.

12.3 GOK acknowledges and agrees that any revocation, suspension, amendment, transfer or vesting of the rights and undertakings of KPLC or any part thereof to any transferee or successor, or of the PPA, or of any KPLC Project Contract (as referred to in paragraph 12.1), or any change in control of KPLC (as referred to in paragraph 12.2) will not in any way limit, diminish or otherwise affect the obligations of GOK under this Letter.

13. **PRG Guaranteed LC**

13.1 GOK confirms that it will, prior to the First Commissioning Date, procure that the Indemnity Agreement is entered into and thereafter remains in full force and effect for the Term. GOK also undertakes to procure that the PRG Provider and KPLC meet their obligations to facilitate the issuance of the PRG Guaranteed LC on or before the First Commissioning Date.

13.2 In the event that:

- (i) the PRG Guaranteed LC is not issued or made effective in favour of the Company by the First Commissioning Date; or
- (ii) the Indemnity Agreement is terminated and/or the PRG Guaranteed LC is unavailable for drawing by the Company for any reason other than default on the part of the Company;

the Company shall be entitled by written notice to GOK, to require GOK to procure for the benefit of the Company, a partial risk guarantee in support of a replacement letter of credit with the same available amount and drawing conditions as the PRG Guaranteed LC or to provide other equivalent credit support which is reasonably acceptable to the Company and the Financing Parties (a "**PRG Replacement Notice**").

13.3 If GOK fails to procure a partial risk guarantee in support of a replacement letter of credit or equivalent support which is acceptable to the Company and the Financing Parties within thirty (30) days of service of the PRG Replacement Notice, the Company shall be entitled to issue a Transfer Notice whereupon the provisions of paragraphs 7.3.6, 7.3.7 and 7.4 of this Letter shall apply.

- 13.4 If at any time from the date of the PRG Replacement Notice the Company becomes entitled under the PPA, to call on the PRG Guaranteed LC, and the Company has not exercised its right under paragraph 13.3 above, GOK shall pay to the Company, or at the direction of the Financing Parties, to the Financing Parties, any and all amounts that would have been payable under the PPA (including, without limitation, Capacity Payments, Energy Charges, Fuel Charges and any other payments) had such events in paragraph 13.2 above not occurred.
14. **Binding Undertaking:** This Letter is intended to create legally binding obligations on GOK, for the benefit of the Company and the Financing Parties (upon the Financing Parties executing a Deed of Adherence to this Letter as provided under paragraphs 1.2 and 20.2) and be enforceable against GOK and its successors, assigns and transferees.
15. **Waivers of sovereign immunity:** Pursuant to the provisions of the Government Proceedings Act, Chapter 40 of the Laws of Kenya (the "**Government Proceedings Act**") the commitment of GOK expressed under this Letter constitutes commercial activities (rather than governmental or public activities) of GOK and GOK is subject to private commercial law with respect thereto. Furthermore, to the extent that GOK may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets or revenues such immunity (whether or not claimed) GOK agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.
16. **Notice to Financing Parties and transfer to substitute party:** Subject to the terms of this Letter, any notice given to the Company or a Financing Party by GOK (or any Governmental Authority acting on its behalf), or by the Company under this Letter shall be given contemporaneously to all the Financing Parties. To the extent that, in accordance with the Direct Agreement to be agreed between the Company, the Financing Parties and KPLC, the PPA is to be transferred to a third party (subject to satisfaction of all Legal Requirements), GOK agrees that the Financing Parties may assign or transfer all or any part of their rights under this Letter to such third party and that, it shall within 60 days following receipt by GOK from the Financing Parties of a transfer notice enter into a replacement letter on terms substantially similar to the terms of this Letter with the transferee and its financing parties and shareholders.
17. **Governing Law and Dispute Resolution**
- (a) This Letter is governed by and construed in accordance with the laws of the Republic of Kenya.
- (b) Subject to paragraph 17(c) below, any dispute or difference of any kind between the parties to this Letter in connection with or arising out of this Letter including the interpretation of this Letter, its validity and any purported breach or termination (a "**Dispute**") shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("**Rules**") in accordance with the said Rules which Rules are deemed to be incorporated by reference into this paragraph 16. It is hereby agreed that:
- (i) the seat and location of the arbitration shall be London, England;
- (ii) there shall be three (3) arbitrators;
- (iii) the language of the arbitration shall be English;
- (iv) the award rendered shall apportion the costs of the arbitration;

- (v) the award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision;
- (vi) the award shall bear interest at a rate to be determined by the arbitral tribunal from the date of the award until the date of the payment;
- (vii) the arbitral tribunal is not authorized to award punitive, double, treble, multiple or consequential damages;
- (viii) the arbitral tribunal shall not be empowered to decide any dispute *ex aequo et bono* or *amiable compositeur*;
- (ix) the award in such arbitration shall be final and binding upon the parties to this Letter and judgment thereon may be entered in any Court having jurisdiction for its enforcement; and the parties to this Letter renounce any right of appeal from the decision of the arbitral tribunal insofar as such renunciation can validly be made; and
- (x) if any Dispute arising out of or in connection with this Letter raises issues which are substantially the same as issues arising out of or in connection with any dispute in connection with any of the Project Agreements (a "**Related Project Agreement**") then notwithstanding that arbitrators may have been agreed to be appointed under any Related Project Agreements, the Company may, by written notice to GOK and the arbitrators who have already been agreed or appointed pursuant to the Related Project Agreement, require the dispute in connection with the Related Project Agreement to be referred to and finally settled by the arbitral tribunal appointed under this Letter.

Each Party, being for these purposes:

- (i) GOK, or GOK and KPLC on the one hand and,
- (ii) acting together, the Financing Parties (provided that the Financing Parties have entered into a Deed of Adherence pursuant to the provisions of paragraph 1.2 or 20.2 of this Letter) and/or the Company, on the other hand:

will appoint an arbitrator within thirty (30) days of the date of the request to initiate arbitration. The two arbitrators appointed herein will then jointly appoint a third arbitrator within thirty (30) Days of the date of the appointment of the second arbitrator, which third arbitrator, unless otherwise agreed by the foregoing parties, shall not be a citizen of the Republic of Kenya or of any country in which any one of the Principal Shareholders (as hereafter defined) is registered and no arbitrator shall have any existing or prior relationship with either Party, to act as Chairman of the arbitral tribunal. Arbitrators not appointed within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of Arbitration (as defined in the Rules). If there is a conflict between this Letter and the said Rules, this Letter shall prevail.

For the provisions of this Letter the term "**Principal Shareholder**" shall mean any Shareholder who is the legal owner of more than ten per cent (10%) of the issued share capital of the Company.

- (c) Where paragraph 7 of this Letter provides that any matter shall be referred to an

Independent Expert or the parties to this Letter otherwise so agree the following provisions shall apply:

- (i) the Independent Expert shall be an independent person with relevant experience and willing to act, agreed between the Parties to this Letter, or if not agreed within fourteen (14) days of a request in writing by either Party, appointed by the Chairman of the International Chamber of Commerce;
- (ii) for a period of forty-two (42) days after the appointment of the Independent Expert or, such other period as the Parties to this Letter may agree, each Party may make such written submissions as it wishes to the Independent Expert and shall simultaneously provide a copy to the other Party, and at the end of such forty-two (42) day period each Party shall have a period of twenty-one (21) days to make counter-submissions to the Independent Expert (with a copy to the other Party) in reply to the other Party's written submissions made during the aforementioned forty-two (42) day period provided that neither Party shall during such twenty-one (21) day period make any written counter-submission which purports to reply to, raise or refer to, any new matters not raised or referred to in any submission made during the aforementioned forty-two (42) day period;
- (iii) at the end of the twenty-one (21) day period referred to in sub-paragraph (b) above, and no later than a further twenty-one (21) days thereafter, either Party may, with the consent of the Independent Expert and at a time and place decided by the Independent Expert, make an oral presentation to the Independent Expert in the presence of the other Party commenting on or explaining matters previously submitted to the Independent Expert in writing;
- (iv) the Independent Expert shall render his determination in writing within fourteen (14) days of the completion of the oral presentation given in accordance with sub-paragraph (c) above or at the end of the twenty-one (21) day period referred to in sub-paragraph (b) above where no oral presentations are made and give reasonable details of the reasons for his determination;
- (v) the decision of the Independent Expert shall have retrospective effect from the date any matter was referred to the Independent Expert and shall be final and binding on the Parties to this Letter save in the event of fraud or manifest error or mistake;
- (vi) the Independent Expert shall act as an expert and not as an arbitrator; and
- (vii) the costs of the Independent Expert shall be borne as determined by the Independent Expert or, in default of such determination, equally by the Parties to this Letter.

18. **Counterparts:** This Letter may be executed and acknowledged in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

19. **Term**

19.1 The obligations of GOK under this Letter shall come into effect from the date of this Letter and shall remain in force until the twenty-fifth (25th) anniversary of the Full Commercial Date unless the PPA is terminated earlier by the parties thereto; Provided that GOK acknowledges and agrees that termination of the PPA (for whatever reason) shall be without prejudice to (i)

the Company's and Financing Parties' rights and GOK's obligations under this Letter; and (ii) any accrued rights prior to such termination.

19.2 In the event that the term of the PPA is extended in accordance with Clause 9.11 or Clause 14.4(b) of the PPA, the obligations of GOK under this Letter shall be automatically extended for the same period as the PPA.

19.3 If the PPA terminates before the expiry of its full term for any other reason other than a Political Event, then this Letter shall terminate on the later of:

(i) sixty days after the PPA has terminated, if neither the Company nor the Financing Parties has notified GOK of a claim under this Letter by such date; or

(ii) the date on which such claim(s) is finally resolved and/or settled and any amount payable under or in connection with such claim(s) is unconditionally and irrevocably paid in full in accordance with the terms of this Letter.

20. **Assignment and Deed of Adherence:**

20.1 The Company may with notice to GOK and for so long as the Debt Amount remains outstanding:

(a) assign any of its rights under this Letter to the Financing Parties for purposes of providing security under the Financing Agreements; and/or

(b) appoint any of the Financing Parties (or the Financing Parties' duly appointed security agent) as the Company's agent (whether by way of a power of attorney or other legal instrument) to implement its rights under this Letter.

20.2 The Company shall notify GOK of the identities of additional Financing Parties as soon as this is known to the Company. Immediately thereafter, GOK, the Company and the Financing Parties shall execute a Deed of Adherence, to make the Financing Parties a party to this Letter.

21. **Risk Management Committee:**

For better management of risks covered under this Letter, GOK will establish a Risk Management Committee comprising of the Company, National Treasury, the Ministry of Energy and Petroleum, the Office of the Attorney General, KPLC and any other relevant Governmental Authority. The mandate of the Risk Management Committee shall be to consult on any matter(s) that may have an impact on any of the rights or obligations of the GOK, the Financing Parties or the Company under this Letter.

22. **Legal Opinion**

Concurrent with the delivery of this Letter to the Company, GOK shall deliver to the Company and the Financing Parties (in a form acceptable to the Company and the Financing Parties) a legal opinion from the Attorney General as legal counsel to GOK confirming, inter alia, the validity and enforceability of the obligations contained in this Letter (so far as they relate to GOK) and that the transactions contemplated herein on the part of GOK are in accordance with all applicable laws of Kenya.

23. **Notices given by the Financing Parties**

GOK acknowledges and agrees that:

- (a) any amount that is payable by the GOK pursuant to this Letter will be paid into the account notified by the Financing Parties from time to time; and
- (b) where it has received conflicting instructions from the Company and the Financing Parties, it shall give priority to and follow the instructions given by the Financing Parties.

Yours faithfully,

Government of the Republic of Kenya acting through the following duly authorised representatives:

Cabinet Secretary, the National Treasury

Cabinet Secretary, Ministry of Energy & Petroleum

Witnessed by:

Managing Director
Kenya Power & Lighting Company Limited

Acknowledged and accepted by:

Executed as a Deed by affixing the)
Common Seal of)
Amu Power Company Ltd in the presence of)
)
)
)
Director)
)
)
)
Director/Company Secretary)

Amu Power Company Limited
Director