

## INDICATIVE TERM SHEET

### AFRICAN DEVELOPMENT FUND

#### INDICATIVE TERMS AND CONDITIONS OF AN ADF PARTIAL RISK GUARANTEE

*These Summary Terms and Conditions do not constitute an offer or commitment to provide the envisaged guarantee, and as such any commitment would be pursuant to internal approvals, conclusion of due diligence and successful negotiation of definitive legal documentation. The terms and conditions outlined below are not a comprehensive statement of all applicable terms and conditions that would be contained in the definitive legal documentation for the guarantee facility and the transaction contemplated herein, but are an indicative summary of the proposed guarantee structure normally required by the African Development Fund (ADF) for similar types of transactions.*

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#### **ADF PARTIAL RISK GUARANTEE (ADF PRG)**

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- PROJECT:** The supply of steam by the Geothermal Development Corporation to, and the purchase by Kenya Power and Lighting Company Limited of the power generated by, three (3) 35 MW (net) modular power plants at the Menengai Geothermal field to be financed, designed, constructed, installed, operated and maintained on a build-own-operate basis by an independent power producer.
- PURPOSE:** The ADF PRG will backstop the failure by an L/C Applicant to reimburse the L/C Bank amounts drawn by an L/C Beneficiary under the L/C following the occurrence of a Guaranteed Event (as defined below).
- L/C APPLICANTS:** The Kenya Power and Lighting Company Limited (**KPLC**) and Geothermal Development Corporation (**GDC**)
- L/C BENEFICIARIES:**
1. QPEA GT Menengai Limited (an affiliate of Quantum Power East Africa);
  2. Sosian-Menengai Geothermal Power Limited; and
  3. ORPower Twenty Two Limited
- L/C BANK:** A commercial bank with an international long-term foreign currency investment grade rating by either Standard & Poor's Moody's Investors Services and/or Global Credit Rating (**L/C Bank Credit Rating**), acceptable to the ADF, GoK and the

L/C Beneficiary, as selected through a competitive bidding process.

**GUARANTEED L/Cs:**

Three (3) Revolving Standby Letters of Credit (L/C) issued in favor of each L/C Beneficiary by the L/C Bank at the request of KPLC and GDC to backstop: (1) KPLC's payment obligations for Energy Charges and KPLC Deemed Generated Energy Payments under the Power Purchase Agreement (**PPA**) and (2) GDC's payment obligations for GDC Deemed Generated Energy Payments under the Project Implementation and Steam Supply Agreement (**PISSA**), in each case, entered into between the L/C Beneficiaries and KPLC and GDC, respectively.

KPLC's and GDC's obligations include reimbursement of the L/C Bank of amounts drawn under each L/C, plus accrued interest if any thereon, up to a cumulative maximum amount equivalent to *US\$ 12,699,999.99 (Twelve Million Six Hundred and Ninety-Nine Thousand Nine Hundred Ninety-Nine United States Dollars and ninety-nine United States cents)* which breaks down to *Four Million Two Hundred and Thirty Three Thousand Three Hundred and Thirty Three United States Dollars and Thirty Three United States cents (US\$ 4,233,333.33)* for each Guaranteed L/C Beneficiary, comprising the face value of *Three Million Seven Hundred Fifty-five Thousand Eight Hundred and Fifty United States Dollars (US\$ 3,755,850.00)* plus accrued interest, if any, up to *Four Hundred and Seventy-Seven Thousand Four Hundred and Eighty Three United States Dollars and Thirty three United States cents (US\$ 477,483.33)* per L/C Beneficiary, which will be guaranteed by the ADF. Any amounts drawn by an L/C Beneficiary that are reimbursed by KPLC and/or GDC to the L/C Bank within the L/C Reimbursement Period will be reinstated as described below.

**GUARANTEED EVENT:**

KPLC's and/or GDC's failure to perform their reimbursement obligations under the Reimbursement and Credit Agreement entered into between KPLC, GDC and the L/C Bank (**Reimbursement Agreement**).

**MAXIMUM L/C AMOUNT:**

An amount sufficient to cover three (3) months of payment obligations for Energy Charges and KPLC Deemed Generated Energy Payments under the PPA and GDC Deemed Generated Energy Payments under the PISSA up to a cumulative total amount per the Guaranteed L/C of *Three Million Seven Hundred and Fifty-five Thousand Eight Hundred and Fifty United States Dollars (US\$ 3,755,850.00)* per L/C Beneficiary and a total cumulative amount for the three (3) Guaranteed L/Cs of *Eleven Million Two Hundred and Sixty-Seven*

*Thousand Five Hundred and Fifty United States Dollars (US\$ 11,267,550.00), exclusive of accrued interest.*

**CURRENCY:** United States Dollars

**L/C TERM:** Up to a 15 year term (committed), with a one-year revolving structure, or as agreed with the L/C Bank, commencing four months prior to the Required Full Commercial Operation Date of the plant.

**L/C:** In a form satisfactory to ADF, the L/C Applicants and the L/C Beneficiaries, and assignable to the lenders. The L/C Bank will issue three (3) L/Cs, one for each L/C beneficiary.

**L/C REIMBURSEMENT PERIOD:**

Following a drawing on the L/C by the L/C Beneficiary, KPLC and/or GDC will be obligated to reimburse the L/C Bank the amount drawn, plus accrued interest thereon, within 12 months of the drawdown (**L/C Reimbursement Period**) in accordance with the terms of the Reimbursement and Credit Agreement.

**L/C REINSTATEMENT:** If the L/C Applicant reimburses the L/C Bank on or before the expiry of the L/C Reimbursement Period, the L/C will automatically be reinstated by the amount so reimbursed.

**CALL ON ADF PRG:** If any amount drawn under the L/C remains unreimbursed following the expiry of the L/C Reimbursement Period, the L/C Bank will have the right to call on the ADF PRG for an amount equal to the amount drawn under the L/C and not reimbursed by an L/C Applicant plus accrued interest, if any, due from the L/C Applicant under the terms of the Reimbursement and Credit Agreement. Any amount paid by ADF to the L/C Bank under the ADF PRG will be deducted from the ADF Guaranteed Amount (as defined below). Even if the L/C Applicant's payment default is remedied thereafter, following a payment under the ADF PRG, the amounts paid by ADF will not be reinstated to the ADF Guaranteed Amount.

**ADF GUARANTEED AMOUNT:**

Cumulative amount equivalent to *Twelve Million Six Hundred and Ninety-Nine Thousand Nine Hundred and Ninety-Nine United States Dollars and ninety-nine United States cents (US\$ 12,699,999.99)* which covers, for each Guaranteed L/C, the Maximum L/C Amount plus accrued interest, if any, under the Reimbursement and Credit Agreement with an accrued interest amount not exceeding *Four Hundred and Seventy-Seven Thousand Four Hundred and Eighty Three United States Dollars and Thirty three United States cents (US\$ 477,483.33)* per L/C Beneficiary.

**ADF PRG GUARANTEE**

**PERIOD:** The L/C Term plus [*twelve months/TBD*].

**ADF PRG FEES:** ADF's standard fees for transactions of this nature to be payable by the L/C Beneficiaries and/or the L/C Applicants, as agreed between the ADF, the L/C Beneficiaries and the L/C Applicants.

**L/C BANK FEES:** An amount to be determined through a competitive process and then agreed between the L/C Bank, the L/C Beneficiary and the ADF to be payable by the L/C Beneficiary to the L/C Bank.

**L/C BANK INTEREST:** An appropriate spread above 6-month LIBOR, to reflect ADF risk, and acceptable to the L/C Applicant and GoK, and agreed by ADF, and to be paid on the amount to be reimbursed under the Reimbursement and Credit Agreement.

**HOST COUNTRY INDENMITY:**

The issuance of the ADF PRG is subject to the Republic of Kenya (**Host Country**) agreeing to reimburse and indemnify the ADF on demand for any payment made by the ADF under the ADF guarantee agreement and for all losses, damages, costs and expenses incurred by the ADF arising from or in connection with the ADF guarantee agreement. **The Indemnity Agreement between the Host Country and the ADF must be negotiated and initialled prior to submission of the Project to the ADF Board for consideration / approval.**

**PROJECT COMPANY AGREEMENT:**

The issuance of the ADF PRG is subject to the L/C Beneficiary entering into a project agreement relating to matters of concern to the ADF namely, provision of Project information, compliance with material contractual obligations, compliance with applicable laws and regulations (including environmental and social laws of the Host Country, the ADF's environmental and social policies and guidelines, sanctionable practices (coercive, corrupt, collusive, obstructive and fraudulent practices) and no revisions to the PPA, the PISSA and other identified project documents without ADF's consent. **The Project Company Agreement between the L/C Beneficiary and the ADF, as well as the Indemnity Agreement, must be negotiated and initialled prior to submission of the Project to the ADF Board for consideration / approval.**

**EXCLUDED LOSSES:**

The ADF PRG will not cover any losses arising in connection with:

- (i) the application of any law, decree or regulation in force in the Host Country as of the effective date of the Guarantee or any action or inaction of the Government of the Republic of Kenya (**Host Government**) or any other event occurring prior to such effective date;
- (ii) Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, Money Laundering, or violations of any bona fide non-discriminatory laws or regulations of general application not designed by the Host Government to have a confiscatory effect, in each case attributable to a Beneficiary in connection with the Project;
- (iii) material non-compliance by the L/C Beneficiary with the Environmental and Social Policies and Guidelines;
- (iv) the failure of the L/C Beneficiary to use all reasonable efforts to ensure that all agreements to which it is a party relating to the Project has been duly authorized and executed by it and that its obligations contained therein are legal, valid, binding and enforceable in accordance with their terms; or
- (v) L/C Beneficiary event of default.

**TERMINATION OF COVERAGE:**

ADF may, by written notice to the L/C Beneficiary, terminate its obligations under the ADF PRG and deny guarantee coverage to subsequent losses if:

- (i) The PPA or the PISSA is terminated in accordance with its terms;
- (ii) Any representation or warranty made by the L/C Beneficiary to the ADF or the L/C Bank is untrue in any material respect, or omission of material information;
- (iii) The L/C Beneficiary is in material default of its obligations under the Project Company Agreement which has not been cured after a reasonable period;
- (iv) The L/C Beneficiary is in material violation of the laws and regulations of Host Country in respect of the Project;

- (v) The L/C Beneficiary is in material violation of the Environmental and Social Policies and Guidelines in connection with the Project;
- (vi) The L/C Beneficiary has engaged or is engaging in Money Laundering in connection with the Project;
- (vii) The L/C Beneficiary has engaged or is engaged in Corrupt Practices, Fraudulent Practices, Coercive Practices or Obstructive Practices in connection with the Project;
- (viii) Suspension of lending by the ADF to the Republic of Kenya or breach by the Republic of Kenya of its obligations under the Indemnity Agreement;
- (ix) Suspension or lapse of the Republic of Kenya from membership in ADF or the African Development Bank (ADB);
- (x) Breach of a covenant by the L/C Beneficiary under the ADF Project Agreement; or
- (xi) Liquidation, bankruptcy, insolvency, winding up, dissolution, or similar measure in relation to the L/C Bank.

**REPLACEMENT OF L/C BANK:**

In case of actual or anticipated liquidation, bankruptcy, insolvency, winding up, dissolution or the downgrading of the L/C Bank or similar measure in relation to the L/C Bank, the parties will endeavor to promptly replace the L/C Bank and the L/C issued by an L/C Bank reasonably acceptable to ADF, GoK and the L/C Beneficiary that meets the L/C Bank Credit Rating.

**CONFIDENTIALITY:** Provisions for protection of confidential, financial and other proprietary information.

**GOVERNING LAW:** English law.

**DISPUTE RESOLUTION:** Arbitration in accordance with UNCITRAL Arbitration Rules.

**ADF PRIVILEGES AND IMMUNITIES:**

ADF shall not waive the privileges, immunities and exemptions afforded to it under the Agreement Establishing the African Development Fund and applicable laws.

## **Appendix 2: CONDITIONS PRECEDENT TO EFFECTIVENESS OF ADF PRG:**

Usual and customary for financings of this type including, but not limited to, the following, **all in form and substance satisfactory to the ADF:**

1. Execution, delivery and effectiveness of the following agreements:
  - a. the Indemnity Agreement between GoK and ADF;
  - b. the Project Agreement(s) between the L/C Beneficiary and the ADF;
  - c. agreement in favor of the Fund, the L/C Bank and ADF external counsel pursuant to which the L/C Beneficiary agrees to pay the ADF PRG fees, the L/C Bank fees and the fees of ADF external counsel;
  - d. the Guarantee Agreement between the L/C Bank and ADF;
  - e. the PPA;
  - f. the PISSA;
  - g. the agreement between KPLC and GDC on Steam Supply Payments;
  - h. other relevant project agreements as may be agreed by the parties and listed in an agreed schedule.
2. Confirmation of budgetary appropriation for the GoK counterpart funding for the construction of the Transmission Line and Steam Gathering System.
3. Confirmation from an authorized officer of the L/C Bank of the satisfaction of all conditions precedent to the issuance of the Guaranteed L/C, other than satisfaction of any condition precedent therein requiring the effectiveness of the ADF Guarantee Agreement.
4. Issuance of original legal opinions to ADF from: (a) the Attorney General of Kenya in agreed form relating to the agreements to which GoK is a party; (b) counsel to KPLC relating to the agreements to which it is a party; (c) counsel to GDC relating to the agreements to which it is a party; (d) counsel to the L/C Bank relating to the agreements to which it is a party; and (e) counsel to the L/C Beneficiary relating to the agreements to which such L/C Beneficiary is a party.
5. Documentary evidence of the authority of each person who has signed each project-related document referenced in 1 above.
6. Delivery of all environmental assessments and documentation required by ADF, including evidence that all project affected persons have been compensated or resettled in accordance with applicable ADF policies, determination by ADF that all relevant parties are in compliance with applicable ADF requirements, and receipt of all relevant Kenyan environmental approvals.
7. Payment in full by the L/C Beneficiary of all such fees which are due and payable by the time of the effectiveness of the guarantee agreement.
8. Other appropriate certificates and evidence as may be mutually agreed in advance taking into account the nature of the financing.