

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2025 between:

- (1) **KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED**, a limited liability company wholly owned by the Government of Kenya and registered under the Companies Act 2015 Laws of Kenya and having its principal offices at Kawi Complex, Popo Lane, South C, P.O. Box 34942 – 00100, in the Republic of Kenya (hereinafter called the "**Contracting Authority**" which expression shall where the context so admits include its successors in title and permitted assigns) of the first part; and
- (2) A consortium comprising of:
  - a **AFRICA50 PROJECT DEVELOPMENT** an international organization established as a pan-African infrastructure investment platform to develop and invest equity in infrastructure projects, including transmission projects, in Africa that are bankable and can be financed by the private sector, having its headquarters at Tour Ivoire 3, 8<sup>ème</sup> étage, Marina de Casablanca, Boulevard des Almohades, Casablanca, Morocco (**Africa50**); and
  - b **POWER GRID CORPORATION OF INDIA LIMITED** a Government of India Enterprise incorporated under the Indian Companies Act, 1956 and having its registered office at B-9, Qutub Institutional Area, Karwaria Sarai, New Delhi and its Corporate office at "Saudamini", Plot No. 2, Sector – 29, Gurugram, Haryana, India (**Power Grid**).

**Africa50** and **Power Grid** hereby jointly referred to as the **Private Party**.

(The Contracting Authority and the Private Party are individually referred to as a **Party** and collectively as the **Parties**).

## PART 1: PRELIMINARY

### RECITALS

- A The Government of Kenya (**GoK**) has adopted policies to attract private sector investment in electricity transmission infrastructure expansion and strengthening. The Contracting Authority is charged with the mandate to plan, design, construct, own, operate and maintain the national electricity transmission network and associated infrastructure in Kenya, and may carry out these responsibilities through any other person or entity authorized by it as permitted under the Public Private Partnerships Act, Cap 430 Laws of Kenya (the **PPP Act**).
- B The Government of Kenya wishes to promote private sector investment and participation in the development and operation of transmission infrastructure in Kenya.
- C Africa50 has partnered with Power Grid Corporation of India Limited (**Power Grid**) through a Joint Development Agreement executed in December 2021 for the development of the Kenya Electricity Transmission PPP Project.
- D The National Treasury and Planning, through the letters dated 8<sup>th</sup> August 2020 and dated 12<sup>th</sup> October 2020: (a) confirmed that Kenya Electricity Transmission Company

(KETRACO) shall be the Contracting Authority (i.e., the holder of the concession on behalf of GoK); (b) delegated the authority to KETRACO decide which lines should be subjected to detailed development as PPP by Africa50 and its partners; and (c) required Africa50 and its partners to submit a detailed Private Investment Proposal (PIP) under the PPP Act;

- E In pursuance of the foregoing, the Contracting Authority, on behalf of the Government of Kenya, has considered a Privately-Initiated Proposal dated 11<sup>th</sup> November 2022 (PIP) submitted by the Private Party, for the development, financing, construction, operation and maintenance of the following transmission infrastructure which are national priority projects approved as part of the Transmission System Master Plan and the Least Cost Power Development Plan 2021:
- i The 400kV Double Circuit (D/C) Loosuk - Lessos Transmission Line, a new 400/220kV Lessos Sub-station and a new 400kV switching Sub-station at Loosuk, with a LILO of both circuits of existing Loiyangalani - Suswa 400 kV D/C line into the new Loosuk Sub-station; and
  - ii The 220kV Double Circuit (D/C) Kibos – Kakamega - Musaga Transmission Line, new Sub-stations at Kakamega and Musaga, associated 220kV bay extensions at Kibos and LILO of both circuits of existing Musaga - Lessos 132kV D/C line into the new Musaga Sub-station.
- F The Directorate of Public-Private Partnerships (the **Directorate**) in consultation with the Contracting Authority evaluated the PIP and the Public Private Partnership Committee (the **PPP Committee**) approved the PIP on 15<sup>th</sup> February, 2023 to proceed to the Project Development Phase (as defined in the PPP Act), during which the Private Party was to undertake project development activities under section 43 (5) of the PPP Act and more specifically set out in the letter from the National Treasury and Economic Planning dated 17<sup>th</sup> February 2023 under reference TNT/PPPU/12/4/VOL I(74), subject to all the documents resulting from the project development activities (the **Designated Feasibility Activities**) being evaluated by the Contracting Authority of the following transmission infrastructure:
- i The 400kV Double Circuit (D/C) Loosuk - Lessos Transmission Line, a new 400/220kV Lessos Sub-station, 220kV bay extension at existing 220/132kV Lessos Sub-station, and a new 400kV switching Sub-station at Loosuk, with a LILO of both circuits of existing Loiyangalani - Suswa 400 kV D/C line into the new Loosuk Sub-station; and
  - ii The 220kV Double Circuit (D/C) Kibos – Kakamega - Musaga Transmission Line, new Sub-stations at Kakamega and Musaga, associated 220kV bay extensions at Kibos and LILO of both circuits of existing Musaga - Lessos 132kV D/C line into the new Musaga Sub-station.

(the Kenya Electricity Transmission PPP Project).



- G The Private Party duly undertook the Designated Feasibility Activities and submitted a Project Development Report on 16<sup>th</sup> August 2023 (the **PDR**), which has been duly evaluated by the Directorate and the Contracting Authority, pursuant to which the Directorate made recommendations to the PPP Committee for approval of the Kenya Electricity Transmission PPP Project, which includes the Project.
- H Pursuant to such recommendation, and the recommendation of the Contracting Authority, the PPP Committee has, in terms of Section 43(11)(a) of the PPP Act, approved that the Kenya Electricity Transmission PPP Project be procured under the PPP Act. After a review of the PDR, including additional material and analysis provided by the Private Party, the PPP Committee authorized the Contracting Authority to enter into negotiations, under Section 44 of the PPP Act in relation to the Kenya Electricity Transmission PPP Project.
- I The Private Party shall, pursuant to Section 68 of the PPP Act, establish a project company in accordance with the Companies Act, Cap 486 Laws of Kenya to undertake the Kenya Electricity Transmission PPP Project (the **Project Company**).
- J This Agreement sets out the terms and conditions pursuant to which the Project Company shall undertake the development, financing, construction, operation and maintenance of the Project Line on a Build – Own – Operate – Transfer arrangement as prescribed under schedule 2 of the PPP Act.
- K Parties agree and acknowledge that upon establishment of the Project Company, the Contracting Authority shall together with the Private Party novate this Agreement in favor of the Project Company, and from the date of such novation all rights, benefits and obligations of the Private Party under this Agreement shall accrue to the Project Company.

**NOW THEREFORE**, in consideration of the foregoing and agreement set forth in this Project Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless the context requires otherwise:

- (1) **Abandonment** means the failure to carry out any of the Construction Works contemplated by this Agreement (including for the avoidance of doubt the Project Completion Schedule (Schedule 8)) for a period of twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any twelve (12) month period, in each case, except where the failure to carry out the Construction Works has been exempted under the Agreement as confirmed by the Independent Expert;
- 1.1.1. **Accounting Year** means in respect of the first Accounting Year, the period beginning on the Signature Date and ending on the immediately succeeding 30<sup>th</sup> June and thereafter each period of twelve (12) months beginning 1<sup>st</sup> July and ending on 30<sup>th</sup> June, provided that the last Accounting Year shall end on the last day of the Project Term;