

Memorandum of Understanding

Between

The Government of Georgia,

Optimum Enerji Üretim A.Ş.

Energo Trans LTD

and

Electricity System Commercial Operator LTD

Date: 19.02.2011

Tbilisi, Georgia

Memorandum of Understanding

This **Memorandum of Understanding** (hereinafter the “**MOU**”) is made on

February 19, 2011 by and between the following parties:

- (1) **Government of Georgia**, represented by the Ministry of Energy of Georgia with authorization provided to the Minister of Energy of Georgia, Alexander Khetaguri, pursuant to decree of the Government of Georgia #1740 dated December 23, 2010 (the “**GoG**”),
- (2) Optimum Enerji Üretim A.Ş. (the “**Company**”) with legal address at Ağaoğlu My World, 34746 Batı Ataşehir, İstanbul, Türkiye, represented by Chairman of the Board, Ali İbrahimağaoğlu,
- (3) Electricity System Commercial Operator LTD (“**ESCO**”) represented by General Director Irina Milorava;
- (4) Energo Trans LTD (“**ET**”) represented by Director Kakha Sekhniashvili.

The following defined terms shall be used in this MOU:

“**BOO**” means Build, Own, and Operate.

“**Effective Date**” means the date that the Company presents the new bank guarantee to the GoG in accordance with Section 4.1 of the MOU.

“**Electricity (Power) Balance**” means the annual energy balance.

“**ESCO**” means Electricity System Commercial Operator LTD.

“**ET**” means Energo Trans LTD.

“**ET Agreement**” means the agreement to be entered into between (1) ET and (2) the Company and/or the Project Company, in connection with the Project.

“**Expression of Interest**” means the terms and conditions of expression of interest for the Project, which is the tender document illustrating the conditions under which the Ministry announced the tender for implementation of the Project.

“**Facility/Facilities**” means each or all power plants within the Project.

“**Feasibility Report**” means the report to be prepared by the Company, which shall include (but not be limited to) any document and/or data and/or information belonging to the Project such as geological, hydrological, installed capacity, energy optimization, project formulation, structures to be constructed, expropriation, Investment Cost, BOQ and EIA and which confirms whether or not the Project is technically, economically, financially and legally feasible, and can be completed within the required time period. Upon finalization of the Feasibility Report, it shall become an Annex of this MOU.

“**Financing Agreements**” means the financing agreements pursuant to which the Project Company obtains debt financing from the Lenders in connection with the Project.

"Generation License" means the document issued by the GWNERC that confirms the right of the Company or the Project Company for the generation of electricity

"Guaranteed Power Purchase Agreement" means the direct agreement that shall be signed between the Company and ESCO before the operation of the Facilities, which shall include the guaranteed price.

"Investment Costs" means, by reference to the accounts and financial statements of the Project Company at the date of termination of this MOU:

- (a) if such termination takes place before the completion of construction of the Facilities, all the costs related with the Project during the construction period, including but not limited to, all construction costs, insurance costs, development costs, consultancy costs, financial costs (including interest during construction, bank fees and commissions), expropriation costs and all other costs related with Project during the period of construction of the Facilities; and
- (b) if such termination takes place after the completion of construction of the Facilities, all the investments costs not recovered related with the Project until such termination date, including but not limited to, all construction costs, operating costs, insurance costs, development costs, consultancy costs, financial costs (including interest, bank fees and commissions), expropriation costs, the accrued interest on the outstanding balance of the loan provided by the Lenders until the termination date and all other costs related with the Project up to the date of termination of the Project.

"Lenders" means the financial institutions providing debt financing to the Project Company in connection with the financing of the Project.

"Lenders' Representative" means the representative or agent of the Lenders who enters into a direct agreement on behalf of the Lenders.

"Ministry" means the Ministry of Energy of Georgia.

"Notice of Termination Right" has the meaning given to such term in Section 6.3 of this MOU.

"Operation Year" means each year commencing on 1 September and finishing on 31 August in the following year.

"Parties" means the GoG, the Company and ESCO and ET jointly.

"Principal Parties" means the GoG and the Company.

"Project" means the construction and operation on a BOO basis of 3 (three) hydro power plants (or such other number as will be determined pursuant to Section 5.6(a)), being the Arakali, Abuli, Akhalkalaki plants in the Samtskhe-Javakheti Region of Georgia, on the river Paravani.

"Project Company" means the legal entity of private law (Limited Liability Company/Joint Stock Company) to be established under the Laws of Georgia.

"State" means Georgia.

"**Substituted Entity**" has the meaning given to such term in Section 6.3 of this MOU.

"**Substitution Date**" has the meaning given to such term in Section 6.8 of this MOU.

"**Substitution Notice**" has the meaning given to such term in Section 6.4 of this MOU.

"**Take-or-Pay Principle**" means the principle whereby, in accordance with the terms of the ET Agreement:

- (a) ET agrees to provide to the Project Company or Company (as the case may be) the necessary capacity through the Transmission Line for a period of 15 years in respect of each Facility after the operation of each Facility and if ET does not provide the Project Company or Company (as the case may be) with such capacity, ET shall reimburse the Project Company or Company (as the case may be) the full amount of the loss of profit which the Project Company or Company (as the case may be) incurs as a result of not being able to transmit to Turkey through the Transmission Line; and
- (b) the Project Company or Company (as the case may be) agrees to pay ET a specified amount for the services being provided by ET to the Project Company or Company (as the case may be) in connection with the Transmission Line and if the Project Company or Company (as the case may be) utilizes such transmission services from ET in an amount less than such specified amount, the Project Company or Company (as the case may be) shall nevertheless pay such specified amount during the period specified in the ET Agreement.

"**Technical Parameters of the Facilities**" means the location, installed capacity and annual production as provided in Annexes [1, 2 and 5]

"**Term**" has the meaning given such term in Section 5.1.

"**Transmission Line**" means the transmission line of 400/500 KV from Akhaltsikhe to the Turkish border.

1. Purpose

The purpose of this MOU is to set out the implementation of the Project by the Company under the terms and conditions set out herein.

2. Subject of MOU

2.1 The Company shall ensure implementation of the Project.

2.2 The Annexes to this MOU contain Technical Parameters of the Facilities to be constructed by the Company, including the following information about each Facility in the Project:

- (a) location;
- (b) designed capacity;
- (c) estimated investment;

- (d) the terms of obtaining construction permits, commencement of construction, completion of construction and commencement of operations; and
 - (e) estimated annual power output.
- 2.3 The Company is authorized to transfer its full or partial rights and/or obligations hereunder to any third party, subject to approval by the GoG. The GoG shall not unreasonably withhold such approval. For the avoidance of doubt, the Project Company shall not be considered a third party.
- 2.4 After signing the MOU but prior to obtaining any construction permit, the Company will establish Project Company.
- 2.5 The Company will ensure that the Project is implemented through the Project Company. For this purpose, the Company will ensure that within 10 days of the date of its establishment and registration in the public registry of the Ministry of Justice of the State, the Project Company also takes on the liabilities and obligations set out in this MOU, provided that the Company will also remain liable for the liabilities and obligations set out in this MOU, either separately or jointly with the Project Company.
- 2.6 In order to satisfy its obligation under Section 2.5 above, the Company shall deliver to GoG a document signed by the Company and the Project Company in the form set out in Annex 6 (*Deed of Adherence*) of this MOU.
- 2.7 For the avoidance of doubt, all of the rights, responsibilities and obligations of the Company under this MOU shall be considered the rights, responsibilities, and obligations of the Project Company.
- 2.8 The Company has the right to work with local and/or foreign subcontractors for the construction of Facilities.

3. Rights and Obligations of the Parties

- 3.1 For the purposes of implementation of the Project, subject to the terms of this MOU and the applicable legislation of Georgia, the Company shall:
- (a) ensure due review, expertise and analysis of all required technical, environmental, economic and legal issues;
 - (b) submit to the GOG the reports prepared by the Company on the respective technical, environmental, economic and legal issues;
 - (c) ensure necessary funds for effective implementation of the Project;
 - (d) without limiting the provisions of Section 5.5, ensure construction of the Facilities described in the Annexes and commencement of their operations in compliance with the agreed terms and timelines. This shall include obtaining any and all licenses and permits required under the applicable legislation of Georgia;

- (e) submit to the GOG every three months all information relating to the progress of the implementation of the Project from the Effective Date until the commencement of operation of all Facilities; and
 - (f) maintain the Facilities within the technical parameters set out in the Annexes to this MOU for the Term.
- 3.2 The Company hereby undertakes that during the implementation of the Project it shall ensure full compliance with all technical, legal and other terms listed for each of the Facilities in the Annexes.
- 3.3 For the first ten years of operation, beginning from the date of commencement of operations of each Facility (the "**Initial Operating Period**"), the full power output of such Facility during the winter months of each year, (being the months of December, January and February (the "**Winter Months**") shall be sold exclusively for the purposes of meeting the internal demand of Georgia, which shall be reflected in the Electricity (Power) Balance of the respective year or other similar document.
- 3.4 For the purposes of Section 3.3 above, for the Initial Operating Period, during the Winter Months, the Company shall sell the generated power at its sole discretion to any purchaser in Georgia under a free (deregulated) tariff and/or in accordance with the Guaranteed Power Purchase Agreement to be signed with ESCO with a tariff of 4,5 USD Cent per Kwh. In case of surplus generation value, ESCO will have a preemptive purchase right at the same rate. The Company may otherwise sell generated power at its discretion and may export electricity.
- 3.5 In the period indicated in Section 3.3 above, the power generated by the Company through Facilities shall be sold in accordance with Section 3.4, while in the other months of each operation year the Company may choose which market (either local or export) may purchase electricity produced by the Facilities and the price at which it shall be sold.
- 3.6
- (a) In case of a delay in implementing the terms and conditions of the MOU which is attributable to the Company (including delays in any of the following: reporting on the progress of the Project implementation, obtaining construction permits for any Facility; commencement of construction works on any Facility, completion of construction of any Facility, or the commencement of operation of any Facility as provided in the Annexes 1-5) the following sanctions will apply to the Company, in each case:
 - I) 1,000 USD for each day of delay from the first day of delay up to and including the 30th day;
 - II) 2,000 USD for each day of delay from the 31st day of delay up to and including the 60th day;
 - III) 3,000 USD for each day of delay from the 61st day up to and including the 90th day;

- IV) 5,000 USD for each day of delay from the 91st day up to and including the 120th day;
 - V) 7,000 USD for each day of delay from the 121st day up to and including the 150th day;
 - VI) 45,000 USD for each day of delay from the 151st day onwards.
- (b) In the case of a delay in relation to any of the items set out in Section 3.6.(a), the due date of any following interconnected and consecutive obligations shall be deemed to be postponed for a period equal to the foregoing delay.
 - (c) If the Company within five working days from the first day of delay provides GoG with relevant justification and evidence that the reason for delay is not attributable to the Company, then the Company shall be released from the sanctions applicable under Section 3.6(a) and shall be entitled to request an adequate time extension. If such justification is not provided within the indicated timeframe, the GoG shall be entitled to apply the relevant delay penalties and the Company will be deemed to have accepted such sanctions and shall raise no subsequent objections to such sanctions.
 - (d) For the purpose of Section 3.6 (a) and (c), and for avoidance of any doubt, any delay in implementing the terms and conditions of the MOU shall be considered as not being attributable to the Company if it is caused:
 - I) by a force majeure event in accordance with Section 14.4;
 - II) by the default or breach of the MOU by GoG, ET or ESCO;
 - III) state or local self governing bodies of Georgia, or their representatives acting illegally, failing to act, or not fulfilling their obligations (fully or partially);
 - IV) by any transmission and/or dispatch licensees of the Georgian electricity system or their representatives acting illegally, failing to act, or not fulfilling their obligations (fully or partially); or
 - V) by any other event which could not have been reasonably foreseen at the time of conclusion of the MOU and is considered by the GoG (acting in good faith) as not being attributable to the Company.
 - (e) For the purpose of Section 3.6(d)(V), and for the avoidance of any doubt, any delay referred to in Section 3.6 (a) and (c) caused by the breach or the default of a third party which is bound contractually to the Company in connection with the Project, shall be considered by the GoG as being attributable to the Company.
- 3.7 GoG shall have the right to recover such penalty amount as may be due under Section 3.6(a) under the bank guarantee provided by the Company pursuant to this MOU. The Company has the right to pay penalties that may become due according to Section 3.6 prior to deduction of such penalties from the bank guarantee, and must immediately

inform the GoG if it wishes to do so. In such circumstances the GoG shall have no right to recover such penalty amount under the bank guarantee.

- 3.8 Penalty amounts shall continue to be recovered under the bank guarantee provided by the Company until such bank guarantee has been fully utilized. In order to avoid the termination of the MOU pursuant to Section 3.9.(b), the GoG shall notify the Company 10 days prior to estimated date of full utilization of the bank guarantee. The Company may provide an additional bank guarantee to the GoG on the same terms as set out in Annex 7 (*Letter of Guarantee*), excluding the amount. The Company may use this right only three times and such new bank guarantees, together with the initial bank guarantee, may not exceed more than 20.000.000 USD in aggregate.
- 3.9 The GoG may, by first serving written notification, immediately terminate this MOU unilaterally:
- (a) if the Company will not provide and/or will not renew the bank guarantee in accordance with Sections 4.1, 4.3 of this MOU;
 - (b) if the bank guarantee has been fully utilized by the GoG in accordance with the provisions of this MOU and the Company does not provide an additional bank guarantee in accordance with Section 3.8 of this MOU; or
 - (c) where the aggregated amount of penalties accrued in accordance with Section 3.6 of this MOU exceeds 20.000.000 USD.
- 3.10 In case of termination of this MOU pursuant to Section 3.9:
- (a) the respective land plots shall be transferred to the State without compensation. In that case the Company shall have the right to dismantle immovable assets and to retain ownership of and remove the movable assets located on such land plot that were created or financed by the Company, unless otherwise agreed by the Principal Parties; and
 - (b) the right of the Company to implement the Project shall be terminated.
- 3.11 The obligations of the GoG are as follows:
- (a) The GoG upon receiving any request from the Company in relation to the implementation of the Project shall ask the relevant authorities/institutions to provide any requested and available information/documents in accordance with Georgian legislation. When asking the State authorities and local self-governance bodies, available public documents and/or information shall be issued no later than 30 calendar days from the date of the Company's request in accordance with Georgian legislation and the Company shall otherwise be entitled to a relevant time extension for fulfillment of its obligations.
 - (b) The GoG shall use its best endeavors to assist the Company with the implementation of the Project in any manner within its power and authority as contemplated by this MOU, which shall include the issuance of required permits and licenses, providing the Company meets the relevant requirements under the Georgian legislation.

- (c) The GoG shall take all necessary actions within its authority to prevent any possible delay in importation of any material to the State for the purposes of the Project, provided that the Company has met the relevant requirements under the Georgian legislation.
- (d) The GoG shall ensure that proposals for providing the necessary land plots for the Facilities are submitted to the President of Georgia. Furthermore, considering the importance of the Project, the GoG shall if necessary assist the Company by expropriating such land plots in accordance with the relevant law in Georgia.
- (e) In case if the Company applies for permits/licenses and has met relevant requirements under the Georgian legislation and permits/licenses are not issued by the State authorities within the timeframes given under Georgian legislation GOG agrees that Company shall be entitled to a relevant time extension for fulfillment of its obligations under this MOU.
- (f) Noting the construction of the Transmission Line, the GoG within its authority and in accordance with Georgian legislation shall fully assist the Company to obtain the necessary capacity through this line to export electricity produced by the Facilities to Turkey, by means of the ET Agreement based on the Take-or-Pay Principle. ET, according to ET Agreement and Georgian legislation for the relevant period, shall guarantee the provision of the necessary capacity to the Company or the Project Company on the above mentioned line to allow the transmission of the electricity to be produced by the Facilities for a period of 15 years after commencement of operation of each Facility.

4. Guarantee

Guarantee

- 4.1 According to the Decree #107 of April 18, 2008 of Government of Georgia the Company has submitted to the GoG bank guarantee in an amount of 9,080.000 (Ninemillioneighty thousand) USD, issued by a bank in the State or from a bank in OECD member countries. The Company undertakes that until March 31, 2011, it shall present a new unconditional and irrevocable bank guarantee in the form of Annex 7 (*Letter of Guarantee*) to the GoG in an amount of 9,080.000 (Ninemillioneighty thousand) USD, issued by a bank in the State or from a bank in OECD member countries. In that case GoG shall release the old bank guarantee in 5 (five) business days.
- 4.2 The bank guarantee provided by the Company shall remain in force until the date falling two months after commencement of the operation of all Facilities.
- 4.3 If the bank guarantee provided by the Company expires before the date indicated in Section 4.2, no later than one month prior to such expiration date the Company shall provide the GoG with the following: a) a document certifying the extension of the bank guarantee until the date set by Section 4.2. b) a new bank guarantee in the same form, amount and with the same conditions, which shall remain in force for the period required under Section 4.2.

Within ten days after commencement of operation of all Facilities, the bank guarantee provided by the Company shall be released by the GoG.

Recovery under the Guarantee

4.4 The GoG may, by first serving written notification, recover amounts under any effective bank guarantee in the following circumstances:

- (a) pursuant to Sections 3.7 and 3.8 of this MOU; or
- (b) without limiting any other provision of this MOU, where the Company has not fulfilled all or part of its obligations under this MOU, and it indicates in advance that it will not fulfill its remaining obligations and/or where a Turkish court has made a decision in relation to the Company leading to the commencement of insolvency, bankruptcy or liquidation proceedings in relation to the Company.

4.5 In case if Turkish court has made a decision in relation to the Company leading to the commencement of insolvency, bankruptcy or liquidation proceedings in relation to the Company, Company shall ensure GoG with prompt written notification within 20 days.

5. Effectiveness of the MOU and its Termination- Reimbursement of damages.

5.1 This MOU shall enter into force from the Effective Date and shall remain in full force and effect for 20 years (the "Term"). For the avoidance of doubt, the expiry of the Term, and also in case of termination of this MOU as a result of a force majeure event pursuant to Section 14 of this MOU, shall have no impact on the ownership, usage, operation or legal and trading rights (including sale and export of the electricity generated by the Facilities) of the Company and/or the Project Company with respect to the Project. Upon expiration of the Term, the Company and/or the Project Company shall be entitled to freely own and operate the Facilities, generate electricity and sell and/or export all the electricity generated or acquired by the Company on its own trading terms in accordance with applicable international agreements of Georgia, the constitution of Georgia and Georgian legislation.

5.2 If at some time after this MOU has been terminated as a result of a force majeure event in accordance with Section 14.4 of this MOU, such force majeure event ends, with the result that the Company is then able to continue to construct and/or operate the Project (as the case may be), then the Parties shall agree to enter into good faith discussions for the purposes of entering into new agreements on substantially the same terms as this MOU, the ET Agreement and the Guaranteed Power Purchase Agreement.

5.3 Without limiting any other provision of this MOU, the Company shall have the right to terminate this MOU unilaterally upon the occurrence of any of the following events:

- (a) if the GoG fails to fulfill its obligations hereunder, the GoG must be notified no later than 60 (sixty) days prior to such termination;
- (b) the Company elects to exercise its right under Section 5.5 of this MOU. The GoG must be notified no later than 30 (thirty) days prior to such termination; or

- (c) if the agreement with ET is not signed within two months after the Effective Date as stated in Section 5.7, the GoG must be notified no later than 30 (thirty) days prior to such termination.

5.4

- (a) Subject to the provision of this MOU, where this MOU is terminated by any Principal Party due to the default of the other Principal Party, the defaulting Principal Party shall reimburse the other Principal Party for all damage (other than for loss of profit) proven to be directly caused by the default and/or breach of the defaulting Principal Party.
- (b) The Principal Parties agree and acknowledge that the defaulting Principal Party shall be liable to the other Principal Party for all damage (other than for loss of profit) proven to be directly caused up to 10,000,000 (ten million) USD and that it may not be possible to estimate the quantum of such damage prior to the execution of this MOU.
- (c) In addition to the amounts specified to be paid in Section 5.4 (b), the Principal Parties agree and acknowledge that in the case of termination of this MOU by the Company due to default and/or breach of this MOU by the GoG, the GoG shall be liable to reimburse the Company for the Investment Costs which have accrued up to the date of termination of this MOU. Following such reimbursement by the GoG to the Company, all tangible and/or intangible assets created and/or financed with the Investment Cost which is reimbursed by GoG under Section 5.4 shall be transferred to the ownership of the GoG and such assets shall be transferred free of all encumbrances.
- (d) In case GoG terminates the MOU and such termination does not result from a default or breach of this MOU by the Company and/or is not as a result of any reason under and in accordance with this terms of this MOU, GoG shall be liable to pay the Company for the Investment Costs which have accrued up to the date of termination of this MOU and shall be liable to the Company for all damage (including for loss of profit) without any limitation and following such payment by the GoG to the Company all tangible and/or intangible assets created and/or financed with the Investment Cost which is paid by GoG, shall be transferred to the ownership of GoG and such assets shall be transferred free of all encumbrances.
- (e) Any amounts required to be paid by one Principal Party to another Principal Party following termination of this MOU shall be paid promptly and in any event within 60 days of termination of this MOU.
- (f) The Parties also agree that in the case of termination of this MOU by the GoG pursuant to the provisions of Article 3.9(c) of this MOU, the Company's total aggregate liability to the GoG is limited to 20,000,000 (twenty million) USD (including delay penalties).
- (g) Any issues raised between the Principal Parties regarding damages or compensation payable from one Principal Party to the other Principal Party, which are not regulated by the provisions of this MOU, unless otherwise

mutually agreed between the Principal Parties, are subject to be regulated under Georgian Legislation and Section 13 provided that the amount of such damages and/or compensation shall be determined in accordance with the arbitration proceedings referred to in Section 13 of this MOU and the Company shall only be required to pay to the GoG such compensation and/or damages amount to the extent that such amount has been finally determined by the arbitrators and is not subject to any appeal.

5.5

- (a) If on the basis of the environmental and social impact assessment and/or the full technical and economic feasibility study in the Feasibility Report the Company considers that the implementation of the Project is not possible and/or not feasible for the Company, the Company shall, at its discretion, decide whether or not to terminate this MOU and shall deliver the notification of such termination to the GoG.
- (b) In the event of termination of this MOU by the Company pursuant to this Section 5.5, the Company shall automatically be deprived of the Project development rights and shall be obligated to transfer free of charge to the GoG the exclusive ownership rights of the full technical and economic feasibility study and the environmental impact assessment reports included in the Feasibility Report, as well as any other documentation and drawings related to the Project which may be in possession of the Company (including new documentation developed by the Company).
- (c) The GoG shall only return the bank guarantee (unless collected by the GoG pursuant to the provisions of this MOU prior thereto) if the Company's decision in relation to the implementation of the Project is based on the impossibility of implementation and/or the Project not being feasible as stated in the Feasibility Report, based on an environmental and social impact assessment and/or a full consideration of the technical and economic feasibility issues. For the avoidance of doubt, if the aforementioned environmental and social impact assessment and full technical and economic feasibility study reports are found not to be of proper quality, the GOG shall be entitled to recover amounts under the bank guarantee and for the purposes of this Section(c) the aforementioned environmental and social impact assessment and full technical and economic feasibility study reports shall be deemed to be of proper quality (irrevocably and unconditionally), if the Feasibility Report includes information on the following:
 - i) topographic surveys and mapping;
 - ii) meteorology and hydrology;
 - iii) sediments;
 - iv) hydraulics;
 - v) reservoir simulation review (power, energy, irrigation, flood mitigation);

- vi) geological and geophysical reports;
- vii) geotechnical investigations and reports;
- viii) seismic reports;
- ix) conceptual (engineering) design;
- x) infrastructure (roads, office building, accommodation, electricity, water, etc.) of the Project;
- xi) construction materials survey;
- xii) electrical and mechanical equipment;
- xiii) transmission grid connection;
- xiv) cost of the Project and investments to be made;
- xv) financial model and analysis;
- xvi) full environmental and social assessment report;
- xvii) project implementation schedule; and
- xviii) required maps, drawings, figures, tables, etc. to illustrate the feasibility report findings.

5.6

- (a) Where the Feasibility Report provides that maximum and efficient utilization of the hydro-potential of the river within the elevations as specified in the Annex 1, can not be achieved (meaning that the Technical Parameters of the Facilities can not be realized by the Company and/or that the information or document provided by the GoG or any other third party and assumptions made, or data created by the Company, on basis of such information and documents are incorrect) this shall not be considered a breach of the terms of this MOU and the Company shall have: i) the right to modify the number, design and/or capacity of the Facilities and ii) the right to request the execution of related amendments to the MOU by the GoG. In case of disagreement between the Principal Parties within 60 days from the date of such request of the Company, this MOU shall immediately terminate, and there shall be no defaulting Principal Party.
- (b) In the event of termination of this MOU by the Company pursuant to the provisions of this Section 5.6:
 - i) the GoG shall return the bank guarantee to the Company within 10 days of the date of termination; and
 - ii) the Company shall be automatically deprived of the Project development rights and shall be obligated to transfer free of charge to the GoG exclusive ownership title to the Feasibility Report, as well as

any other documentation and drawings related to the Project which may be in possession of the Company (including new documentation developed by the Company).

- 5.7 Where an agreement with ET is not signed within two months of the Effective Date, the Company shall have the right to terminate the MOU by notifying GoG in writing 30 days prior to such termination. The GoG shall release any effective bank guarantee within 10 days of such termination. The right of the Company to terminate this MOU on the basis of this Section 5.7 will no longer apply after the ET Agreement has been signed and/or after 120 days from the effective date. (Or such later date agreed between the Principles Parties)
- 5.8 In case if the Company before construction applies for Generation License and has met relevant requirements under the Georgian legislation and Generation License is not issued by the Georgian National Water and Energy Regulatory Commission within 90 days; Company shall have the right to terminate the MOU. The GoG shall release any effective bank guarantee within 10 days of such termination. The right of the Company to terminate this MOU on the basis of this Section 5.8 will no longer apply after the Generation License has been issued.
- 5.9 Survival Upon Termination
- (a) Subject to Section 5.9(b) below, without prejudice to any rights of the Parties, the provisions of Sections, 3.10(a), 5.4, 5.5, 5.6, 5.9, 11.12 and 13 shall survive the termination of this MOU.
- (b) If this MOU is terminated due to a force majeure event in accordance with Section 14.4, the only provisions of this MOU which shall survive termination are Section 5.1 and 5.2.

6. Substitution Rights

- 6.1 The GoG acknowledges that it shall not exercise its right to terminate this MOU in accordance with Section 3.9 (c) of this MOU before complying with the procedure specified in Sections 6.2 to 6.8 of this MOU.
- 6.2 If at any time the GoG intends to exercise its right to terminate the MOU under Section 3.9 (c) of this MOU, before the GoG serves a notice on the Company to terminate the MOU in accordance with Section 3.9 (c) of this MOU, the GoG shall serve a notice on the Lenders that the GoG has a right to terminate the MOU in accordance with Section 3.9 (c) (a "Notice of Termination Right").
- 6.3 Following receipt by the Lenders of the Notice of Termination Right and until the date falling two (2) months after the date of receipt by the Lenders of the Notice of Termination Right, the Lenders shall have the right to nominate a substituted entity to the GoG to be substituted for the Company and the Project Company in accordance with Section 6.8 (the "Substituted Entity").
- 6.4 The Lenders or the Lenders' Representative, as the case may be, shall be entitled to effect a substitution within two (2) months of receipt of the Notice of Termination Right. In order to effect such substitution, the Lenders or the Lenders' Representative,

as the case may be, shall notify their or its intention to the GoG (the "**Substitution Notice**") and shall provide to the GoG all information that may be necessary for the GoG to verify that the conditions specified in Section 6.7 are satisfied.

- 6.5 The Lenders, the Lenders' Representative and/or the Substituted Entity are entitled to request that new terms and conditions should apply to the contractual arrangements between the GoG and the Substituted Entity, **provided that** the contractual arrangements between the GoG and the Substituted Entity should be substantially the same as those between the Company, the Project Company and the GoG in the MOU.
- 6.6 The GoG shall, within a reasonable time following the date of the Substitution Notice, and in any event within one (1) month, inform the Lenders of its acceptance or not of the proposed substitution, which acceptance shall not be withheld if the conditions specified in Section 6.7 have been satisfied.
- 6.7 The Lenders' right under this provision to nominate a Substituted Entity may be exercised only on two (2) occasions and if the GoG on two (2) occasions does not, for the reasons specified in this Section 6.7, accept the Substituted Entity proposed by the Lenders, the GoG shall be entitled to serve the notice terminating the MOU in accordance with Section 3.9(c) and for the purposes of this Section 6, the only circumstances in which the GoG can refuse a Substituted Entity proposed by the Lenders are as follows:
 - (a) if the Substituted Entity does not comply with the terms of Expression of Interest and MOU; or
 - (b) if the new terms and conditions proposed by the Substituted Entity and/or the Lenders do not substantially reflect the terms and conditions set out in the MOU.
- 6.8 Following acceptance of the Substituted Entity by the GoG, the GoG shall enter into one or more agreements with the Substituted Entity, the Company and the Project Company, as required, so as to ensure that on the date falling within 10 days of the acceptance by the GoG under Section 6.6 of this MOU (the "**Substitution Date**");
 - (a) the Substituted Entity shall become a party to the MOU in place of the Company and the Project Company and shall thereafter be treated as if it is named as a party thereto in place of the Company and the Project Company;
 - (b) the Substituted Entity shall be granted all of the rights and assume all of the obligations of the Company and the Project Company under the MOU as from the Substitution Date;
 - (c) the GoG shall owe its obligations under the MOU to the Substituted Entity;
 - (d) the Substituted Entity submits a new relevant bank guarantee in an amount of 10,000,000 (ten million) USD to the GoG in accordance with terms of the MOU or before the Substitution Date; and
 - (e) the Substituted Entity shall not be liable for any claim or demand whatsoever in relation to anything done or omitted to be done at any time by the Company and the Project Company under the MOU.

7. Other Developments affecting Project

The GoG agrees that it shall not initiate, approve, authorize, consent to or otherwise endorse any projects, developments or other schemes (of whatever nature) which may adversely affect (in the reasonable opinion of the Company) the Technical Parameters of the Facilities.

8. Discriminatory Change in Law and Tax

8.1 The GoG agrees that it shall not initiate or propose any changes in the law of Georgia or approve or otherwise allow any regulations which would apply expressly to:

- (a) the Project and not to similar projects procured under an agreement with the GoG;
- (b) the Project Company or the Company and not to other persons; and/or
- (c) any contractors or operators with whom the Project Company or the Company has entered into contractual arrangements in connection with the Project and not to other persons.

8.2 The GoG may not initiate any regulation or amendment to the law in respect of any discriminatory taxes or other similar duties to be imposed, which would apply expressly to:

- (a) the Project and not to similar projects procured under an agreement with the GoG;
- (b) the Project Company or the Company and not to other persons; and/or
- (c) any contractors or operators with whom the Project Company or the Company has entered into contractual arrangements in connection with the Project and not to other persons.

9. Transfer of Shares in the Project Company

There shall be no restrictions on the sale, transfer or assignment of the shares in the Project Company by the shareholders in the Project Company. The shareholders in the Project Company shall be entitled to sell, assign or transfer any or all of their shares to any other person or entity and at any time.

10. Security

The Parties agree that the Project Company and the shareholders in the Project Company shall be entitled to provide any security to the Lenders, without obtaining the prior written consent from the GOG in connection with the financing to be provided by the Lenders for the Project.

11. Amendments

11.1 This MOU may be amended by written agreement between the Parties.

- 11.2 If any provision of this MOU becomes invalid or unenforceable, the validity of other provisions shall not be affected.
- 11.3 The GoG agrees to consider requests from the Company in good faith that the MOU may be amended to take account of the requirements of the Lenders, **provided that:**
- (a) to the extent that the GoG has considered such requests in good faith, the GoG shall not be required to accept any such amendments;
 - (b) such non-acceptance by the GoG shall not be considered to be a default by GoG under this MOU; and
 - (c) the Company shall not be entitled to delay its obligations under this MOU as a result of such non-acceptance by the GoG.

12. Notifications

- 12.1 A notice under or in connection with this MOU (a "Notice"):
- (a) shall be in writing;
 - (b) shall be made in English language accompanied with translation in Georgian; and
 - (c) shall be delivered personally or sent by first class post (and air mail if overseas) courier, or fax (with original to follow) to the Party due to receive the Notice at its address set out in this MOU or to another address, person, telex or fax number specified by that Party by written notice to the other Party.
- 12.2 Notice given under Section 12.1 is effective when actually received.

13. Governing Law and Dispute Resolution

- 13.1 This MOU shall be governed by the laws of Georgia.
- 13.2 The Parties hereto will use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with, or the breach, termination, invalidity or interpretation of, this MOU. The Parties agree that their respective duly authorized representatives shall regularly meet during the validity period of this MOU for the purpose of attempting to settle by amicable agreement any and all disputes then in existence between them. Any such settlement shall take effect only if in writing and signed on behalf of the Parties.
- 13.3 If the Company commits any other material breach or default in respect of the performance of any of its obligations under this MOU, or any other agreement entered into by the Company in connection with the Project, which breach or default has continued unremedied for 30 days or more after the delivery of notice of such breach or default by the GoG, such breach will be resolved according to Section 13 unless otherwise mutually agreed by Parties.
- 13.4 Any dispute which cannot be settled amicably within 30 days after receipt by one Party of the other Party's written request to do so may be submitted by either Party to

arbitration before an arbitral tribunal consisting of three (3) arbitrators applying the laws of Georgia.

All disputes arising out of or in connection with the present contract shall be finally settled by International Chamber of Commerce as the appointing party and under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration will be in effect and conducted in English language in Geneva, Switzerland. The decision of any such arbitral tribunal shall be final and binding on the Parties, and may not be appealed against.

14. Force Majeure

14.1 Definition of Force Majeure

Force Majeure shall mean any event beyond the reasonable control of either the GoG or the Company, the occurrence of which could not have been reasonably foreseen at the Effective Date, including but not limited to, war (whether declared or not), revolution, riot, insurrection, general and illegal strikes, strikes of employees of the third companies, civil commotion, invasion, armed conflict, hostile act of a foreign enemy, blockade, embargo, act of terrorism, sabotage, civil disturbance, radiation, biological or chemical contamination, ionizing radiation, explosion, fire, epidemic, cyclone, tidal wave, landslide, lightning, earthquake, flood, volcanic eruption, other natural disaster or calamity of any kind and any other similar event.

14.2 Notice of Force Majeure

If any Principal Party hereto is affected by Force Majeure as defined in Section 14.1 it shall give written notice as soon as reasonably practicable after becoming aware thereof to the other Principal Party. The affected Principal Party shall likewise immediately notify the other Principal Party in writing and, in any event, within 20 business days of the date Force Majeure event ceases. A detailed report elaborating the reasons and consequences of the Force Majeure event will be provided by the Company to the GoG.

14.3 No Breach

If a Force Majeure event shall prevent the total or partial performance of any of the obligations of either Principal Party under this MOU, then the Principal Party claiming Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected and the other Principal Party shall not be entitled to terminate this MOU except as otherwise provided herein. Notwithstanding the Force Majeure event, the Principal Party claiming Force Majeure shall use commercially reasonable efforts to continue to perform its obligations under this MOU and to minimize any adverse effects of such event of Force Majeure.

14.4 Termination Upon Force Majeure

- (a) If a Force Majeure event shall occur and continue for an aggregate period of at least 90 days within a period of 12 months to have any of the effects described

in this Section 14.3, then either Principal Party shall have the right to terminate this MOU.

- (b) Additionally, if a Force Majeure event shall occur and the consequences thereof shall materially and adversely affect the economic or commercial position of the Company or the Project Company from what it was on the Effective Date of this MOU or from what it is or what it would have been but for the occurrence of such Force Majeure event and the consequences thereof, and such event and/or the consequences thereof continue for a period of at least 90 days from the date on which the Company or the Project Company shall give written notice thereof to the GoG, then the Company shall, regardless of any amounts payable in respect thereof, have the right to terminate this MOU.
- (c) In the case of termination of this MOU by the Company pursuant to the provisions of Section 14.4 of this MOU, the GoG shall return the relevant bank guarantee to the Company within 10 days of the date of termination.

15. Counterparts, Language of MOU

This MOU is executed in English language, with four original counterparts.

This MOU shall enter into force on the Effective Date.

Annex 1

LOCATION		
1	Arakali HPP	Ninotsminda
2	Abuli HPP	Akhalkalaki
3	Akhalkalaki HPP	Akhalkalaki

Annex 2

POWER		
		MW
1	Arakali HPP	11
2	Abuli HPP	20
3	Akhalkalaki HPP	15
	Sum	46

Annex 3

The amount of investment to be made		
1	Arakali HPP	90 000 000 USD
2	Abuli HPP	
3	Akhalkalaki HPP	

Annex 4

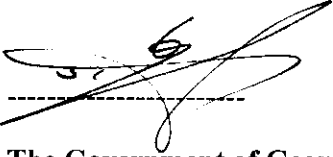
Terms of Obtaining Construction Permits, Commencement of Construction and Commencement of Operations

No	Name	Date of Obtaining Construction Permits after the effective date of Memorandum	Commencement of Construction works after obtaining Construction Permit	Completion of Construction Works after obtaining Construction Permit	Commencement of Operation after obtaining Construction Permit
1	Arakali HPP	9 Month	4 Month	29 Month	32 Month
2	Abuli HPP	9 Month	4 Month	29 Month	32 Month
3	Akhalkalaki HPP	9 Month	4 Month	27 Month	30 Month

Annex 5

Annual Production Period		
		kWh
1	Arakali HPP	63.000.000
2	Abuli HPP	129.000.000
3	Akhalkalaki HPP	85.000.000
	Sum	277.000.000

Signatories:

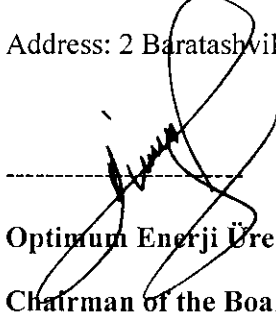


The Government of Georgia

Minister of Energy

Alexander Khetaguri,

Address: 2 Baratashvili Str, 0105 Tbilisi, Georgia

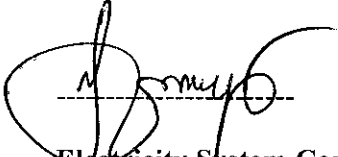


Optimum Enerji Üretim A.Ş

Chairman of the Board

Ali İbrahimağaoğlu

Ağaoğlu My World, 34746 Batı Ataşehir, İstanbul, Türkiye



Electricity System Commercial Operator LTD

General Director

Irina Milorava

Adress: 39 Guramishvili Str., 0181 Tbilisi, Georgia



Enerji Trans LTD

Director

Kahka Sekhniashvili

Address: 2 Baratashvili Str., 0105 Tbilisi, Georgia

THIS DEED OF ADHERENCE is made and entered into on [date] by [insert details of the Project Company] (hereinafter, the “**Project Company**”).

WHEREAS: On the basis of Decision by the Protocol of the Governmental meeting of _____, and according to the terms and conditions of expression of interest approved by the order of the Minister of Energy of Georgia ___ dated _____ the Ministry of Energy of Georgia has announced and held an expression of interest (the “**Expression of Interest**”) for the purposes of implementation of the Abuli, Arakali and Akhalkalaki Hydropower Plants Project in the Samtskhe-Javakheti Region of Georgia, on the river Paravani, which envisages the undertaking of the full technical and economic feasibility study, environmental and social impact assessment, detailed design study, as well as financing, construction, testing, commissioning, ownership, operation and maintenance of a three (or other number as revealed after feasibility study report is prepared) hydropower plants with a capacity of estimated 46 MW in Samtskhe-Javakheti Region of Georgia by the private investor, selected as the winner in the Expression of Interest, on an exclusive basis (the “**Project**”);

WHEREAS: On May 7, 2010, the OPTİMUM ENERJİ ÜRETİM A.Ş (the “**Company**”) submitted a binding bid for the Expression of Interest (the “**Company Bid**”);

WHEREAS: On _____, 2010, the Company was announced to be the winning participant of the Expression of Interest;

WHEREAS: On _____, 2011 the Company and the Government of Georgia (the “**Government**”) signed the Memorandum of Understanding regarding the construction, ownership, and operation of Abuli, Arakali and Akhalkalaki Hydro Power Plants (the “**Memorandum of Understanding**”);

WHEREAS: Pursuant to Sections 2.4 to 2.7 of the Memorandum of Understanding the Company undertook to establish the Project Company and ensure undertaking of all of the Company's obligations under the Memorandum of Understanding by the Project Company, with the Company remaining jointly and separately liable for the same obligations; and

WHEREAS: The Project Company is willing to be irrevocably bound by the obligations of the Company under the Memorandum of Understanding .

NOW, THEREFORE, the Project Company agrees to the following:

1. The Project Company hereby accedes to the Memorandum of Understanding entered into by the Company and agrees to be bound by the rights, obligations and liabilities of the Company under the Memorandum of Understanding. The Project Company irrevocably and unconditionally assumes all of the obligations, and liabilities of the Company under the Memorandum of Understanding, with the Company remaining jointly and severally liable for the same before the Government. Insofar as obligations under the Memorandum of Understanding from the date of execution of this Deed of Adherence are concerned, references to the Company therein shall be deemed supplemented by the references to the Project Company and vice-versa.
2. As of the date of execution of this Deed of Adherence by the Project Company, the Company and the Project Company shall be jointly and severally liable before the Government for fulfillment of the obligations provided under the Memorandum of Understanding. Nothing in this Deed of Adherence shall limit or restrict obligations of the Company or the Government under the Memorandum of Understanding or prejudice or adversely affect in any respect any of the rights and remedies granted to the Government or the Company under the Memorandum of Understanding.
3. The Company shall be considered liable for any breach, resulting out of the Project Company's acts and the Project Company shall be considered liable for any breach, resulting out of the Company's acts, **provided that** the Government agrees that there shall be no double recovery from the Company and the Project Company in respect of a liability of the Company or the Project Company under the Memorandum of Understanding; that to the extent that a liability is discharged by the Project Company such liability shall also be deemed to be discharged by the Company and to the extent that a liability is discharged by the Company, such liability shall also be deemed to be discharged by the Project Company.
4. Furthermore, the reference in the Memorandum of Understanding to the "Principal Parties" shall be deemed to include the Government and the Company, as well as the Project Company.
5. This Deed of Adherence forms an inseparable part of the Memorandum of Understanding.
6. The abovementioned act of adherence may not be cancelled by the Project Company without the advance letter of consent from the Government.

IN WITNESS WHEREOF, the Project Company has caused this Deed of Adherence to be executed by its duly authorized representative as of the date first written above.

[Insert name of the Project Company]

Signature:

Name:

Title:

APPROVED BY:

Optimum Enerji Üretim A.Ş.

Signature:

Name: ALİ İBRAHİMAĞAOĞLU

Title: Chairman of Board

Date: _____

Government of Georgia, represented by the Ministry of Energy

Signature:

Name:

Title:

GUARANTEE

[Insert date]

Letter of Guarantee No.: [---]

Since you, the Government of Georgia, have signed the memorandum in Georgia with our clients, Optimum Enerji Üretim A.Ş. (the "**Company**") related to the full technical feasibility study, environmental impact assessment, detailed design study, as well as design, financing, construction, testing, commissioning, ownership, operation and maintenance of 3 Hydro Power Plants such as Arakali, Abuli, Akhalkalaki plants in the Samtskhe-Javakheti Region of Georgia (the "**Memorandum**"):

We, [---] (the "**Bank**"), hereby unconditionally and irrevocably undertake to pay you any sums up to maximum amount of 9.080.000 USD (the "**Maximum Amount**"), in connection with the Company's obligations under the Memorandum and in accordance with the following:

- (A) We shall pay you immediately upon your written demand and irrespective of any objection by the Company or any other party such amount or amounts as you may demand up to the Maximum Amount;
- (B) All payments made based on your demand shall be free and clear of, and without any present or future deduction or withholding for payment of, any taxes, levies, duties, charges or fees of any nature whatsoever and by whomsoever imposed;
- (C) The undertakings contained in this guarantee constitute direct and fundamental obligations of ours and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source, such as change in the conditions of the contract or extension thereof or change in the scope or nature of work to be performed, or any omission or act by you or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee;
- (D) This guarantee shall remain valid and in full force and effect up to the end of the _____ day of the month of _____ of the year _____ ; and

[Name]

[Title]

[Name of the Bank]



საქართველოს მთავრობის

განკარგულება

№1740 2010 წლის 23 დეკემბერი ქ. თბილისი

საქართველოს მთავრობას, Optimum Enerji Üretim A.Ş.,
შპს „ელექტროენერგეტიკული სისტემის კომერციულ
ოპერატორსა“ და შპს „ენერგოტრანსს“ შორის
დასაადები მემორანდუმის თაობაზე

1. მოწონებულ იქნეს საქართველოს მთავრობას, Optimum Enerji Üretim A.Ş., შპს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორსა“ და შპს „ენერგოტრანსს“ შორის დასაადები მემორანდუმის პროექტი.
2. „საქართველოს მთავრობის სტრუქტურის, უფლებამოსილებისა და საქმიანობის წესის შესახებ“ საქართველოს კანონის 27-ე მუხლის შესაბამისად ზემოაღნიშნულ მემორანდუმს საქართველოს მთავრობის სახელით ხელი მოაწეროს საქართველოს ენერგეტიკის მინისტრმა ალექსანდრე ხეთაგურმა.

პრემიერ-მინისტრი

ნიკა გილაური



საქართველოს იუსტიციის სამინისტრო
MINISTRY OF JUSTICE OF GEORGIA

0123412688510

KA0123412688510

საქართველო, ქ. თბილისი, 0133, გორგასლის ქ.24 ა. ტელ.: 40-51-48, 40-58-36; ელ.ფოსტა: chancellery@justice.gov.ge
24 a, Gorgasali str., 0133, Tbilisi, Tel.: 40-51-48, 40-58-36, E-MAIL: chancellery@justice.gov.ge

№5590

22 / დეკემბერი / 2010 წ.

საქართველოს ენერგეტიკის
მინისტრის პირველ მოადგილეს
ქალბატონ მარიამ ვალიშვილს

ქალბატონო მარიამ,

საქართველოს იუსტიციის სამინისტრომ განიხილა თქვენი აწლის 20 დეკემბრის №02/3686 წერილით წარმოდგენილი საქართველოს ენერგეტიკის სამინისტროსა და თურქულ კომპანია Optimum Energy Uretim A.S.-ს შორის გასაფორმებელი მემორანდუმის პროექტი, რომელთან დაკავშირებით გაცნობებთ, რომ მემორანდუმის პროექტის ყველა დებულება, რომლითაც განსაზღვრულია საქართველოს მთავრობის მიერ ხელშეკრულების შეწყვეტისა და ზიანის ანაზღაურების მოთხოვნის უფლებები, საჭიროებს მიზანშეწონილობის კუთხით დამატებით განხილვასა და გადაწყვეტას. მხედველობაში გვაქვს საქართველოს მთავრობის შეზღუდული უფლება მემორანდუმის შეწყვეტის უფლება გამოიყენოს მხოლოდ საბანკო გარანტიასთან ურთიერთმიმართებით, ხოლო ზიანის ანაზღაურება მოითხოვოს მხოლოდ წინასწარ დადგენილი ზღვრული ოდენობით. აღნიშნულთან დაკავშირებით მხედველობაში უნდა იქნეს მიღებული ხელშეკრულების მოქმედების 20 წლიანი ვადა და დავის არსებობის შემთხვევაში, დავის განხილვის ფორუმი - საერთაშორისო სავაჭრო პალატა.

აქვე შევნიშნავთ, რომ ჩვენი ზემოაღნიშნული პოზიცია მიზანშეწონილობასთან მიმართებით განხილული და საბოლოოდ გადაწყვეტილი იქნება საქართველოს მთავრობის მიერ საქართველოს მთავრობის 2010 წლის 11 მაისის №139 დადგენილებით გათვალისწინებულ სხვა გარემოებათა შეფასებასთან ერთად.

პატივისცემით,

საქართველოს იუსტიციის სამინისტრო,
მინისტრის პირველი მოადგილე

თინა ბურჯალიანი