

Memorandum of Understanding

Between

The Government of Georgia,

Achar Energy 2007 Ltd.

Energo Trans LTD.

and

Electricity System Commercial Operator LTD.

Dated

01/07/2011

Tbilisi, Georgia

Memorandum of Understanding

This Memorandum of Understanding (hereinafter the "MOU") is made on

01/07/2011 by and between the following parties:

- 1) Government of Georgia, represented by the Ministry of Energy and Natural Resources of Georgia with authorization provided to the Minister of Energy and Natural Resources of Georgia Alexander Khetaguri, pursuant to decree of the Government of Georgia #1146 dated May 24, 2011 (the "GoG");
- 2) Achar Energy 2007" Ltd. ("the Company"), a limited liability company incorporated under the laws of Georgia, having its principle office at M. Varshanidze Str. No. 172, Batumi, Georgia, represented by Mr. Ismail Kuris acting as a director of the Company,
- 3) Electricity System Commercial Operator LTD ("ESCO") represented by General Director Irina Milorava;
- 4) Energo Trans LTD ("ET") represented by Director Kakha Sekhiashvili.

The following defined terms shall be used in this MOU:

"BOO" means Build, Own, Operate.

"Effective Date" means the effective date of the First 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, in connection with 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, Bill of Quantities 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 Company (directly itself or through its group companies) obtains debt financing from the Lenders in connection with the Project.

"First MOU": The Memorandum of Understanding signed for the implementation of the Project between the Government of Georgia and the Company on February 28, 2008 which has been amended by and shall be considered entire with the Agreement dated June 8, 2009 signed by and between the Government of Georgia and the Company.

"Generation License" means the document issued by the Georgian National Energy and Water Supply Regulatory Commission, that confirms the right of the 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 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 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 and Natural Resources of Georgia.

"Notice of Termination Right" has the meaning given to such term in Section 6.1 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 the cascade of 3 (three) hydro power plants including Kirnati, Khelvachauri-I, Khelvachauri-II in the Achara Region of Georgia, on the river Chorokhi in the elevations of 53-42 for Kirnati, 42-31 for Khelvachauri-I and 31-22 for Khelvachauri-II (optional) subject to article 2.1 according to the laws of Georgia and the MOU.

"Signature Date" means the date on which this MOU is signed,

"State" means Georgia.

"Substituted Entity" has the meaning given to such term in Section 6.2 of this MOU.

"Substitution Date" has the meaning given to such term in Section 6.7 of this MOU.

"Substitution Notice" has the meaning given to such term in Section 6.3 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 Company 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 Company with such capacity, ET shall reimburse the Company the full amount of the loss of profit which the Company incurs as a result of not being able to transmit to Turkey through the Transmission Line; and
- (b) the Company agrees to pay ET a specified amount the rate of which is regulated by the relevant laws and regulations of Georgia for the services being provided by ET to the Company in connection with the Transmission Line and if the Company utilizes such transmission services from ET in an amount less than such specified amount, the Company 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.

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

"Transmission Line" means the transmission line of 500/400 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. For the avoidance of doubt, this MOU does not fully abrogate the First MOU. The provisions of this MOU are drafted with the intention of inserting new provisions to or clarifying or amending, as the case may be, the provisions of the First MOU as a result of the fact that the Feasibility Report indicates new technical circumstances regarding the Project.

2. Subject of MOU

- 2.1. The Principal Parties of this MOU hereby agree that, in accordance with the Feasibility Report, Project details considered under the first MOU has been Changed and instead of the Hydro Power Plants considered under the first MOU and its Annexes the Company is obliged to construct the Khelvachauri-I regulator and Kirnati regulator with a total MW of 71,02 MW installed capacity and total GWh of 321,6 annual energy production.**

The Principal Parties hereby also agree and accept that it should be decided by the Company as to whether to construct the third regulator Khelvachauri II due to the adverse affects which the construction may have on the agricultural lands in Batumi and other project areas of third parties, including but not limited to submergence, demolition or loss of ground. Thus, the Company shall reserve the right to make a decision within twelve (12) months from the signature of this MOU, whether to construct the third regulator Khelvachauri-II. If the Company doesn't notify the GoG of its decision regarding whether to construct the third regulator within the specified time period, the GoG may grant the right to construct the third regulator Khelvachauri-II to a third party, provided that such construction and/or operation does not prejudice the Company's project and/or any rights of the Company under this MOU.

If the Company decides not to construct the third regulator Khelavachauri-II or doesn't notify the GoG within the specified time period, the Company shall not be subject to any liability nor be applied to any amount of liquidated damage, compensation, reimbursement or any other amount under whatsoever name regarding the third regulator Khelvachauri-II. In that case GOG shall release the relevant bank guarantee or relevant amount of bank guarantee provided by the Company for the purpose of construction of third regulator Khelavachauri-II.

If the Company decides to construct the third regulator, the specified construction commencement and completion dates of third regulator Khelavachauri-II and effectiveness of

relevant bank guarantee shall be extended for a time period equal to that elapses until the Company renders its decision regarding the third regulator Khelvachauri-II.

- 2.2.** The Company shall ensure implementation of the Project.
 - 2.3.** 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.
 - 2.4.** 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.
 - 2.5.** 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)** submit to the GOG the reports prepared by the Company on the respective technical, environmental, economic and legal issues of the third regulator Khelvachauri II;
 - (b)** ensure necessary funds for effective implementation of the Project;
 - (c)** 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;
 - (d)** submit to the GOG every three months all information relating to the progress of the implementation of the Project from the Signature Date until the commencement of operation of all Facilities; and
 - (e)** 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 five 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 in the event of and 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 4,8 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 any of the milestones stated in Annex 4: Procedures to obtaining construction permits for any Facility; commencement of construction works on any Facility - which is attributable to the Company, the following sanctions will apply to the Company, in each case:
- i)** 500 USD for each day of delay from the first day of delay up to and including the 30th day;
 - ii)** 1 000 USD for each day of delay from the 31st day of delay up to and including the 60th day;
 - iii)** 5 000 USD for each day of delay from the 61st day up to and including the 90th day;
 - iv)** 20 000 USD for each day of delay from the 91st day up to and including the 120th day;
 - v)** 50 000 USD for each day of delay from the 121st day up to and including the 150th day;
 - vi)** 160 000 USD for each day of delay from the 151st day onwards.

In case of a delay in reporting on the progress of the project implementation and/or any of the following milestones stated in Annex 4: Completion of construction works of any Facility; testing and/or launching of any Facility - which is attributable to the Company, the following sanctions will apply to the Company, in each case:

- i) 200 USD for each day of delay from the first day of delay up to and including the 30th day;
 - ii) 400 USD for each day of delay from the 31 st day of delay up to and including the 60th day;
 - iii) 1 000 USD for each day of delay from the 61st day up to and including the 90th day;
 - iv) 3 000 USD for each day of delay from the 91 st day up to and including the 120th day;
 - v) 8 000 USD for each day of delay from the 121st day up to and including the 150th day;
 - vi) 9 000 USD for each day of delay from the 151 st 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 (if applicable and relevant evidence is available) 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.
- (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 14.3;
 - ii) by the breach of the MOU by GoG, ET or ESCO;
 - iii) by 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 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 business 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 6 (*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 11 800 000 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 and 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;
 - (c) where the aggregated amount of penalties accrued in accordance with Section 3.6 of this MOU exceeds 11 800 00000 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 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. For

the avoidance of doubt, the obligations of the ET under the ET Agreement shall only include the transmission of electricity till the border of Turkey and providing the necessary capacity for 15 years. Therefore the transmission, sale and distribution of electricity in Turkey shall solely be the rights of Achar Energy.

4. Guarantee

Guarantee

- 4.1. For ensuring of fulfillment by the Company of its obligations considered by the First MOU, the Company has submitted to the GoG a bank guarantees in total amount of 3,561,600.00 (three million five hundred sixty one thousand six hundred) USD, issued by Albaraka Türk Katılım Bankası Anonim Şirketi. Within 30 calendar days after Signature Date the Company shall submit to the GOG new bank guarantee in the form of Annex 6 of this MOU in an amount of 5,900,000.00-USD (five million nine hundred thousand) issued by a bank in the State or from a bank in OECD member countries. After submission the new bank guarantee by the Company in accordance with this article 4.1, old bank guarantees shall be released by the GOG.
- 4.2. The bank guarantee provided by the Company according to article 4.1 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. Or 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 declares in advance that it will not fulfill its remaining obligations and/or where a Georgian 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 Georgian 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 on the Signature Date and shall remain in full force and effect until February 2033 (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 with respect to the Project. Upon expiration of the Term, the 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 if the GoG fails to fulfill its obligations hereunder. In that case the GoG must be notified no later than 60 (sixty) days prior to such termination.

5.4.

(a) Subject to the provision of this MOU, where this MOU is breached by any Principal Party, the breaching Principal Party shall reimburse the other Principal Party for all damage (other than for loss of profit) proven to be directly caused by the breach of the breaching Principal Party.

(b) The Principal Parties agree and acknowledge that in the case of termination of this MOU by the Company due to 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.

- (c) In case GoG terminates the MOU and such termination does not result from a 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.
- (d) 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.

5.5. Survival Upon Termination

- (a) Subject to Section 5.5(b) below, without prejudice to any rights of the Parties, the provisions of Sections, 3.10(a), 5.4, 5.5, 5.6, 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.

5.6. In case of termination of this MOU based on any reasons considered or not considered under this MOU the First MOU automatically shall be terminated.

6. Substitution Rights

- 6.1.** In the event of termination of this MOU by one of the Principal Parties, the terminating Party shall serve a written notice to the Lenders and the other Principal Party. The notification shall be made by the GoG if this MOU is cancelled for whatsoever reason rather than being terminated (a "Notice of Termination Right").
- 6.2.** 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 in accordance with Section 6.6 (the "Substituted Entity").

- 6.3.** 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 6.6 are satisfied.
- 6.4.** 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 and the GoG in the MOU.
- 6.5.** The GoG shall, within a reasonable time following the date of the Substitution Notice, and in any event within one (1) months, inform the Lenders of its acceptance or not of the proposed substitution, which acceptance shall not be withheld if the conditions specified in Section 6.6 have been satisfied.
- 6.6.** The Lenders' right under this provision to nominate a Substituted Entity may be exercised only on two (2) occasions and 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 the 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.
- If the GoG on two (2) occasions does not, for the reasons specified above, 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.
- 6.7.** Following acceptance of the Substituted Entity by the GoG, the GoG shall enter into one or more agreements with the Substituted Entity, the Company, as required, so as to ensure that on the date falling within 10 days of the acceptance by the GoG under Section 6.5 of this MOU (the "Substitution Date"):
- (a)** the Substituted Entity shall become a party to the MOU in place of the Company and shall thereafter be treated as if it is named as a party thereto in place of the Company;
 - (b)** the Substituted Entity shall be granted all of the rights and assume all of the obligations of the 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 5 900 000USD, to the GoG in accordance with terms of the MoU or before the Substitution Date; and

6.8. Upon the Substitution Date the GoG agrees and accepts that, the Company shall be released from any and all of its obligations under this MOU as of substitution date. The Company shall be liable for any claim arising from acts before the substitution date. In addition, once the new bank guarantee is submitted by the Substituted Entity to the GoG, the GoG is obliged to return the bank guarantee provided by the Company within fifteen (15) days at the latest.

7. Other Developments Affecting Project

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

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 Company and not to other persons; and/or
- (c) any contractors or operators with whom 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 Company and not to other persons; and/or
- (c) any contractors or operators with whom the Company has entered into contractual arrangements in connection with the Project and not to other persons.

9. Transfer of Shares in the Company

There shall be no restrictions on the sale, transfer or assignment of the shares in the Company by the shareholders in the Company. The shareholders in the 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 Company and the shareholders in the 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. In the event of a conflict between the provisions of the First MOU and the provisions of this MOU, the provisions of this MOU shall prevail.

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

11.3. If any provision of this MOU becomes invalid or unenforceable, the validity of other provisions shall not be affected.

11.4. 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 breach 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. 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 under the UNCITRAL Arbitration Rules then in effect and conducted in the 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. The appointing authority shall be the International Chamber of Commerce (for the purposes of this Section 13, the "ICC") in accordance with the rules of the ICC as the appointing authority in UNCITRAL or other ad hoc arbitration proceedings then in effect.

14. Force Majeure

14.1. Definition of Force Majeure

Force Majeure shall mean any event beyond the reasonable control of either party of this MOU, 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, 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 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 Parties. The affected Party shall likewise immediately notify the other Parties 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 Party under this MoU, then the Party claiming Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected. Notwithstanding the Force Majeure event, the 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 the Company 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 from what it was on the Signature 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 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, with four original counterparts.



The Government of Georgia

Minister of Energy and Natural Resources of Georgia

Alexander Khetaguri

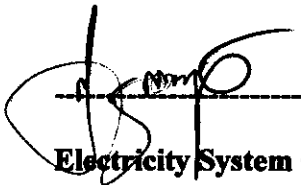
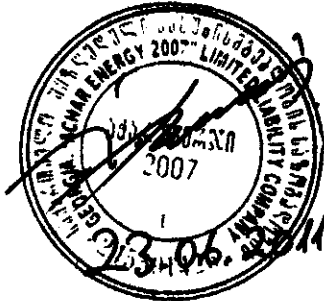
Address: 6 Gulua str., Tbilisi, Georgia

Achar Energy 2007 Ltd.

Director

Ismail Kuris

Address: M. Varshanidze Str. No. 172, Batumi, Georgia



Electricity System Commercial Operator LTD

General Director

Irina Milorava

Address: 2 Baratashvili str., 0105 Tbilisi, Georgia

Energo Trans LTD

Director

Kakha Sekhniashvili

Address: 2 Baratashvili str., 0105 Tbilisi, Georgia

Location

Number	Project Name	Location
1.	Kirnati hydroelectric plant	Achara, Chorokhi
2.	Khelvachauri hydroelectric plant I	Achara, Chorokhi
3.	Khelvachauri hydroelectric plant II	Achara, Chorokhi

Power (Estimated)

Number	Project Name	MW
1.	Kirnati hydroelectric plant	34.644
2.	Khelvachauri hydroelectric plant I	36.376
3.	Khelvachauri hydroelectric plant II	34.645
	Total	105.665

The Amounts of Investments to be Made*

Number	Project Name	The Estimated Amounts of Investments in USD
1.	Kirnati hydroelectric plant	57,231,491
2.	Khelvachauri hydroelectric plant I	69,572,205
3.	Khelvachauri hydroelectric plant II	69,228,798
	Total	196,032,494

*The amounts of investments to be made for each regulator specified here are estimated amounts and based on the Feasibility Report. Therefore these amounts may differ from the amounts to be specified by the final and application project.

The Dates Of Obtaining of Construction Permit, Construction Commencement and Exploitation

Number	Project Name	Procedures to Obtain Construction Permit	Construction Works	Exploitation
1.	Kirnati hydroelectric plant	Start: 01.05.2011 Finish: 31.12.2011	Start: 01.01.2012 Finish: 31.12.2016	Testing Period: January 2017 Launching: February 2017
2.	Khelvachauri hydroelectric plant I			
3.	Khelvachauri hydroelectric plant II			

Annual Production Amount (Estimated)

Number	Project Name	GWh
1.	Kirnati hydroelectric plant	153.9
2.	Khelvachauri hydroelectric plant I	167.7
3.	Khelvachauri hydroelectric plant II	173.2
	Total	494.8

The Letter of Guarantee

—name of the company—

[insert date]

Letter of Guarantee No.: [—]

Since you, the Government of Georgia, have signed the Memorandum of Understanding in Georgia with our clients, [name of the company] (the "Company") relating to conduction of the full technical feasibility study, environmental impact assessment, detailed design study, as well as design, financing, construction, testing, commissioning, ownership, operation and maintenance of ----- Hydro Power Plants in ----- region of Georgia (the "Memorandum"):

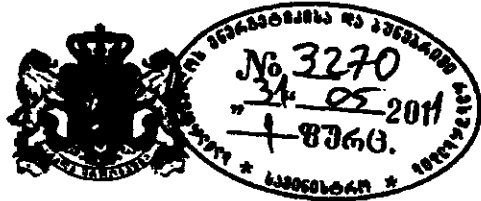
We, [—] (the "Bank"), hereby unconditionally and irrevocably undertake to pay you any sums with amount of ----- USD (the "Maximum Amount"), in connection with the Company's obligations under the Memorandum and in accordance with the following:

- (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**

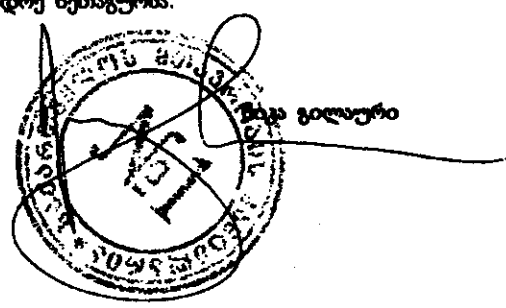
№1146 2011 წლის 24 მაისი ქ. თბილისი

საქართველოს მთავრობას, შპს „აჭარ ენერჯი 2007“-ს, შპს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორსა“ და შპს „ენერჯოტრანსს“ შორის დასადები ურთიერთგაგების მემორანდუმის თაობაზე

1. მოწონებულ იქნეს საქართველოს მთავრობას, შპს „აჭარ ენერჯი 2007“-ს, შპს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორსა“ და შპს „ენერჯოტრანსს“ შორის დასადები ურთიერთგაგების მემორანდუმის პროექტი საქართველოში, აჭარის რეგიონში, მდინარე ჭოროხზე ჰიდროელექტროსადგურების მშენებლობის, ფლობისა და ოპერირების შესახებ.

2. „საქართველოს მთავრობის სტრუქტურის, უფლებამოსილები-სა და საქმიანობის წესის შესახებ“ საქართველოს კანონის 27-ე მუხლის შესაბამისად მემორანდუმს საქართველოს მთავრობის სახელით ხელი მოაწეროს საქართველოს ენერჯეტიკისა და ბუნებრივი რესურსების მინისტრმა ალექსანდრე ხეთაგურმა.

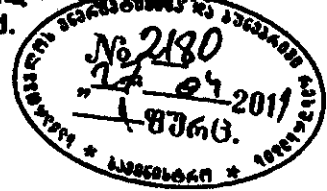
პრემიერ-მინისტრი





შპს "ელექტროენერგეტიკული სისტემის კომერციული ოპერატორი"
Electricity System Commercial Operator Ltd.

27.04.2011 № 01/543



საქართველოს ენერჯეტიკისა და ბუნებრივი
რესურსების მინისტრის პირველ მოადგილეს
ქალბატონ მ. ვაჟიშვილს

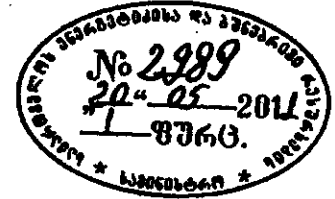
ქალბატონო მარია,

სისტემის კომერციულმა ოპერატორმა განიხილა თქვენი 2011 წლის 27
აპრილის №02/1363 და 2011 წლის 27 აპრილის №02/1360 წერილებით
წარმოდგენილი ხელშეკრულებების პროექტები, რომელთა მიმართაც შენიშვნები არ
გაგეგმინია.

პატივისცემით,

გენერალური დირექტორი

ირინა მილორავე



საქართველოს იუსტიციის სამინისტრო
MINISTRY OF JUSTICE OF GEORGIA

010127920170111

KA010127920170111

საქართველო, ქ. თბილისი, 0114, ვაჟა-ფშაველას ქ.24 ა. ტელ.: 40-51-48, 40-58-36; ელ.ფოსტა: imb@justice.gov.ge
24 a, Gorgasali av., 0114, Tbilisi, Tel.: 40-51-48, 40-58-36, E-MAIL: imb@justice.gov.ge

№13630

19 / მაისი / 2011 წ.

საქართველოს ენერგეტიკისა და ბუნებრივი
რესურსების მინისტრის პირველ მოადგილეს
ქალბატონ მარიამ ვალიშვილს

ქალბატონო მარიამ,

საქართველოს იუსტიციის სამინისტრომ განმეორებით განიხილა თქვენი ამა წლის 16 მაისის №02/1693 წერილით წარმოდგენილი საქართველოს მთავრობას, შპს „აჭარა ენერჯი 2007“, შპს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორსა“ და შპს „ენერგოტრანსს“ შორის გასაფორმებული „ურთიერთგაგების მემორანდუმის“ პროექტი და გაცნობებით, რომ მის მიმართ სამართლებრივი ხასიათის შენიშვნები არ გვაქვს. ამასთან კვლავ შევნიშნავეთ, რომ დავის განხილვის ფორუმად საერთაშორისო არბიტრაჟის არჩევის საკითხი უნდა გადაწყდეს მისი მიზანშეწონილობიდან გამომდინარე.

პატივისცემით,

საქართველოს იუსტიციის სამინისტრო,
მინისტრის პირველი მოადგილე

თინა ბურჯულიანი



საქართველო, თბილისი 0105, ბარათაშვილის 2, Baratashvili str. Tbilisi 0105, Georgia ტელ /ფაქსი/tel./fax: +995(32) 510315

28.04.2011 № 11/142

საქართველოს ენერგეტიკისა და ბუნებრივი
რესურსების მინისტრის პირველ
მთავარს კალბატონ მ. ვალიაშვილს

თქვენს მწლის 27 აპრილის №02/1362 წერილზე

ქალბატონო მარია მ,

შპს "ენერგოტრანსმა" განიხილა საქართველოს მთავრობას, შპს "აჭარ
ენერჯი 2007"-ს, შპს "ელექტროენერგეტიკული სისტემის კომერციულ
ოპერატორს" და შპს "ენერგოტრანსს" შორის გასაფორმებელი მემორანდუმის
პროექტი და გაცნობებთ, რომ წარმოდგენილი დოკუმენტის მიმართ შენიშვნები
არ გაგვანჩნია.

პატივისცემით,

ქალბატონი სვეტიცხოველი
დირექტორი