

**MEMORANDUM**  
Of  
**UNDERSTANDING**

Between

**THE GOVERNMENT OF GEORGIA**

**JSC “SVANETI HYDRO”**

**JSC “GEORGIAN STATE ELECTROSYSTEM”**

**JSC “UNITED ENERGY SYSTEM SAKRUSENERGO”**

**JSC “ELECTRICITY SYSTEM COMMERCIAL OPERATOR”**

And

**“ENERGOTRANS” LLC**

DATE: 25 DECEMBER, 2015.

TBILISI, GEORGIA

The present memorandum of understanding is signed by and between the following Parties:

The Government of Georgia (hereinafter referred to as “Government”) represented by the Minister of Energy of Georgia Mr. Kakha Kaladze;

JSC “SVANETI HYDRO” (hereinafter referred to as “Company”) represented by Director Mr. Zurab Gordeziani;

JSC “Georgian State Electrosystem” (hereinafter referred to as “GSE”) represented by Rehabilitation Manager/Chairman of Management Board, Mr. Sulkhan Zumburidze;

JSC “United Energy System Sakrusenergo” (hereinafter referred to as “SAKRUSENERGO”) represented by General Director, Mr. Romeo Mikautadze;

JSC “Electricity System Commercial Operator” (hereinafter referred to as “ESCO”) represented by General Director, Mr. Vakhtang Ambokadze;

“Energotrans” LLC (hereinafter referred to as “Energotrans”) represented by Director, Mr. Kakha Sekhniashvili.

The Parties sign the present Memorandum of Understanding (hereinafter referred to as: “Memorandum”) on the following:

## I - DEFINITIONS

1. The following capitalized defined terms shall have the meaning ascribed to them below when used in the present Memorandum:
  - 1.1 “Agreement” means the agreement that shall be signed by the Principal Parties for the purpose of starting the Construction Phase and is defined by the Annex 4 of the Memorandum.
  - 1.2 “Bank Guarantee” means Preconstruction Security and/or Construction Security;
  - 1.3 “Commencement of Construction Works” has the meaning ascribed to such term in Annex 3 hereto.
  - 1.4 “Commencement of Operation” means once the Facility is capable of delivering power on a regular basis after having successfully completed the commissioning tests as per prudent utility practices and has met the relevant requirements of Georgian Legislation.
  - 1.5 “Construction Permit” means the permit issued by the competent authority of the State, which gives the Company the right to design, engineer, procure, construct and commission the Facility.

- 1.6 “**Construction Phase**” means the time period starting from the Effective Date of the Agreement defined by the Annex 4 of the Memorandum until the date of Commencement of Operation during which the Company is obliged to implement construction activities;
- 1.7 “**Construction Security**” means the bank guarantee provided by the Company for the purpose of securing the fulfillment of its obligations under Construction Phase;
- 1.8 “**Day/Days**” means calendar day(s);
- 1.9 “**Facility**” means the hydro power plant as defined by the Annex N1 of this Memorandum.
- 1.10 “**Feasibility Study**” means the study/report to be prepared by the Company, which shall include (but not be limited to) all documents and/or data and/or information defined by the Annex N2 of the Memorandum and which confirms whether or not the Project is technically, economically, financially and legally feasible, and can be completed within the defined time period.
- 1.11 “**Generation License**” means the document issued by the Georgian National Energy and Water Regulatory Commission that confirms the right of the Company for the generation of electricity.
- 1.12 “**Guaranteed Power Purchase Agreement**” means the direct agreement that shall be signed between the Company and ESCO in accordance with Clause 18 of this Memorandum;
- 1.13 “**Investment Costs**” means all the costs related to the Project including but not limited to, all construction costs, the cost of acquiring right with respect to land, insurance costs, development costs, consultancy costs, financial costs (including interest, bank fees and commissions), expropriation costs duties, charges, and all other costs related to the implementation of the Project.
- 1.14 “**Lenders**” means the financial institutions providing debt financing to the Company in connection with the financing of the Project, and that have been communicated (nominated) to Government as financing organizations of the Project by the Company for the purposes of Clause 25 of the Memorandum.
- 1.15 “**Ministry**” means the Ministry of Energy of Georgia;
- 1.16 “**Preconstruction Phase**” means the time period starting on the date of execution of the present Memorandum until the date of commencement of Construction Phase during which the Company is obliged to implement preconstruction activities;
- 1.17 “**Preconstruction Security**” means the bank guarantee provided by the Company for the purpose of securing of fulfillment of its obligations under Preconstruction Phase;

1.18 "Parties" means the Government, Company, GSE, SAKRUSENERGO, ESCO and Energotrans jointly.

1.19 "Principal Parties" means the Government and the Company.

1.20 "Project" means the implementation of the Feasibility Study, the environmental and social impact assessment, and the development, design construction and operation of the Facility (including the acquisition of all rights to land plots and other rights necessary for the construction and operation of the Facility).

1.21 "State" means Georgia.

1.22 "Take-or-Pay Principle" means the principle whereby, in accordance with the agreements indicated in clauses 27.4 and 27.5:

- a) GSE, Energotrans and SAKRUSENERGO shall provide Company with necessary dispatch and transmission services and Energotrans additionally with necessary capacity through its own portion of Akhaltsikhe-Borchka power transmission line to export electricity produced by Facility to the Turkish border for a period of 15 years after the Commencement of Operation of the Facility and if Energotrans, GSE and/or SAKRUSENERGO does not provide the Company with necessary dispatch and transmission services and ET additionally with necessary capacity through its own portion of Akhaltsikhe-Borchka power transmission line to export electricity produced by the Facility to the Turkish border, defaulting party in accordance with the agreements indicated in clauses 27.4 and 27.5 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 power transmission network of Georgia which will be calculated in accordance with the terms of the agreements indicated in clauses 27.4 and 27.5; and
- b) the Company agrees to pay Energotrans, GSE and SAKRUSENERGO a specified amount for the services, being provided and/or reserved by them to the Company in connection with the power transmission services and if the Company utilizes such transmission services from Energotrans, GSE and/or SAKRUSENERGO in an amount less than such specified amount (preliminary agreed/reserved), the Company shall nevertheless pay such specified amount during the period specified in the agreements indicated in clauses 27.4 and 27.5, except when the Company, in compliance with the terms and conditions set forth in the agreements indicated in clauses 27.4 and 27.5, notifies Energotrans, GSE and SAKRUSENERGO in accordance with the agreements indicated in clauses 27.4 and 27.5 about the capacity which shall not be used.

1.23 “**Technical Parameters of the Facility**” means the location, installed capacity and annual production as provided in Annex 1, unless otherwise agreed between the Parties, or modified in accordance with this Memorandum.

1.24 “**Transmission Line**” means the 400 KV transmission line from Akhaltsikhe to the Turkish border owned and operated by Energotrans.

## **II - PURPOSE**

2. The purpose of the Memorandum is the implementation of the Project by the Company under the applicable laws and regulations of Georgia and the terms and conditions set out herein.

## **III - PRECONSTRUCTION PHASE**

3. Preconstruction Phase starts on the date of execution of the present Memorandum and ends on the date of commencement of Construction Phase.
4. The Company within the Preconstruction Phase in accordance with the terms and conditions defined by the Annexes 1, 2 and 3 is obliged to:
  - 4.1 Locate and determine the lands necessary and/or affected for the implementation of the Project;
  - 4.2 Conduct the full Feasibility Study according to the schedule defined by Annex 2 (within the parameters and location defined by Annex 1 of this Memorandum) of this Memorandum, finalize the feasibility report and present it to the Ministry. If the quarterly progress reports with respect to the items given in schedule contained in Annex 2 or some part of the Feasibility Study is not of a proper quality the Ministry shall notify the Company in writing about such improper quality of the Feasibility Study and give the Company reasonable additional period of up to three months to adjust the issues observed. Herewith the above mentioned time extension shall not cause the extension of the total term envisaged by Annex 2;
  - 4.3 Finalize the environmental and social impact assessment report, and present it to the Ministry of Environment and Natural Resources Protection of Georgia and to the Ministry of Energy of Georgia;
  - 4.4 Conduct the public hearings defined by Georgian Legislation and present the results to the Ministry of Environment and Natural Resources Protection of Georgia and to the Ministry of Energy of Georgia;
  - 4.5 Submit the proposal to the Government on construction of hydropower plant situated on the river within the elevations, parameters and location provided in Annex 1.

5. In case the Technical Parameters of the Facility that are suggested to provide the efficient utilization of the hydro-potential of the river (for example: installed capacity) are not confirmed by the detailed Feasibility Study , (meaning that the Technical Parameters of the Facility cannot be realized by the Company due to the information or document provided by the Government or any other third party and assumptions made, or data created by the Company or the Government, on the basis of such information and documents are shown by the Feasibility Study to be incorrect) the Company shall not be considered to be in breach of the terms of this Memorandum or the Agreement and the Company shall have the right to modify the design and/or capacity of the Facility, based on Governments written approval.
- 5<sup>1</sup>. The Parties hereby acknowledge, that implementation of the Project by the Company depends on construction of the relevant substation and lines which are required for delivery of electricity produced by the Facility to the power transmission network and are reflected in “10 year development plan of the transmission network of Georgia” adopted by the Ministry on 8th of April 2015, Order 39, as to be constructed in the year 2018.
6. In case the Company, after implementing the obligations defined by the Clauses 4.1 – 4.5 and pursuant to Clause 5 of this Memorandum decides to build Facility, the Company shall present to the Government the proposal within the time frame defined by Annex 2, which proposal shall include the following:
  - 6.1 The Company’s decision on construction of respective hydropower plant;
  - 6.2 Full technical parameters, including capacity and planned annual generation of the Facility;
  - 6.3 Exact coordinates of allocation of the hydropower plant(s) and elevations of the river;
  - 6.4 Approximate total Investments Costs required for implementation of the Project;
  - 6.5 Feasibility Study;
  - 6.6 Environmental and social assessment report (including the results of public hearing defined by Georgian Legislation).
7. The Government within 2 months after receiving the proposal of the Company shall discuss and make a decision on the issue of construction of the Facility. This decision shall only be based on the environmental and social assessment report and/or the results of public hearing defined by Georgian Legislation. If the decision of the Government is positive the Principal Parties shall sign the Agreement within 2 months after the date of the Government’s decision. If the decision of the Government is negative it must be reasonably substantiated. In case of negative decision the Government shall return to the Company the Preconstruction Security.
8. Preconstruction Security
  - 8.1 For the purpose of securing the fulfilment of obligations of Company under the Preconstruction Phase including preparation of Feasibility Study and the environmental and social impact assessment report, the Company has provided the Government with the Bank Guarantee in an amount of 118 500 (one hundred and eighteen thousand five hundred) USD (copy of the Bank Guarantee is attached). The Bank Guarantee provided by the Company shall

remain in force until the date falling two months after the date of commencement of Construction Phase.

8.2 The Government is entitled to claim and receive the full or partial amount under the Bank Guarantee in following cases:

- a) The Company has violated the schedule defined by the Annex 2 for more than 15 days in total (on top of the additional time envisaged by Clause 4.2 and any delay caused by an Excusable Delay as defined in Clause 16) – in an amount of 50% of the Preconstruction Security;
- b) The Company has violated the schedule defined by the Annex 2 for more than 30 days in total (on top of the additional time envisaged by Clause 4.2 and any delay caused by an Excusable Delay as defined in Clause 16) – in a full amount of Preconstruction Security;
- c) If the Company's decision not to implement the Project is made on the grounds other than given in the Clause 12 of the Memorandum - in a full amount of Preconstruction Security.

9. If on the basis of the environmental and social impact assessment and/or the Feasibility Study the Company considers that the implementation of the Project is not possible and/or not feasible, the Company shall, at its discretion, decide whether or not to terminate this Memorandum and shall deliver the notification of such decision to the Government before the time determined for submission of the proposal to the Government about the implementation of the Project pursuant to the schedule given in Annex 2.
10. In any event of termination of this Memorandum by the Company, the Company shall automatically be deprived of the Project development rights and shall be obligated to transfer free of charge to the Government the exclusive ownership rights on the Feasibility Study and the environmental and social impact assessment reports, as well as any other documents and drawings related to the Project which may be in possession of the Company (including new documents developed by the Company) at the time of termination, save to the instances when the Company terminates the Memorandum pursuant to Clause 24.1 below in which case the provisions of Clause 25.3 will apply.
11. In case the Company makes proposal to the Government under Clause 6, but the positive decision on implementation of the Project is not made by the Government pursuant to Clause 7, but the Government at any later stage decides to implement the Project within the substantially same technical parameters provided by the Company in its proposal, the Parties agree that such Project will be offered for implementation to the Company in a first place and the Company will be given 1 month to make a its decision.
12. After the termination of the Memorandum by the Company in accordance with the Clause 9 of the Memorandum, the Government shall return the Preconstruction Security (unless collected by

the Government pursuant to the provisions of this Memorandum prior thereto) only in following case - if the Company's decision not to implement the Project is based on the findings of the Feasibility Study, including but not limited to, possibility of the recovery of the investments made for the implementation of the Project within the time frame usually applicable to the projects of similar character and scale in Georgia and/or implementation of the Project is unreasonable based on environmental and social impact assessment issues.

#### **IV - CONSTRUCTION PHASE**

13. Construction Phase starts on the Effective Date of the Agreement defined by the Annex 4 of the Memorandum and ends on the date of Commencement of Operations.
14. The Company during the Construction Phase is obliged to:
  - 14.1 Obtain the relevant rights with respect to the lands necessary and/or affected for the implementation of the Project;
  - 14.2 Commence construction works based on construction permit of the Facility according to Georgian legislation within the time frame defined by the Annex 3 of the Memorandum.
  - 14.3 Construct the Facility in accordance with this Memorandum according to the parameters and location defined by the Annex 1 and ensure commencement of operation of the Facility within the time frame defined by the Annex 3 of the Memorandum.
  - 14.4 Ensure necessary funds for effective implementation of the Project.
  - 14.5 Ensure the construction in accordance with the safety and environmental and other standards defined by the Georgian legislation;
  - 14.6 The Company at its own expense is obliged to ensure the full and free access of the representatives of the Government of Georgia, the Ministry of Energy of Georgia, the Ministry of Environment and Natural Resources Protection of Georgia and/or any entitled governmental entity for the purpose of monitoring the construction process.
  - 14.7 Upon the reasonable request of the authorized governmental body, the Company shall, at its own expense ensure the quality and safety monitoring of the construction materials.
15. Construction Security.
  - 15.1 For the purpose of securing the obligations of the Company under the Construction Phase namely the Term of Commencement of Construction Works based on Construction Permit and of Commencement of Operation of the Facility defined by the Annex 3 of the Memorandum, the Company shall within 15 working days after signing the Agreement provide to the



Government the Construction Security in an amount of 2 370 000 (two million three hundred seventy thousand) USD, (the amount of this Guarantee shall be precisely defined after final determination of the exact capacity of the Facility according to feasibility study submitted by the Company, in accordance with the provisions of this Memorandum). The Construction Security provided by the Company shall remain in force until the date falling 5 months after the date of Commencement of Operation of the Facility defined by the Annex N3 of the Memorandum. The Construction Security submitted by the Company shall be issued by any bank licensed by State or the OECD member countries.

15.2 The violation by the Company of the Term of Commencement of Construction Works based on Construction Permit defined by the Annex 3 of the Memorandum shall cause the penalization of the Company in an amount of 1,5 % of the full Construction Security for each delayed day. Herewith the imposed fine shall be paid by the Company within 15 days from receiving the request from Ministry. The Construction Security shall be reduced by the amount of fine paid by the Company.

15.3 The violation by the Company of the term of Commencement of Operation defined by the Annex 3 of the Memorandum shall cause the penalization of the Company in an amount of 1,5 % of the full Construction Security for each delayed day. Herewith the imposed fine shall be paid by the Company within the 15 days from receiving the request from Ministry. The Construction Security shall be reduced by the amount of fine paid by the Company.

15.4 The Government is entitled to claim and receive the full or partial amount under the Construction Security in following cases:

- a) The Company refuses to pay the fine imposed on it according to the Clause 15.2 and/or 15.3 of the Memorandum – in an amount equal to the unpaid fine.
- b) Government terminates the Memorandum according to Clause 22 – in a full amount of existing Construction Security.

16. For avoidance of any doubts, a delay shall not be considered as breach of the terms and conditions of the Memorandum and the Company shall not be penalized due to any delay in implementing the terms and conditions of the Memorandum if it is caused:

- a) By Force Majeure event;
- b) Breach of this Memorandum or the Agreement by the Government;
- c) State or local self-governing bodies of Georgia, or their representatives acting illegally, failing to act, or not fulfilling their obligations, fully or partially; or
- d) By any transmission and/or dispatch licensee of Georgia or their representatives acting illegally, failing to act, or not fulfilling their obligations, fully or partially (any delay caused by any of the foregoing events or circumstances an “Excusable Delay”);

## **V - GENERAL CONDITIONS**

17. For the first 15 (fifteen) years of operation, beginning from the date of Commencement of Operation of the Facility (the "Initial Operation Period"), the full power generation of the Facility shall be sold during the following months of each year: January, February, March, April, September, October, November and December (the "Winter Months") exclusively to ESCO.

18. For the purpose of Clause 17 of the Memorandum, for the Initial Operation Period, during the Winter Months, the Company shall sell the generated power in accordance with the Guaranteed Power Purchase Agreement to be signed with ESCO at a tariff of 5.5 USD Cent per KWh at the interconnection point (busbar).

19. Other than the Winter Months of the Initial Operation Period, the Company is entitled to sell the generated power at its sole discretion to any purchaser in Georgia or export abroad under a free (deregulated) tariff.

20. In case of insolvency and/or liquidation of ESCO and/or assignment of its functions to any other entity due to change of the laws or otherwise, Government shall make its best effort within its competence to assign rights and obligations of ESCO to the new entity (entities) or otherwise transfer such rights and obligations to the new entity(s) which under the relevant Georgian legislation will be wholly or partially carrying out the functions of ESCO in the energy sector of Georgia.

## **VI - TERMINATION OF THE MEMORANDUM**

21. This Memorandum shall be terminated in following cases:

21.1 By mutual agreement of the Principal Parties – from the date of agreement on termination.

21.2 If the Agreement defined by Annex 4 of the Memorandum is not signed according to the Clause 7 of the Memorandum – automatically on expire date of the Preconstruction Phase defined by the Annex 3 of the Memorandum.

22. The Government may terminate the Memorandum unilaterally, by serving the written notice to the Company, in following cases:

22.1 In case the amount of fine, according to the Clause 15.2 reaches 50% or more of the full amount of the Construction Security.

22.2 In case the amount of fine, according to the Clause 15.3 reaches 50% or more of the full amount of the Construction Security.

22.3 Company has refused to implement the Project pursuant to Clause 9.

22.4 The Company has essentially violated any term of the Memorandum and/or its Annexes, as a result of which the Memorandum loses its initial meaning.

22.5 In case the Company violates the schedule defined by Annex 2 and such violation lasts for more than 30 days as from the date of receipt of a written notice from the Government.

22.6 According to the information/documents received from the Company and/or obtained by the Government it is clear, that the necessary actions, for fulfilling the obligations under the Memorandum, are not conducted by Company and aforementioned lasts for more than 100 days, as from the date of receipt of a written notice from the Government.

23. Termination of the Memorandum by the Government according to Clause 22 shall cause the following:

23.1 The rights (including ownership rights) of the Company on the land plots necessary and/ or affected for the implementation of the Project shall be transferred to the State.

23.2 The Company shall be deprived the right to implement the Project.

23.3 Exclusive ownership rights of the Feasibility Study and the environmental and social impact assessment reports, as well as any other documents and drawings related to the Project which may be in possession of the Company (including new documents developed by the Company) shall be transferred to the Government.

24. The Company may terminate the Memorandum unilaterally, by serving the written notice to the Government, in following cases:

24.1 If the Government essentially fails to fulfill its liabilities hereunder. The Government must be notified no later than 60 days prior to such termination.

24.2 The Company elects to exercise its right under Clause 9 of this Memorandum. The Government must be notified no later than 60 days prior to such termination.

25. The termination of the Memorandum according to the Clause 24 of the Memorandum by the Company shall cause the following:

25.1 The rights (including ownership rights) of the Company on the land plots necessary and/ or affected for the implementation of the Project shall be transferred to the State.

25.2 The Company shall be deprived the right to implement the Project.

25.3 In case of termination of this Memorandum by the Company under the Clause 24.1 of this Memorandum, the Government shall be liable to reimburse the Company for the Investment Costs which have accrued up to the date of termination of this Memorandum. Following such reimbursement by the Government to the Company, all tangible and/or intangible assets created and/or financed with the Investment Cost which is reimbursed by

Government shall be transferred to the ownership of the Government (free of all encumbrances) in exchange of such reimbursement.

25.4 Exclusive ownership rights of the Feasibility Study and the environmental and social impact assessment reports, as well as any other documents and drawings related to the Project which may be in possession of the Company (including new documents developed by the Company) shall be transferred to the State.

25.5 The Government shall return the existing Bank Guarantee.

25.1 Termination of the Memorandum by the Government or by the Company shall cause the termination of the Memorandum for all Parties and accordingly the termination of the agreements signed in accordance with clauses 27.4. and 27.5.

25.2 In case of termination of the Memorandum and accordingly agreements signed in accordance with clauses 27.4. and 27.5 no Party is obliged to reimburse any damages resulting of such termination except the Government and the Company against each other as it is defined by the Memorandum.

26. The Government acknowledges that it shall not exercise its right to terminate this Memorandum in accordance with Clause 22 of this Memorandum before complying with the procedure specified in Clauses Clause 26.1 through 26.6 of this Memorandum:

26.1 If at any time the Government intends to exercise its right to terminate the Memorandum under Clause 22 of this Memorandum, before the Government serves a notice on the Company to terminate the Memorandum the Government shall serve a notice on the Lenders that the Government has a right to terminate the Memorandum in accordance with Clause 22 (the "Notice of Termination Right").

26.2 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 Government to be substituted for the Company in accordance with Clause 26.6 (the "Substituted Entity").

26.3 The Lenders and/or the Substituted Entity are entitled to request that new terms and conditions should apply to the contractual arrangements between the Government and the Substituted Entity, provided that the contractual arrangements between the Government and the Substituted Entity should be substantially the same as those between the Companies, the Government in the Memorandum.

26.4 The Government shall, within a reasonable time following the nomination of the Substituted Entity and in any event within two (2) months, inform the Lenders of its acceptance or not of the proposed substitution, which acceptance shall not be withheld or delayed if the conditions specified in Clause 26.5 have been satisfied.

26.5 The Lenders' right under this provision to nominate a Substituted Entity may be exercised only on two (2) occasions and if the Government on two (2) occasions does not, for the reasons specified in this Clause 26, accept the Substituted Entity proposed by the Lenders, the Government shall be entitled to serve the notice terminating the Memorandum in accordance with Clause 22 and for the purposes of this Clause 26, the only circumstances in which the Government can refuse a Substituted Entity proposed by the Lenders are as follows:

- (a) if the Substituted Entity does not accept the substantial terms and conditions of Memorandum; 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 Memorandum.

26.6 Following acceptance of the Substituted Entity by the Government, the Government 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 1 month of the acceptance by the Government under Clause 26.5. of this Memorandum (the "Substitution Date"):

- a) the Substituted Entity shall become a party to the Memorandum 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 Memorandum as from the Substitution Date;
- c) the Government shall owe its obligations under the Memorandum to the Substituted Entity;
- d) the Substituted Entity submits a new relevant bank guarantee to the Government; 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 under the Memorandum.

## **VII - LIABILITIES OF THE GOVERNMENT**

27. Notwithstanding the other obligations of the Government under this Memorandum, The obligations of the Government are also as follows:

27.1 The Government shall use its best endeavors to assist the Company with the implementation of the Project in any manner within its competence as contemplated by this Memorandum, which shall include the issuance of required permits and licenses, provided that the Company meets the relevant requirements under the Georgian legislation.

27.2 The Government within its competence and provided that Company have met with relevant requirements of the Georgian Legislation, shall ensure that the rights on the state owned land plots necessary for and/or affected by the implementation of the Project shall be transferred to the Company according to the Georgian legislation.

27.3 The Government shall ensure that the state owned land plots that potentially are necessary to implement the Projects are not alienated to the third parties.

27.4 Government within its competence shall ensure that Energotrans shall enter into the agreement with the Company for the transmission/export of the electricity generated by the Company to Turkish border via the Transmission Line, which agreement shall be based on Take-or-Pay Principle. Energotrans shall guarantee the provision to the Company of the necessary capacity on the Transmission Line allowing the transmission of the electricity to be produced by the Facility (except the electricity produced by the Facility in Winter Months) for a period of 15 years after the Commencement of Operation of the Facility.

27.5 The Government within its competence shall assist the Company with the implementation of the Project within its authority as contemplated by this Memorandum, and Government shall assist Company in acquiring the relevant licenses and permits, which includes but not limited to water usage and environmental impact licenses/permits, license/permits for the construction works, technical conditions for the temporarily and permanent connections to the grid, agreements with relevant counterparts (GSE and SAKRUSENERGO) for provision of necessary transmission and dispatch services , license/permits for storing and using explosives, collections, crushing and using boulders, river bed materials and rocks from quarries etc. providing that the Company meets the relevant requirements under the Georgian legislation.

27.6 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 Government agrees that Company shall be entitled to a relevant time extension for fulfillment of its obligations under this Memorandum.

27.7 The Government shall ensure that the maximum output of the Facility shall be reflected in annual electricity (power) balance of the State and that central dispatch licensee of the State and other electricity service providers shall at all times act and operate in a manner that will guarantee equal and fair treatment of the operation of the Facility in all respects, including the securing of the right of the Company under the Clause 27.4 and 27.5 take into account the requirements of Georgian Legislation.

## **VIII - DISCRIMINATORY CHANGE IN LAW AND TAX**

28 The Government within its competence agrees that it shall not initiate or propose any discriminatory changes in the law of Georgia or approve or otherwise allow any regulations which would apply expressly to:

28.1 The Project and not to similar projects procured under an agreement with the Government.

28.2 The Company and not to other persons in general; and/or

28.3 Any contractors or operators with whom the Company has entered into contractual arrangements in connection with the Project and not to other persons in general.

29 The Government 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:

29.1 The Project and not to similar projects procured under an agreement with the Government;

29.2 The Company and not to other persons in general; and/or

29.3 Any contractors or operators with whom the Company has entered into contractual arrangements in connection with the Project and not to other persons in general.

## **IX - AMENDMENTS OF THE MEMORANDUM**

30 Amendments

30.1 This Memorandum may be amended by written agreement between the Parties.

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

## **X - NOTIFICATIONS**

31 A notice under or in connection with this Memorandum (a "Notice"):

31.1 shall be in writing.

31.2 shall be made in English language.

31.3 shall be delivered personally or sent by first class post (and air mail if overseas) courier, or fax and/or electronically (with original to follow) to the party.

31.4. is effective when actually received.

## **XI - GOVERNING LAW AND DISPUTE RESOLUTION**

32 This Memorandum shall be governed by the Georgian Legislation.

- 33 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 Memorandum. The Parties agree that their respective duly authorized representatives shall regularly meet during the validity period of this Memorandum 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 relevant parties.
- 34 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 shall be submitted by either Party to The Common Courts of Georgia according to the Georgian legislation.

## **XII - FORCE MAJEURE**

- 35 Force Majeure shall mean any event beyond the reasonable control of either the party, the occurrence of which could not have been reasonably foreseen at the date of signing the Memorandum, 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.
- 36 If any party hereto is affected by Force Majeure as defined in previous Clause, it shall give written notice immediately after becoming aware thereof to the other party. A detailed report elaborating the reasons and consequences of the Force Majeure event will be provided by any affected party to the other party.
- 37 If a Force Majeure event shall prevent the total or partial performance of any of the obligations of either Party under the Memorandum, then the Party claiming Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected and the other Party shall not be entitled to terminate this Memorandum except as otherwise provided herein. Notwithstanding the Force Majeure event, the Party claiming Force Majeure shall use commercially reasonable efforts to continue to perform its obligations under this Memorandum and to minimize any adverse effects of such event of Force Majeure.

## **XIII - ADDITIONAL CONDITIONS**

- 38 The present Memorandum enters into force (Effective Date) on the day of execution (signing) and is in full force until the Parties have fully fulfilled all the obligations, defined by the present Memorandum, towards each other.
- 39 The present Memorandum is made in English language, into 6 (six) equally binding copies.



## XIV - SIGNATORIES

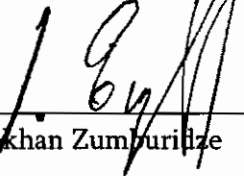
The Government of Georgia

  
\_\_\_\_\_  
Kakha Kaladze

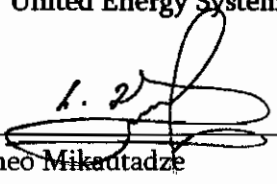
JSC "Svaneti Hydro"

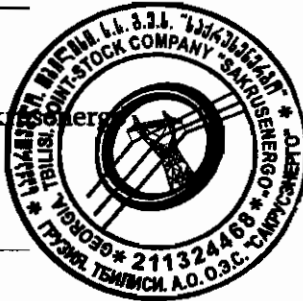
  
\_\_\_\_\_  
Zurab Gordeziani

JSC "Georgian State Electrosystem"

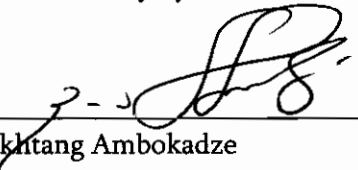
  
\_\_\_\_\_  
Sukhan Zumburidze

JSC "United Energy System Sakrebulo Energy"

  
\_\_\_\_\_  
Romeo Mikautadze



JSC "Electricity System Commercial Operator"

  
\_\_\_\_\_  
Vakhtang Ambokadze

"Energotrans LLC"

  
\_\_\_\_\_  
Kakha Serghiniashvili



ANNEX 1

NAME	LOCATION	RIVER ELEVATION		ANNUAL GENERATION (GWH)	CAPACITY (MW)
Mestiachala 1 HPP	Samegrelo-zemo Svaneti Region. River Mestiachala	1860	1637	103,5	23,7

ANNEX 2

Name of HPP: Mestiachala 1 HPP	The Quantity of Months from the Effective Date the Memorandum			
	3	6	9	12
Sites and main parameters definitions	√			
Topographical Surveys and Preparation of Maps	√			
Geological, Geophysical		√		
Seismic Risk analysis		√		
Construction Materials Survey			√	
Meteorological and Hydrological Studies		√		
Hydraulic Studies			√	
Alternative Analysis			√	
Technical Design			√	
Infrastructure			√	
Power Generation and Utilization			√	
Transmission System Associated			√	
Bills of Quantities			√	
Construction Organization				√
Economic Analysis				√
Financial Analysis				√
Procurement Planning and Execution Scheme				√
Feasibility Study completion and Submission				√
Environmental and Social Assessment report completion and Submission				√
Conduct the public Hearings an submit the results				√
Locate and determine the lands necessary for the implementation of the Project				√
Submission of the proposal to the Government about the implementation of the Project				√

**ANNEX 3**

<b>PRECONSTRUCTION PHASE</b>		<b>CONSTRUCTION PHASE</b>	
<b>Start</b>	<b>End</b>	<b>Start</b>	<b>End</b>
The Effective Date of the Memorandum	The Effective Date of the Agreement	The Effective Date of the Agreement	Commencement of Operations
16 months after the Effective Date of the Memorandum		Commencement of Construction Works based on Construction permit – 8 months after the Effective Date of the Agreement	Commencement of Operations 36 months after the Construction Permit is acquired

## ANNEX 4

### AGREEMENT

(Annex 4 to the Memorandum of understanding signed between the Government of Georgia, JSC “Svaneti Hydro”, JSC “Georgian State Electrosystem”, JSC “United Energy System Sakrusenergo”, “Energotrans” LLC and JSC “Electricity System Commercial Operator” on \_\_\_\_\_  
(hereinafter: “Memorandum”))

Tbilisi \_\_\_\_\_

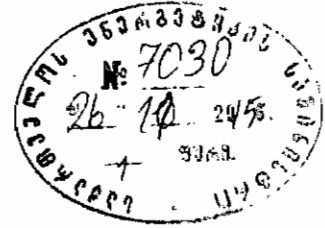
The Government of Georgia (hereinafter referred to as “Government”) represented by the Minister of Energy of Georgia Mr. Kakha Kaladze;

JSC “Svaneti Hydro” (hereinafter referred to as “Company”) represented by Director Mr. Kaha Hizanshvili;

Whereas the Principle parties based on Feasibility Study, environmental and social impact assessment and the results of public hearings prepared and submitted by the Company according to the Memorandum have made a mutual decision on Construction of Facility Defined by the Annex 1 of the Memorandum.

Therefore Principal parties sign the present Agreement to commence the Construction Phase.

1. The Company is obliged to submit to the Government the bank guarantee according to the article 15.1 of the Memorandum within the 15 working days after signing the present agreement.
2. The present Agreement enters into force and is effective (Effective Date) from the day, when Company fulfills its obligation under the article 1 of this Agreement
3. In case the Company has not fulfilled its obligation under the article 1 of this Agreement the Memorandum is terminated and the consequences defined by the Article 23 of the Memorandum shall apply.
4. Signatures:



## საქართველოს მთავრობის განკარგულება

№2457 2015 წლის 19 ნოემბერი ქ. თბილისი

საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერგოტრანსს“, სს „გაერთიანებულ ენერგეტიკულ სისტემა საქრუსენერგოს“ და სს „სვანეთი ჰიდროს“ შორის დასადები ურთიერთგაგების მემორანდუმის თაობაზე

1. მოწონებულ იქნეს საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერგოტრანსს“, სს „გაერთიანებულ ენერგეტიკულ სისტემა საქრუსენერგოს“ და სს „სვანეთი ჰიდროს“ შორის დასადები ურთიერთგაგების მემორანდუმის პროექტი.

2. „საქართველოს მთავრობის სტრუქტურის, უფლებამოსილებისა და საქმიანობის წესის შესახებ“ საქართველოს კანონის 27-ე მუხლის შესაბამისად, ურთიერთგაგების მემორანდუმს, საქართველოს მთავრობის სახელით, ხელი მოაწეროს საქართველოს ენერგეტიკის მინისტრმა კახა კალაძემ.

პრემიერ-მინისტრი

*Handwritten signature*



ირაკლი ღარიბაშვილი



საქართველოს იუსტიციის სამინისტრო  
MINISTRY OF JUSTICE OF GEORGIA



KA010171630276015

საქართველო, ქ. თბილისი, 0114, ვაჟა-ფშაველას ქ. 24 ა. ტელ: 2 40-51-48, 2 40-58-36, ელ. ფოსტა: info@justice.gov.ge  
24 a, Gorgasali str., 0114, Tbilisi, Tel: 2 40-51-48, 2 40-58-36, E-MAIL: info@justice.gov.ge

№7770

12 / ოქტომბერი / 2015 წ.

საქართველოს ენერჯეტიკის მინისტრის  
მოადგილე,  
ნატონ ირაკლი ხმალაძეს

ნატონ ირაკლი,

საქართველოს იუსტიციის სამინისტრომ განიხილა თქვენ მიერ 2015 წლის 7 ოქტომბრის №04/3758 წერილით წარმოდგენილი საქართველოს მთავრობას, სს „ელექტროენერჯეტიკული სისტემის კომერციულ ოპერატორს“, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერჯოტრანსს“, სს „გაერთიანებული ენერჯეტიკული სისტემა საქრუსენერგოს“ და სს „სვანეთი ჰიდროს“ შორის დასადგები ურთიერთგაგების მემორანდუმის პროექტი, რომელთან დაკავშირებითაც გაცნობებთ შემდეგს:

ხელშეკრულების პროექტის მე-5 მუხლის ბოლო წინადადების თანახმად, ამავე მუხლით გათვალისწინებულ შემთხვევაში კომპანიას უფლება აქვს, ცალმხრივად შეცვალოს სადგურის დირაქტი და მოცულობა. მიზანშეწონილია, რომ კომპანიისთვის მინიჭებული აღნიშნული უფლება დაინტერდინაროს საქართველოს მთავრობის მხრიდან წინასწარ თანხმობას.

ამასთან, ხელშეკრულების პროექტის მე-17 მუხლი შეიცავს ტექნიკური ხასიათის ხარვეზს, კერძოდ, ფრაზა „the full annual power generation of the Facility“ უნდა შეიცვალოს „the full power generation of the Facility“-ით.

პატივისცემით,

გ. ლორთქიფანიძე

მინისტრის მოადგილე

გოზა ლორთქიფანიძე

867/102-02

Bank Guarantee

Issuance Date: August 04, 2015

**BANK GUARANTEE REF.: 2548039-8032853**

**GUARANTOR: JSC „ TBC Bank (Tax I/D 204854595)**  
**ADDRESS: Tbilisi, MARjanishvili Street. # 7**

**PRINCIPAL: JSC Svaneti Hydro (TAX ID: 405021275)**  
**ADDRESS: 29a Gagarini Str. 0160, Tbilisi, Georgia**

**BENEFICIARY: THE GOVERNMENT OF GEORGIA REPRESENTED BY THE MINISTRY OF ENERGY OF GEORGIA**

**GUARANTEE AMOUNT /CURRENCY: USD 118,500 (US DOLLARS: One hundred and eighteen thousand five hundred)**

**VALIDATION TIME: Till August 31, 2017**

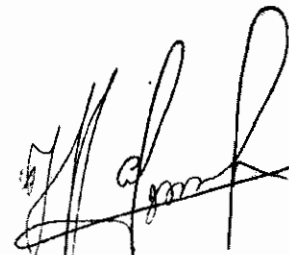
We were informed that JSC Svaneti Hydro (TAX ID: 405021275) (Hereinafter the “Principal”) has the intention of submission of application for participating in the expression of interest for preparation of the feasibility study, construction, possession and operation of Mestiachala 1 Hydro Power Plant in Georgia.

In accordance with regulations the Principal has to present bank guarantee ensuring preparation of feasibility study and environmental impact assessment report on Mestiachala 1 Hydro Power Plant and presentation of the construction guarantee pursuant to the terms and conditions of the Memorandum of Understanding to be signed between the Principal and the Government of Georgia (the “MOU”).

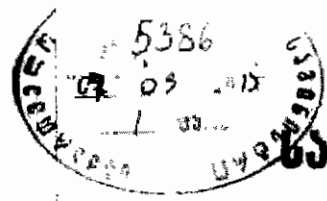
We, JSC “TBC Bank”, having our registered address at Tbilisi, MARjanishvili Street. # 7 (the “Guarantor”), under this bank guarantee (“Bank Guarantee”) hereby unconditionally and irrevocably undertake to pay you any sums up to a maximum amount of USD 118,500.00 (US Dollars: One hundred and eighteen thousand five hundred) (“Maximum Guarantee Amount”) in connection with the Principal’s obligation of preparation of the feasibility study and environmental impact assessment report and presentation of the construction guarantee pursuant to the terms and conditions of the MOU, in accordance with and subject to the following:

- (A) Guarantor shall pay you We shall pay you upon your first written demand after 5 working days and irrespective. of any objection by the Principal or any other party such amount or amounts as you may demand up to the Maximum Amount of 118,500.00 (US Dollars: One hundred and eighteen thousand five hundred);
- (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 Bank Guarantee shall remain valid and in full force until and Till August 31, 2017 (hereinafter the “expiry date”); and expires full and automatically, should Beneficiary’s original written request for payment not be in our possession at our above mentioned address before the expiry date;
- (D) Demand for payment or any other correspondence from the beneficiary must be accompanied by a copy of the decision of the Government of Georgia providing the authorization of respective rights under Agreement. Any document(s) presented under the guarantee must be made in English and/or Georgian languages.
- (E) Consequently any demand for payment under this guarantee must be received by the guarantor at the above indicated office before the expiry date not later than (UTC/GMT +04:00 HOURS) 5pm at the chancellery department of JSC TBC BANK, to the attention of Trade Finance Department. After expiry this guarantee will become null and void whether returned to us or not.
- (F) This Bank Guarantee will be reduced by each payment made by us as a result of a claim. This guarantee will be governed by Georgian Law, place of Jurisdiction is Tbilisi. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication no. 758.

  
**DEPUTY CORPORATE DIRECTOR**  
Giorgi Shikhashvili







# საქართველოს მთავრობის ბანკარგულაბა

N1847 2015 წლის 4 სექტემბერი ქ.თბილისი  
სამეგრელო-ზემო სვანეთის რეგიონში „მესტიაჭალა 1“

ჰიდროელექტროსადგურის მშენებლობის ტექნიკურ-ეკონომიკური  
შესწავლის, მშენებლობის, ფლობის და ოპერირების შესახებ ინტერესთა  
გამოხატვაში გამარჯვებული პირის გამოვლენის თაობაზე

1. საქართველოს მთავრობის 2013 წლის 21 აგვისტოს №214  
დადგენილებით დამტკიცებული „საქართველოში ელექტროსადგურების  
მშენებლობის ტექნიკურ-ეკონომიკური შესწავლის, მშენებლობის, ფლობის და  
ოპერირების შესახებ ინტერესთა გამოხატვის წესის“ მე-6 მუხლის  
შესაბამისად, სამეგრელო-ზემო სვანეთის რეგიონში „მესტიაჭალა 1“  
ჰიდროელექტროსადგურის მშენებლობის ტექნიკურ-ეკონომიკური  
შესწავლის, მშენებლობის, ფლობის და ოპერირების შესახებ ინტერესთა  
გამოხატვაში გამარჯვებულად გამოვლინდეს სს „სვანეთი ჰიდრო“.

2. საქართველოს ენერჯეტიკის სამინისტრომ უზრუნველყოს ინტერესთა  
გამოხატვაში გამარჯვებულ პირთან გასაფორმებელი ურთიერთგაგების  
მემორანდუმის პროექტის საქართველოს მთავრობის სხდომაზე  
განსახილველად წარმოდგენა.

პრემიერ-მინისტრი



ირაკლი ღარიბაშვილი



ელექტროენერგეტიკული ბაზრის ოპერატორი  
Electricity Market Operator

საქართველო, თბილისი, 0114, ბარათაშვილის ქ. 2  
ტელეფონი: 2401420; ფაქსი: 2601915

2 Baratashvili Str., 0114 Tbilisi, Georgia  
Phone: +995 32 2401420; Fax: +995 32 2601915

N 01/1098  
05/11/2015

1098-01-2-201511051115



თანხმობა ხელმოსაწერი  
ურთიერთგაგების მემორანდუმის  
პროექტზე

საქართველოს ენერგეტიკის მინისტრის  
მოადგილეს ბატონ ირაკლი ხმალაძეს

ბატონო ირაკლი,

საქართველოს ენერგეტიკის სამინისტროს 2015 წლის 23 ოქტომბრის #04/3959 წერილის პასუხად გაცნობებთ, რომ ბაზრის ოპერატორმა განიხილა საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერგოტრანსს“, სს „გაერთიანებული ენერგეტიკული სისტემა საქრუსენერგოს“ და სს „სვანეთი ჰიდროს“ შორის დასადები ურთიერთგაგების მემორანდუმის პროექტი (მესტიაჭალა 1 ჰესი), რომელთან დაკავშირებითაც შენიშვნები არ გაგვაჩნია.

პატივისცემით,

ვახტანგი ამზოკაძე

გენერალური დირექტორი

OFFICE@ESCO.GE • WWW.ESCO.GE

სს „ელექტროენერგეტიკული სისტემის კომერციული ოპერატორი“  
რეგისტრირებულია ქ. თბილისის საგადასახადო ინსპექციის მიერ 07.08.2006; საიდ. კოდი 205170036

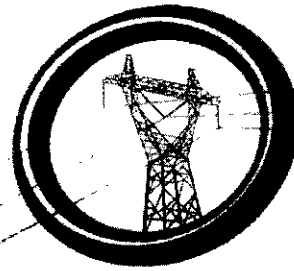
ELECTRICITY SYSTEM COMMERCIAL OPERATOR JSC  
Registered by Tbilisi Tax Inspectorate on 07.08.2006; ID CODE 205170036

საქრუსენერგო

სს ბაქათიანძეშვილი ენერჯისტიკის სისტემა

SAKRUSENERGO

JSC UNITED ENERGY SYSTEM



N 05/732  
11/11/2015

732-05-2-201511111620



საქართველოს ენერჯეტიკის მინისტრის  
მოადგილეს ბ-ნ ირაკლი ხმალაძეს

ბატონო ირაკლი,

სს გეს „საქრუსენერგო“-მ განიხილა საქართველოს მთავრობას, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერჯოტრანსს“, სს გაერთიანებული ენერჯეტიკული სისტემა „საქრუსენერგოს“, სს „ელექტროენერჯეტიკული სისტემის კომერციულ ოპერატორს“ და სს „სვანეთი ჰიდრო“-ს შორის გასაფორმებელი ურთიერთგაგების მემორანდუმის პროექტი, რომელთან დაკავშირებითაც გაცნობებთ, რომ შენიშვნები არ გაგვაჩნია.

პატივისცემით,

რომეო მიქაუტაძე

გენერალური დირექტორი



საქართველოს სახელმწიფო ელექტროსისტემა / Georgian State Electrosystem

საქართველო, თბილისი 0105, ბარათაშვილის 2, Baratashvili str., Tbilisi 0105, Georgia; ტელ./ფაქსი/Tel/Fax: +995 322 983704; +995 322 510101



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საქართველოს ენერგეტიკის სამინისტროს

სს „საქართველოს სახელმწიფო ელექტროსისტემა“ განიხილა თქვენი 23.10.2015წ. N04/3959 წერილით წარმოდგენილი საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერგოტრანსს“, სს „გაერთიანებული ენერგეტიკული სისტემა საქრუსენერგოს“ და სს „სვანეთი ჰიდრო“-ს შორის გასაფორმებელი მემორანდუმის პროექტი, რასთან დაკავშირებითაც გაცნობებთ, რომ ჩვენი კომპეტენციის ფარგლებში შენიშვნები არ გაგვაჩნია.

პატივისცემით,

სულხან ზუმბურიძე

მმართველთა საბჭოს თავმჯდომარე

რეაბილიტაციის მმართველი

[www.gse.com.ge](http://www.gse.com.ge)



**ენერგოტრანსი**

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საქართველოს ენერგეტიკის სამინისტროს

თქვენი 2015 წლის 23 ოქტომბრის #04/3959 წერილის პასუხად მოგახსენებთ, რომ შპს "ენერგოტრანსმა" განიხილა საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“, სს „საქართველოს სახელმწიფო ელექტროსისტემას“, შპს „ენერგოტრანსს“, სს „გაერთიანებული ენერგეტიკული სისტემა საქრუსენერგოს“ და სს „სვანეთი ჰიდრო“-ს შორის დასადები შეთანხმების პროექტი, რაზეც ჩვენი კომპეტენციის ფარგლებში შენიშვნები არ გვაქვს.

პატივისცემით,  
კახა სეხნიაშვილი

დირექტორი