

**RESTATED AND AMENDED
MEMORANDUM
Of
UNDERSTANDING**

Between

THE GOVERNMENT OF GEORGIA

MTKVARI HESI LTD

And

JSC “ELECTRICITY SYSTEM COMMERCIAL OPERATOR”

DATE: 16 July, 2015

TBILISI, GEORGIA

The present Restated and Amended Memorandum of Understanding (hereinafter the "MOU") is signed on July 16th, 2015 by and between the following parties:

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

Mtkvari Hesi LTD (hereinafter referred to as "Company") represented by its Director Mr. Davit Peradze;

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

PREAMBLE

Whereas, the Ministry of Energy of Georgia announced the expression of interest for construction of the Facility in Akhaltsikhe Region, on the River Mtkvari, in Georgia;

Whereas, on 24 November 2008 the Parties entered into the Memorandum of Understanding (the "Initial Memorandum"), which regulated, inter alia, terms and conditions for cooperation with the objective of construction and development of Mtkvari HPP;

Therefore, for the purpose of implementation of the Project the Parties are willing to amend and restate the Initial Memorandum; respectively, they agree and bind the terms and conditions of the present MOU, according to which the Company shall have the right to implement the Project on BOO basis, further defined hereunder.

DEFINITIONS

1. The following defined terms shall be used in the present MOU:

- 1.1 "Applicable Law" means all Georgian laws, ordinances, decisions, statutes, rules, regulations, orders, resolutions, specifications and decrees of any governmental authority having jurisdiction over the Parties, the Facilities or the Parties' obligations under this MOU as the same may be modified, amended or repealed from time to time, including any requirements of or deriving from any permit obtained for the Facilities and/or any international treaties.
- 1.2 "Bank Guarantee" means Construction Security;
- 1.3 "BOO" means Build, Own, Operate i.e. the exclusive right to design, construct, finance, own, implement, operate and maintain Facility for indefinite term.
- 1.4 "Change in Law" means the occurrence of any of the following or similar after the Effective Date having a bearing on the implementation of the Project:

- 1.4.1 The modification, amendment, variation, alteration or repeal of any existing Applicable Law or enactment of any new regulation;
- 1.4.2 The commencement/introduction of any Applicable Law which has not yet entered;
- 1.4.3 Any change of high level judicial practice that impacts interpretation and application of the Applicable Law; and
- 1.4.4 Creation or introduction of an independent regulatory authority having jurisdiction over the Project.
- 1.5 **"Commencement of Operation"** means the capability of the relevant Facility to generate electricity.
- 1.6 **"Construction Phase"** means, the time period starting from the Effective Date until the actual date of Commencement of Operation of Facility under which the Company is obliged to implement construction activities, but no later than the term of Construction Phase defined by the Annex 2 of the MOU unless otherwise provided herein or agreed by the Principal Parties.
- 1.7 **"Construction Security"** means bank guarantee provided by the Company for the purpose of securing the fulfillment of its obligations associated with the Construction Phase in the amount of USD 1,000,000.00 (one million).
- 1.8 **"Day/Days"** means any Gregorian calendar day(s).
- 1.9 **"Effective Date"** means the date of signing of the MOU.
- 1.10 **"Electricity (Power) Balance"** means the annual energy balance, approved by the relevant entity according to Applicable Law.
- 1.11 **"Equity Premium"** means at the date of termination of this MOU the equity capital of the Company attributable to its shareholders in respect of their investment in the Company, any profit that the Company would have received should there be no termination of the MOU, which shall be calculated on basis of the expected equity IRR ("Internal Rate of Return") of 18%, a gross-up amount that allows the Company to distribute dividends to its shareholders in an aggregate amount after payment of all applicable taxes on the sale and purchase transaction, realization of profit by the Company and distribution of dividends by the Company, that equals the aggregate dividend amount that such shareholders would have received had no such taxes been payable (the "Tax Gross-Up Amount").
- 1.12 **"Facility"** means the Mtkvari hydropower plant with the technical parameters given in Annex 1 of the MOU.
- 1.13 **"Feasibility Study"** means the study/report prepared for the Facility, which includes (but not be limited to) all documents and/or data and/or information related to the Facility.
- 1.14 **"Generation License"** means the document to be issued by the GNEWRC according to Applicable Law that confirms the right of the Company for the generation of electricity of Facility, for indefinite time.
- 1.15 **"GNEWRC"** shall mean Georgian National Energy and Water Regulatory Commission, or any successor or assignee, responsible for issuing or administering the generation,

transmission, dispatching and distribution licenses or performing other regulatory functions attributed in accordance with the Applicable Law;

- 1.16 **"Guaranteed Power Purchase Agreement"** means a direct agreement signed between the Company and ESCO on 18th of July, 2013 (as amended).
- 1.17 **"Investment Costs"** means, by reference to the accounts and financial statements of the Company at the date of termination of this MOU:
- 1.17.1 if such termination takes place during the Construction Phase of the Facility, 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 incurred at the moment of termination or to be incurred under the relevant financing document (including, but not limited to, loan interest accrued during Construction Phase, loan principle amount, fees and commissions associated with the loan), expropriation and all other costs associated with Project during the period of construction of the Facility; and
- 1.17.2 if such termination takes place after the completion of the Construction Phase of the Facility, all the investment costs associated with the Project not recovered until such termination date, including but not limited to, all construction costs, operating costs, insurance costs, development costs, consultancy costs, financial costs incurred at the moment of termination or to be incurred under the relevant financing document (including loan interest, loan principle amount, fees and commissions associated with the loan), expropriation costs, the accrued interest on the outstanding balance of the loan provided by the Lenders until the termination date and all other costs associated with the Project up to the date of termination of the Project.
- 1.18 **"Lenders"** means private or public finance institutions, corporations, funds, banks, accounts, office corporates etc. that provide debt or project financing to the Company for the purpose of implementation of the Project.
- 1.19 **"Ministry"** means the Ministry of Energy of Georgia.
- 1.20 **"Parties"** means GOG, Company and ESCO jointly.
- 1.21 **"Plant"** means each hydro power plant of the Facility separately.
- 1.22 **"Project"** means construction and operation of the Facility on BOO basis.
- 1.23 **"Site"** means the site of Project appurtenances, generating plant, land, waterways, roads and any rights acquired or to be acquired by the company for the purposes of the Project on, though, above or below the ground on which the Mtkvari HPP or any part thereof is to be built and all rights of way and access from public highways.
- 1.24 **"State"** means State of Georgia.
- 1.25 **"Technical Parameters of the Facility"** means the location, river elevation, installed capacity and annual production of the relevant Facility as provided in Annex 1 of the MOU.

1.26 "Tentative Annual Generation Forecast" means the forecast of the amount of electricity to be tentatively generated by the Facility annually.

PURPOSE AND SUBJECT OF THE MOU

2. The purpose of the MOU is the implementation of the Project by the Company on BOO basis under the Applicable Law and the terms and conditions set out herein.
3. The Company is authorized to transfer its full or partial rights and/or obligations hereunder to any third party, subject to terms and conditions set forth in Article 30 of the MOU.

CONSTRUCTION PHASE

4. Construction Phase starts on the Effective Date and ends on the actual date of Commencement of Operation of the Facility.
5. The Company within the Construction Phase is obliged to:
 - 5.1 Obtain the relevant rights for the lands necessary and/or affected for the implementation of the Project;
 - 5.2 Commence construction works based on construction permit of the relevant Facility according to the Applicable Law within the time frame defined by the Annex 2 of the MOU.
 - 5.3 Construct the Facility according to the Technical Parameters of the Facility defined by the Annex 1 of the MOU (or as amended by the Company and accepted by the GOG, which shall not be unreasonably withheld) and ensure Commencement of Operation of the Facility within the time frame defined by the Annex 2 of the MOU.
 - 5.4 Ensure necessary funds for effective implementation of the Project. In case all permits are obtained for the implementation of the relevant Project but the financial closing cannot be achieved on such time the Parties shall agree on an equitable extension of time provided that such extension of time shall be minimum 3 (three) months.
 - 5.5 Ensure the construction in accordance with the security and environmental and other standards defined by the Applicable Law;
 - 5.6 Ensure, at its own expenses, the full and free access of the representatives of GOG, Ministry, Ministry of Environmental and Natural Resources and Environmental Protection of Georgia and/or any entitled GOG entity for the purpose of monitoring the construction process;
 - 5.7 If requested, ensure the quality and security monitoring of the construction materials at its own expense.
6. Construction Security.
 - 6.1 For the purpose of securing the Construction Phase namely the terms of resume of construction works based on construction permit and Commencement of Operation of the

Facility defined under the MOU, the Company has submitted the Construction Security. Construction Security provided by the Company shall always remain in force until the date falling 5 (month) months after the terms of Commencement of Operation of the Facility as defined by the Annex 2 of the MOU. The Construction Security submitted by the Company shall be issued by any bank licensed by State or the OECD member countries.

- 6.2 The violation by the Company of the term of resume of construction works based on Construction Permit defined under the MOU shall cause the penalization of the Company, in an amount of 0.5 (zero point five) % of the Construction Security, for each delayed day. Fines shall be effectively imposed based written notification on such imposition by the GOG, supplemented by the payment request and information on the cause of penalization and due amount. Herewith the imposed fine shall be paid by the Company within 15 (fifteen) days from receiving the request from Ministry. In case fine is paid by the Company, the respective Construction Security shall be reduced in accordance with the amount paid by the Company.
- 6.3 The violation by the Company of the term of Commencement of Operation defined under the MOU shall cause the penalization of the Company, in an amount of 0.5 (zero point five) % of the Construction Security, for each delayed day. Fines shall be effectively imposed based written notification on such imposition by the GOG, supplemented by the payment request and information on the cause of penalization and due amount. Herewith the imposed fine shall be paid by the Company within 15 (fifteen) days from receiving the request from Ministry. In case fine is paid by the Company, the Construction Security shall be reduced in accordance with the amount paid by the Company.
- 6.4 If the implementation progress of the Project is at least 60% (sixty percent) of total investments defined by the Feasibility Study at the time the fine has reached 50% (fifty percent) of the Construction Security, then the Principal Parties shall agree on an equitable extension of time and the date of Commencement of Operation shall be updated accordingly.
- 6.5 The GOG is entitled to redeem the Construction Security, claim and receive the full or partial amount under such Construction Security in following cases and under following conditions:
 - a) If the Company refuses to pay the fine imposed on it according to Article 6.2 and 6.3 of the MOU, the GOG shall be entitled to redeem an amount equal to the unpaid fine from the Construction Security.
 - b) If GOG terminates the MOU according to Article 12 of the MOU the GOG shall be entitled to redeem in a full amount of the Construction Security.

GENERAL CONDITIONS

7. 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 output of the Facility during each year shall be sold exclusively to ESCO in accordance with the Guaranteed Power Purchase Agreement with a tariffs set out in the Annex 3 of the MOU. Herewith the Company shall be entitled to receive the compensation in case it was unable to generate the full power output of the Facility due to the reasons caused by unreasonable and/or illegal actions of the GOG, ESCO and any other authorized entities.

The electricity purchase price during the Initial Operation Period will be subject to an amendment in a manner to reflect the compensation necessary to cover the financial losses suffered by the Company due to Change in Law, including the applicable Tax Gross-up Amount as defined under the MOU.

OBLIGATIONS OF THE PARTIES

8. For the purposes of implementation of the Project, subject to the terms of this MOU and the Applicable Law, the Company shall:
 - 8.1 Ensure due implementation of the Project;
 - 8.2 Maintain the Facility within the Technical Parameters.
9. The obligations of the GOG are as follows:
 - 9.1 The GOG within its competence shall use its best endeavors to assist the Company with the implementation of the Project in any manner, which shall include the issuance of any permits and licenses including construction permit, Generation License which are or may become required for implementation of the Project provided the Company meets the relevant requirements in accordance with the Applicable Law. . GOG hereby declares that the Project is of high importance and shall in each and every case/issue assist the Company in good faith and within its competence considering the financial, social and legal creditability of the Project provided the Company meets the relevant requirements in accordance with the MOU and Applicable Law.
 - 9.2 The GOG within its competence shall use its best endeavors 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 in accordance with the Applicable Law.
 - 9.3 Within its competence and provided that the Company has met all relevant requirements under Applicable Law, the GOG shall ensure that proposals for providing the necessary land plots for the Facility are satisfied and it shall transfer State owned lands required for the Project to the Company according to Applicable Law. Furthermore, considering the importance of the Project, the GOG within its competence shall use best efforts to assist the Company with expropriation procedures in accordance with the Applicable Law, provided that the Company has met all relevant requirements Under Applicable Law.

- 9.4 Within the 180 (one hundred eighty) days as of the Effective Date the GOG in accordance with the Applicable Law and within its competence shall use its best endeavors to assist the Company to sign the amended and restated Guaranteed Power Purchase Agreement with ESCO and duly register it within the JSC “Georgian State Electrosystem”.
- 9.5 The GOG shall not initiate, approve, authorize, consent to or otherwise endorse any projects, developments or other schemes (of whatever nature) which may adversely affect (in the reasonable opinion of the Company) the Technical Parameters of the Facility and/or profitability of the Project without prior written consent of the Company.
- 9.6 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest, man-made and other physical obstructions and pollutants, underground pipelines and conduits, contaminated soils, hazardous landfill and similar found on the Site shall be removed under the care and authority of the GOG in accordance with the Applicable Law. In case the abovementioned events cause the interruption of the construction works for more than 120 days the Company shall have the right to terminate the present MOU in accordance with Article 14.
- 9.7 The GOG shall not restrict conversion and remittance outside of State of foreign currencies for payment by the Company of its foreign currency denominated debts and obligations (including payment of obligations to the Lenders), as well as for payment of dividends, proceeds from capital reduction of the company and for purchase of equipment, materials and services necessary for construction, operation and maintenance of the Project.
- 9.8 The GOG within its competence shall ensure and make the best effort that the necessary visas/residence permits are issued to foreign employees, managers, shareholders, as well as other Project-related consultants and advisers of the Company and/or of its contractors and subcontractors, provided that all preconditions required under Applicable Law for obtaining a visa are fully satisfied.
- 9.9 The GOG within its competence shall ensure and make the best effort for fulfillment of ESCO's obligations under this MOU and the Guaranteed Power Purchase Agreement, including payment obligations. Namely, in case ESCO fails to fulfill its obligations in due timeframes as undertaken under this MOU and the Guaranteed Power Purchase Agreement, the GOG shall take any and all steps necessary for due implementation and enforcement of this liability of ESCO, including, without limitation, as may be required under the Applicable Law.
- 9.10 The GOG within its competence shall ensure and make the best effort that the Company is registered as a qualified enterprise and as a wholesaler with ESCO in line with the requirements of the Applicable Law, provided that the Company has duly complied with all preconditions thereunder for such registration.
- 9.11 The GOG shall ensure within its competence that the Tentative Annual Generation Forecast in respect of the Facility duly furnished by the Company is included into the Electricity

(Power) Balance, provided that the Company has duly applied and complied with all preconditions thereunder as determined under the Applicable Law.

- 9.12 In case of insolvency, bankruptcy, liquidation of ESCO and of assignment of their functions to any other entities due to Change in Law (as described under Articles 17 and 18) or otherwise, GOG shall ensure within its competence that the rights and obligations of ESCO under this MOU and other relevant agreements are assigned or otherwise transferred to the new entities, which under relevant Applicable Law will be wholly or partially carrying out functions of the ESCO in the energy sector of Georgia.
 - 9.13 In case of proposal by the Company and/or the Lenders, GOG shall discuss the execution of a direct agreement regulating step-in right of the Lenders and reflecting other market terms and conditions for the financing of a Project, accordingly.
10. For the purposes of implementation of the Project, subject to the terms of this MOU and the applicable legislation of Georgia, the ESCO:
- 10.1.1 Shall within 180 (one hundred and eighty) days sign the amended and restated Guaranteed Power Purchase Agreement with the Company as agreed through mutual negotiations considering the terms and conditions defined under the present MOU;
 - 10.1.2 Shall within the Initial Operating Period acquire entire generated power of the Facility at the bus-bar for the price and conditions set under Section 7 of the present MOU.

EXTENSION OF TIME

11. The Company shall have the right to request time extension should any of the following events affect implementation of the Project, for a period at least equal to delay arising out of following events:
- 11.1 a force majeure event; or
 - 11.2 any default or breach under the MOU by GOG or ESCO; or
 - 11.3 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 judicial orders or decisions, injunction of a governmental authority or any delays attributable to the GOG or any State or local self-governing bodies of Georgia; or
 - 11.4 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
 - 11.5 Company applies for any permits, licenses, approvals, authorizations, etc. including any permit required for Preconstruction Phase works, construction permit, Generation License etc. which are required for implementation of the relevant Project and has met relevant requirements in accordance with the Applicable Law and such are not issued by the State authorities within reasonable period or in accordance with Applicable Law; or

- 11.6 if the Company due to the reasons attributable to GOG cannot access to the Site to perform necessary works, despite Company has met relevant requirements in accordance with the Applicable Law;
- 11.7 discovery of fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archeological interest, man-made and other physical obstructions and pollutants, underground pipelines and conduits, contaminated soils, hazardous landfill and similar, in case the abovementioned event causes the interruption of the construction works for more than 120 days for the Company; or
- 11.8 any other event which could not have been reasonably foreseen at the time of Effective Date of the MOU and not being attributable to the Company including but not limited to exceptionally adverse climatic conditions, natural physical conditions, subsurface conditions, public resistance.

For avoidance of any doubt the Company shall not have the right to request time extension if events affecting the implementation of the Project are caused by contractors and/or subcontractors of the Company.

Notwithstanding the provisions and the terms of the MOU, in case the Company fulfills its full obligations under the Preconstruction Phase earlier, than it is determined by the Annex 2 of the MOU, the time period equal to the saved time shall be added to the Construction Phase and it shall be used by the Company, at its sole discretion.

TERMINATION OF THE MOU

12. The GOG may terminate the MOU partially or wholly and unilaterally, by serving the written notice to the Company, in following cases:
 - 12.1 In case the amount of fine, according to Article 6.2 and/or 6.3 of the MOU reaches 50% (fifty percent) or more of the full amount of the Construction Security and the implementation progress of the Project is lower than 60% (sixty percent) of total investments defined by the Feasibility Study.
 - 12.2 In case the Company fails to fulfill its obligation within the timeline defined by the Parties according to Article 6.4 of the MOU.
13. The termination of the MOU by the GOG partially or wholly and unilaterally shall cause the following:
 - 13.1 The rights (including ownership rights) on the land plots necessary and/ or affected for the implementation of the Project shall be transferred to the State free of charge.

- 13.2 The Company shall be deprived the right to implement the relevant Project.
 - 13.3 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 GOG for free of charge.
 - 13.4 In case of termination of this MOU by the GOG in accordance with Article 12.2 of the MOU the ownership right of the Project (including all movable and immovable assets necessary for the construction and/or operation of the Facility) shall be transferred to the State free of charge, after which within 1 (one) year the GOG shall provide the compensation to the Company equal to the documented Investment Costs.
 - 13.5 In case of termination of this MOU by the GOG in accordance with Article 12.1 of the MOU the ownership right of the Project (including all movable and immovable assets necessary for the construction and/or operation of the Facility) shall be transferred to the State free of charge, after which within 2 (two) years the GOG shall commit to conduct an open tender for the existing Project (with the same conditions defined by this MOU). If the price payable to the GOG by the entity, that was announced as a winner is more than the documented Investment Costs of the Company, the Company shall only receive the amount equal to documented Investment Costs, but if the price payable to the GOG by the entity, that was announced as a winner is less than the documented Investment Costs of the Company, than the Company shall only receive this amount and it shall have no right to request any further compensation from GOG. Herewith, the Company shall have the right to participate in above mentioned open tender.
14. The Company may terminate the MOU partially or wholly and unilaterally, by serving the written notice to the GOG, in the following cases:
- 14.1 If the GOG fails to fulfill its liabilities as given in Article 9 hereunder. The GOG must be notified about such violation and the Company shall give the GoG additional time of 120 days to cure such breach, prior to such termination. For the avoidance of any doubt, in case such breach is not cured within the 120 day timeframe and unless otherwise notified by the Company to GOG in writing, the MOU shall be automatically terminated without serving any additional notification thereupon by the Company, after expiry of 120 days stipulated above.
 - 14.2 In case if events (or one of them) as specified in Article 11 of the MOU continues for more than 180 (one hundred eighty) days.
 - 14.3 In case the Guaranteed Power Purchase Agreement with ESCO cannot be executed within 180 (one hundred eighty) days period of time after the Effective Date.
 - 14.4 In case the Guaranteed Power Purchase Agreement is terminated for reasons not attributable to the Company including but not limited to termination due to non-

- performance/default of ESCO under Power Purchase Agreement and such failure of the ESCO is not remedied by the GOG within 90 (ninety) days as of providing written notification.
- 14.5 In case if the GOG or any public sector entity expropriates, compulsorily acquires, nationalizes or otherwise compulsorily procures the Facility, any capital or any assets of the Company whether in whole or part.
- 14.6 In case the MOU is not amended even though it was acceptable for the GOG in accordance with Article 20.2.
- 14.7 If no solution as described in Article 19 of this MOU is reached between the Company and the GOG within 120 days from the date of issuance of notification by the Company.
- 14.8 If within 90 (ninety) days as of such occurrence taking place the Company is not returned in the same financial position as it would have occupied had there been no change of volume as described in Article 31.
15. The termination of the MOU according to Article 14 of the MOU by the Company shall cause the following:
- 15.1 The rights (including ownership rights) on the land plots necessary and/ or affected for the implementation of the Project shall be transferred to the State.
- 15.2 The Company shall be deprived the right to implement the Project.
- 15.3 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 State.
- 15.4 The Company shall be entitled to receive the documented Investment Cost in case the MOU is terminated in accordance with Article 14.2 (on the basis of Articles 11.1 and 11.8), and Article 14.3.
- 15.5 In case the MOU is terminated in accordance with Articles 14.1, 14.2 (on the basis of Articles 11.2 – 11.7), Article 14.4 Article 14.5, Article 14.6, Article 14.7 and Article 14.8 of the MOU, or is terminated by the GOG without any justified reasons, which includes but is not limited to disagreement on time extension as described in Article 6.4, the Company shall be compensated with the total amount of all damages, penalties, and expenses caused by termination or buyout of contracts to which the Company is a party and which are terminated or breached by the Company as a result of termination of the MOU, plus any costs incurred by the Company in securing the Company's release from all past, present and future liability under such contracts, a gross-up amount that allows the Company to pay the damages, penalties and expenses, documented Investment Cost and Equity Premium.

15.6 If the MOU is terminated during Construction Phase as per Article 14 of the MOU then the GOG shall return the existing Construction Security within 30 (thirty) days after termination date.

16. Termination of the MOU by the GOG or by the Company shall cause the termination of the MOU for all Parties and accordingly the termination of the Guaranteed Power Purchase Agreement.

DISCRIMINATORY CHANGE IN LAW AND TAX

17. The GOG agrees that it shall not initiate or propose any discriminatory Change in Law of Georgia or approve or otherwise allow any regulations which would apply expressly to:

17.1 The Project and not to similar projects procured under an agreement with the GOG.

17.2 The Company and not to other persons and/or

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

18. The GOG shall not initiate any discriminatory regulation or amendment to the law in respect of any discriminatory taxes or other similar duties to be imposed, which would apply expressly to:

18.1 The Project and not to similar projects procured under an agreement with the GOG;

18.2 The Company and not to other persons and/or

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

19. The GOG acknowledges that in case a discriminatory changes in law becomes implemented on the basis of which only the Company (and not other similar companies) suffers an increase in costs or other financial burden, loss, liability or damage in connection with its development or operation of the Project, Company may notify GOG and propose amendments to this MOU so as to put the Company in the same financial position as it would have occupied had there been no such implementation of the discriminatory changes in law resulting in such cost increase or other financial burden, loss, liability or damage as aforesaid. Upon notification by the Company as aforesaid, GOG shall either agree on amendments to the MOU (including increase in price of electricity to be paid by ESCO to the Company pursuant to the Guaranteed Power Purchase Agreement) or put in place an alternative arrangement to implement the foregoing, as soon as possible but in any event not later than 120 days from the date of issuance of notification by the Company as provided hereinabove.

AMENDMENTS OF THE MOU

20. Amendments;

- 20.1 This MOU may be amended by written agreement between the Parties.
- 20.2 The MOU may be amended in accordance with reasonable request from Lenders provided that it should be acceptable to the GOG.
- 20.3 Parties agree that the MOU shall be amended in case of global and/or local financial adverse condition occurs provided that it should be acceptable to the GOG.
- 20.4 If any provision of this MOU becomes invalid or unenforceable, the validity of other provisions shall not be affected.

NOTIFICATIONS

21. A notice under or in connection with this MOU (a "Notice"):

- 21.1 Shall be in writing.
- 21.2 Shall be made in English language.
- 21.3 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.
- 21.4 Notice given under the Article 21 of the MOU is effective when actually received.
- 21.5 Notice given under this MOU shall be addressed to the Party at its address set out below or at each other address as the Party may designate in writing:

(i) **The Government of Georgia**

Address: 2 Sanapiro Str, 0105 Tbilisi, Georgia

Telephone: (+995 32) 235 78 04

Attention: Ministry of Energy of Georgia, His Excellency, The Minister

E-mail: mail@energy.gov.ge

(ii) **The Company**

Address: №74A Ilia Chavchavadze Avenue, Tbilisi, Georgia.

Telephone: +995 32 2916949

Attention: Mr. Davit Peradze, Director

E-mail: info@hpp.ge

(iii) **JSC "Electricity System Commercial Operator"**

Address: 2 Baratashvili Street, Tbilisi, Georgia;

Telephone: +995 (32) 2401 420

Attention: Mr. Vakhtang Ambokadze, General Director

Fax: +995 (32) 2 601-915

E-mail: office@esco.ge

GOVERNING LAW AND DISPUTE RESOLUTION

22. This MOU shall be governed by the laws of Georgia.
23. 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 the MOU.
24. Any dispute or controversy arising out of or in relation to this MOU shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC") by 1 (one) or more arbitrators appointed in accordance with said Rules.

FORCE MAJEURE

25. Force Majeure shall mean any event beyond the reasonable control of either Party, the occurrence of which could not have been reasonably foreseen at the date of signing the MOU, including but not limited to, war (whether declared or not), revolution, riot, rebellion, civil war, 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.
26. If any Party hereto is affected by Force Majeure as defined in previous article, 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.
27. If a Force Majeure event shall prevent the total or partial performance of any of the obligations of either Party under the MOU, 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 MOU, except for when such Force Majeure event lasts more than 180 (one hundred eighty) days, which triggers the right of unilateral termination by the Company.

ADDITIONAL CONDITIONS

28. The MOU enters into force on the Effective Date and is in force until all obligations towards each other are fulfilled by the Parties, unless terminated in accordance with the MOU.
29. 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

except for state owned lands in connection with the financing to be provided by the Lenders for the Project.

30. During the Initial Operation Period any sale, assignment and/or transfer of shares in the Company to any other person or entity by the existing shareholders of the Company through single or series or series of the transactions as a result of which the existing shareholders will become minority shareholders shall require consent of the GOG. For avoidance of any doubt, such consent of the GOG shall not be required until the existing shareholders hold majority of shares in the Company. The GOG shall be allowed to withhold its consent only in case if following grounds are at hand:
 - 30.1 There is credibility concern and/or negative experience with the potential assignee, receiver, buyer of the shares and/or the shareholders, affiliates and/or final beneficiaries of such potential assignee, receiver, buyer, i.e. such potential assignee, receiver, buyer of the shares and/or the shareholders, affiliates and/or final beneficiaries of such potential assignee, receiver, buyer failed to implement projects of the similar scale and similar nature in the past.
 - 30.2 In the reasonable opinion of the GOG, there are political-strategic concerns with regard to the potential assignee, receiver, buyer of the shares and/or the shareholders, affiliates and/or final beneficiaries of such potential assignee, receiver, buyer, which may have impact on geo-political and energy security of Georgia.

Notwithstanding anything to the contrary, the shareholders of the Company shall be entitled to freely sell, assign or transfer any shares of the Company after expiry of Initial Operation Period, at its own discretion and without consent of GOG.

31. The parties acknowledge that in case of any kind of artificial change of the volume of the river Mtkvari by the Turkish side, which has caused an increase in costs or other financial burden, loss, liability or damage in connection with its development or operation of the Project, the Company may notify GOG and propose amendments to this MOU so as to put the Company in the same financial position as it would have occupied had there been no such change of volume. Upon notification by the Company as aforesaid, GOG shall either agree on amendments to the MOU or put in place an alternative arrangement as soon as possible as to put the Company in the same financial position as it would have occupied had there been no such change of volume.
32. The Initial Memorandum shall be deemed to be terminated and cancelled from the Effective Date of this MOU. Herewith the terms and conditions of the Initial Memorandum shall only apply up to the Effective Date of the MOU.
33. The MOU is made in English language, into 3 (three) equally binding copies.

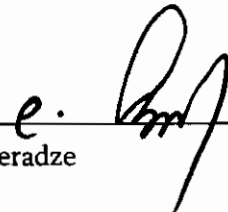
SIGNATORIES

The Government of Georgia



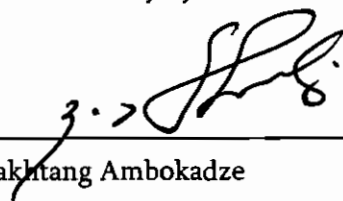
Kakha Kaladze

Mtkvari Hesi LTD



Davit Peradze

JSC "Electricity System Commercial Operator"



Vakhtang Ambokadze

Annex 1

NAME	LOCATION	RIVER ELEVATION		ANNUAL PRODUCTION (GWH)	CAPACITY (MW)
Mtkvari HPP	Akhalsikhe region, River Mtkvari	1015	909	227 – 234	43 - 58

Annex 2

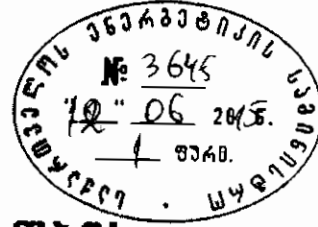
CONSTRUCTION PHASE	
Resume of Construction Works based on Construction Permit - 7 months after the Effective Date	Commencement of Operations – 36 months after the Resume of Construction Works

Annex 3

<p>The tariff of the Electricity to be sold to ESCO for the Initial Operation Period</p>	<p>6.5 US Cent per KWh. (with 2% of annual escalation starting right after the commissioning date, meaning that increase of the tariff on the basis of the abovementioned escalation shall take place in the initial annual period as well)</p>
-------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



ეხე



საქართველოს მთავრობის განკარგულება

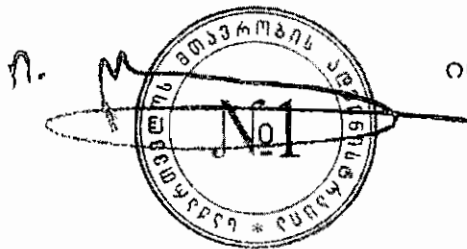
№1193 2015 წლის 10 ივნისი ქ.თბილისი

საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის
კომერციულ ოპერატორსა“ და შპს „მტკვარი ჰესს“ შორის დასაადები
ურთიერთგაგების მემორანდუმის თაობაზე

1. მოწონებულ იქნეს საქართველოს მთავრობას, სს
„ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორსა“ და შპს
„მტკვარი ჰესს“ შორის დასაადები 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



ირაკლი ღარიბაშვილი



საქართველოს იუსტიციის სამინისტრო
MINISTRY OF JUSTICE OF GEORGIA



KA010183668691815

საქართველო, ქ. თბილისი, 0114, გორგასლის 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

№3462

04 / მაისი / 2015 წ.

საქართველოს ენერჯეტიკის
მინისტრის მოადგილეს,
ბატონ ილია ელოშვილს

ბატონ ილია,

საქართველოს იუსტიციის სამინისტრომ განიხილა თქვენი 2015 წლის 20 აპრილის №03/1434 წერილით წარმოდგენილი საქართველოს მთავრობას, სს „ელექტროენერჯეტიკული სისტემის კომერციულ ოპერატორს“ და შპს „მტკვარი ჰესს“ (შემდგომში – „კომპანია“) შორის დასადები ურთიერთგაგების მემორანდუმის (შემდგომში – „განახლებული მემორანდუმი“) პროექტი, რომელთან დაკავშირებით გაცნობებთ შემდეგს:

1. იმის გათვალისწინებით, რომ განახლებული მემორანდუმის პროექტი წარმოადგენს 2008 წლის 24 ნოემბერს გაფორმებული ურთიერთგაგების მემორანდუმის (შემდგომში – „თავდაპირველი მემორანდუმი“) განახლებულ ვერსიას (amended and restated memorandum of understanding) და ადგენს თავდაპირველი მემორანდუმისგან განსხვავებულ პირობებს, განახლებული მემორანდუმის ფარგლებში განსაზღვრულ უნდა იქნეს დებულება, რომლის მიხედვით, თავდაპირველი მემორანდუმი, მათ შორის, ყველა მისი ცვლილება, გავრცელდება მხოლოდ განახლებული მემორანდუმის ძალაში შესვლამდე არსებულ პერიოდზე და შეწყდება განახლებული ურთიერთგაგების მემორანდუმის ძალაში შესვლის მომენტიდან.

2. განახლებული მემორანდუმის პროექტის 9.3 პუნქტთან დაკავშირებით შევნიშნავთ, რომ საქართველოს კანონმდებლობა არ იცნობს ტერმინს – „სახელმწიფოებრივი მნიშვნელობის პროექტს“ (Project of state importance). აღნიშნული 9.3 პუნქტის მიზნებისთვის კერძო პირებისთვის უძრავი ქონების ჩამორთმევა შესაძლებელია, განხორციელდეს მხოლოდ „საქართველოს კონსტიტუციის“ 21-ე მუხლისა და „აუცილებელი საზოგადოებრივი საჭიროებისათვის საკუთრების ჩამორთმევის წესის შესახებ“ საქართველოს კანონის შესაბამისად, რომელთა თანახმად, ექსპროპრიაციის თაობაზე გადაწყვეტილებას იღებს მხოლოდ სასამართლო. ამდენად, მემორანდუმის პროექტის 9.3 პუნქტის მე-2 წინადადება მიზანშეწონილია, ჩამოყალიბდეს შემდეგი

რედაქციით: Furthermore, considering the importance of the Project, the GOG, within its competence, shall use best efforts to assist the Company with expropriation procedures in accordance with the Applicable Law, provided that the Company has met all relevant requirements under Applicable Law.

3. საკითხი განახლებული მემორანდუმის პროექტის 9.9 პუნქტის შესაბამისად საქართველოს მთავრობისა და სს „ელექტროენერგეტიკული სისტემის კომერციული ოპერატორის“ სოლიდარული პასუხისმგებლობის, მათ შორის, ფულად ვალდებულებებთან დაკავშირებით, განსაზღვრის თაობაზე უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე.

4. განახლებული მემორანდუმის პროექტის 15.5 პუნქტის შესაბამისად, საქართველოს მთავრობის მიერ კომპანიისთვის გადასახდელი კომპენსაციის ოდენობა, განსაკუთრებით, „Equity Premium“-ის ანაზღაურების ნაწილი, საჭიროებს გადახედვას მიზანშეწონილობის კუთხით.

5. განახლებული მემორანდუმის პროექტის 30-ე მუხლის ბოლო პარაგრაფთან დაკავშირებით შევნიშნავთ, რომ შპს „მტკვარი ჰესის“ აქციონერების/პარტნიორების მიერ შპს „მტკვარი ჰესის“ აქციების/წილების ისეთი გადაცემა, რომლის შედეგადაც მესამე მხარეს არ აღმოაჩნდება შპს „მტკვარი ჰესის“ აქციების/წილების უმრავლესობა, მიზანშეწონილია, ასევე, საჭიროებდეს საქართველოს მთავრობის თანხმობას, განახლებული მემორანდუმის პროექტის 30.1 და 30.2 პუნქტებში განსაზღვრული პირობების გათვალისწინებით. ზემოაღნიშნული მსჯელობის ფარგლებში, ასევე, მიზანშეწონილია, 30-ე მუხლის ფარგლებში შპს „მტკვარი ჰესის“ აქციების/წილების მესამე პირისთვის გადაცემისას საქართველოს მთავრობის თანხმობის გაცემის საკითხი დაკავშირებული იყოს არა მხოლოდ მთავრობის მიერ მესამე პირის შეფასებასთან, არამედ, ასევე, მესამე პირის საბოლოო ბენეფიციარების ან აფილირებული პირების 30.1 და 30.2 პუნქტების შესაბამისად მისაღებობის დადგენასთან.

6. განახლებული მემორანდუმის დანართი №2-ში მითითებული სამშენებლო სამუშაოების გაგრძელების პირობები, ფაქტობრივი მდგომარეობის გათვალისწინებით, მიზანშეწონილია, ჩამოყალიბდეს შემდეგი რედაქციით: „... Resume Construction Works...“. განახლებული მემორანდუმის 10.1.1 პუნქტიდან მიზანშეწონილია, ამოღებულ იქნეს ფრაზა „...proposed by the company and...“.

7. ამასთან, საკითხი დავათა გადაწყვეტის ფორუმად საერთაშორისო სავაჭრო პალატის წესების გამოყენებით არბიტრაჟის არჩევის შესახებ უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე.

პატოვისცემით,

გ. დხაჭიფაშვილი

მინისტრის მოადგილე

გოჩა ლორთქიფანიძე



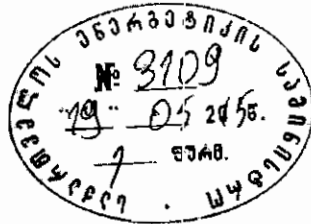
ელექტროენერგეტიკული ბაზრის ოპერატორი
Electricity Market Operator

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 01/533
19/05/2015

533-01-2-201505191603



თანხმობა ხელმოსაწერი
ურთიერთგაგების მემორანდუმის
პროექტზე

საქართველოს ენერგეტიკის მინისტრის
მოდგილეს ბატონ ირაკლი ხმაღამეს

ბატონო ირაკლი,

საქართველოს ენერგეტიკის სამინისტროს 2015 წლის 20 აპრილის #03/1435 წერილის პასუხად გაცნობებთ, რომ ბაზრის ოპერატორმა განიხილა საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“ და შპს „მტკვარი ჰესს“ შორის დასადები ურთიერთგაგების მემორანდუმის პროექტი, რომელთან დაკავშირებითაც შენიშვნები არ გაგვაჩნია.

პატივისცემით,

ვახტანგი ამბოკაძე

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