

AMENDED and RESTATED

MEMORANDUM
Of
UNDERSTANDING

The Government of Georgia
LLC “Georgian Investment Group Energy”
JSC “Electricity System Commercial Operator”

DATE: 20 August, 2015

TBILISI, GEORGIA



This Memorandum of Understanding is amending and restating the prior Memorandum of Understanding dated September 15, 2009 (hereinafter the "Initial Memorandum of Understanding") as amended on 30.04.2010, 01.06.2011, 04.02.2014 and 11.07.2014. The present Memorandum of Understanding (hereinafter the "MOU") is signed 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;

LLC „Georgian Investment Group Energy“- (hereinafter referred to as: "Company"), Identification Code: 205256177 represented by its Director, Mr. Dimitri Abesadze; and

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

The parties sign the present MOU on the following:

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over the Parties, the Facility or the Parties' obligations under this MOU as the same may be modified, amended or repealed from time to time, including any requirements of or deriving from any permit obtained for the Facility.
 - 1.2 "BOO" means Build, Own, Operate i.e. the exclusive right to design, construct, finance, own, implement, operate and maintain Facility for indefinite term.
 - 1.3 "Commencement of Operation" means the capability of the relevant Facility to generate electricity in accordance with Applicable Law.
 - 1.4 "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 Company and GOG.
 - 1.5 "Day/Days" means any calendar day(s).
 - 1.6 "Effective Date" means the date of signing of the MOU by the Parties.
 - 1.7 "Equity Premium" means at the date of termination of this MOU fair market value of the Facility determined by one of the Big Four Audit Firms (which, for the avoidance of doubt, at the moment are PriceWaterhouseCoopers, Deloitte & Touche, Ernst & Young and KPMG International) appointed by the Company. The recommendation/report of that Audit Firm shall be final and binding and shall not at any time become disputed.
 - 1.8 "Facility" means the "Khobi HPP 2" as defined by the Annex 1 of this MOU.

- 1.9 **"Feasibility Study"** means the study/report to be prepared by the Company for the Optional Facility, which shall include (but not be limited to) all documents and/or data and/or information as may be determined between the Parties in accordance with this MOU and which confirms whether or not construction of the Facility is technically, financially and legally feasible, economically attractive.
- 1.10 **"Guaranteed Power Purchase Agreement"** means the direct agreement(s) that shall be amended and restated as well as executed between the Company and ESCO in accordance with the MOU.
- 1.11 **"Investment Costs"** means, by reference to the accounts and financial statements of the Company at the date of termination of this MOU:
- 1.11.1 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 costs, and all other costs associated with Project during the period of construction of the Facility; and
- 1.11.2 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.
- 1.12 **"Ministry"** means the Ministry of Energy of Georgia.
- 1.13 **"Optional Facility"** means the "Khobi HPP 1" as defined by the Annex 1 of this MOU.
- 1.14 **"Parties"** means GOG, Company and ESCO jointly.
- 1.15 **"Project"** means implementation of feasibility study, environmental and social impact assessment, construction and operation of the Facility and implementation of feasibility study, environmental and social impact assessment of the Optional Facility.
- 1.16 **"State"** means the State of Georgia.
- 1.17 **"Tax Gross-up Amount"** means a gross-up amount that allows the Company to distribute dividends to its shareholders and/or interest to the Lenders 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.

- 1.18 **"Technical Parameters of the Facility/Optional Facility"** means the location, river elevation, installed capacity and annual production of the Facility and/or Optional Facility as provided in Annex 1 of the MOU.
- 1.19 **"Electricity (Power) Balance"** shall mean the annual electricity balance of Georgia as determined and approved in accordance with Georgian laws.
- 1.20 **"Generation License"** shall mean the document to be issued by the Georgian National Energy and Water Supply Regulatory Commission in accordance with the Georgian Legislation, which confirms the right of the Company for the generation of electricity;
- 1.21 **"Lenders"** shall mean private or public finance institutions, corporations, fund, banks, accounts, office corporate, etc., which shall provide debt or equity financing to the Company for the purpose of implementation of the Project;
- 1.22 **"Operation Year"** shall mean each operation year commencing on 1st of January (00:00) of each year and ending on 31st of December (24:00) of the same year;
- 1.23 **"Tentative Annual Generation Forecast"** shall mean the forecast of the amount of electricity to be tentatively generated by the Facility for any Operation Year.
- 1.24 **"Change in law"** shall mean the occurrence of any of the following or similar after the Effective Date having a bearing on the implementation of the Project:
- 1.24.1 The modification, amendment, variation, alteration or repeal of any existing Georgian Legislation or enactment of any new Georgian Legislation;
- 1.24.2 The commencement/introduction of any Georgian Legislation which has not yet entered;
- 1.24.3 Any change of high level judicial practice that impacts interpretation and application of the Applicable Law; and
- 1.24.4 Creation or introduction of an independent regulatory authority having jurisdiction over the Project.
- 1.25 **"Abandonment of the Project"** shall mean the stoppage of all and/or substantially all construction works of the Facility for more than 30 (thirty) days continuously due to the reasons attributable to the Company according to this MOU and Applicable Law.
- 1.26 **"GSE"** shall mean " in accordance with Applicable Law the transmission and dispatch licensee owner Joint Stock Company "Georgian State Electrosystem, which is fully owned by JSC "Partnership Fund".

PURPOSE 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.

OPTIONAL FACILITY

3. Within 6 months after the Effective Date the Company shall be entitled to make decision on whether to conduct the Feasibility Study on Optional Facility or not at its sole discretion. In the event before expiry of the above 6 month period the Company informs the GOG on its decision to conduct the Feasibility Study on the Optional Facility, it shall become obliged to conduct the full Feasibility Study, finalize the environmental and social impact assessment report, conduct the relevant public hearings of the environmental and social impact assessment report of the Optional Facility within 18 months from the Effective Date, and in case the Company's decision on construction and operation of the Optional Facility within the Technical Parameters of the Optional Facility is positive and acceptable for the Company, submit the relevant proposal to the GOG. Furthermore, if the Company decides to conduct the Feasibility Study as per above, it shall submit the quarterly schedule of the Feasibility Study, which shall be approved by the GOG and after the relevant approval, the Company shall ensure the fulfillment of the aforementioned schedule. Herewith the GOG shall not unreasonably withhold the aforementioned approval.
4. The GOG and Company shall mutually discuss the issue of construction and operation of the Optional Facility on BOO basis, and shall execute a separate Memorandum of Understanding on substantially the same terms set out herein for the purpose of implementation of the Optional Facility or incorporate the relevant changes in this Memorandum of Understanding.

COMPANY'S OBLIGATIONS

5. The Company for the purpose of implementation of the Facility Project is obliged to:
 - 5.1 Commence construction works based on Construction Permit of the Facility according to the Applicable Law within the time frame defined by the Annex 2 of the MOU.
 - 5.2 Construct the Facility according to the Technical Parameters of the Facility and ensure Commencement of Operation of the Facility within the time frame defined by the Annex 2 of the MOU in accordance with Applicable Law.
 - 5.3 Ensure necessary funds for effective implementation of the Project and present the GOG the copies of agreements, contracts and/or documents confirming the financial closure of the Facility Project no later than the term of Commence construction works based on Construction Permit defined by the Annex 2 of the MOU.
 - 5.4 Ensure the construction in accordance with the security, environmental and other standards defined by the Applicable Law;
 - 5.5 Ensure, at its own expense, the full and free access to the construction site of the representatives of GOG, Ministry, Ministry of Environment and Natural Resources Protection of Georgia and/or any entitled GOG entity for the purpose of monitoring the construction process, provided that the above representatives visiting the construction site fully observe the necessary security instructions and procedures.
 - 5.6 If requested, ensure quality and security monitoring of the construction materials at its own expense.



5.7 Ensure that during Project implementation period, at least 80% of employees (except the management end experts) are the citizens of Georgia.

GOG'S AND ESCO'S OBLIGATIONS

6. The GOG for the purpose of implementation of the Facility Project is obliged to:
 - 6.1 Within its competence use its best endeavors to assist the Company and as requested by the Company, its contractors and/or subcontractors with the implementation of the Project in any manner, which shall include the issuance and/or extension of any permits and licenses including but not limited to Generation License, mining license, construction permit, water usage and environmental impact permit and/or ecological expertise conclusion, license/permit for storing and using explosives, collection, crushing and using boulders, river bed materials and rock quarries, etc. which are required for implementation of the Project, provided that the Company and/or its contractors/subcontractors meet the relevant requirements under the Applicable Law.
 - 6.2 Within its competence and provided that the Company has met all relevant requirements under Applicable Law, ensure and use its best endeavor that proposals for providing the necessary land plots for the Facility and transmission lines that connect the Facility to the grid are satisfied and it shall transfer State owned lands required for the Project to the Company according to the 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 the Applicable Law
 - 6.3 In case of insolvency, bankruptcy, liquidation of ESCO and/or assignment of its functions to any other entity due to change of the laws or otherwise, use its best effort within its competence to assign rights and obligations of the ESCO assigned under the Guaranteed Power Purchase Agreement to the new entity (or entities) or otherwise transfer mentioned rights and obligations to the new entity (or entities), which under the relevant Georgian legislation will be wholly or partly carrying out the functions of the ESCO in the energy sector of Georgia.
 - 6.4 In case of proposal by the Company, financing parties and/or Lenders, discuss the matter of amending the MOU and/or execution of direct agreement, regulating the rights of the financing parties and/or Lenders, and reflecting other market terms and conditions for the financing of a Facility Project.
 - 6.5 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.
 - 6.6 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 JSC "Georgian State Electrosystem".
- 6.7 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.
- 6.8 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 of the Facility 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 180 days the Company shall have the right to terminate the present MOU in accordance with relevant termination Clauses of this MOU.
- 6.9 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.
- 6.10 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/residence permit are fully satisfied.
- 6.11 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 the this liability under this Article, including, without limitation, as may be required under the Applicable Law. GOG shall be released from its obligations under this article from the date, when the GOG no longer controls ESCO, provided that GOG ensures that provisions of this Clause 6.11 are transferred in full to the entity obtaining control over ESCO.
- 6.12 The GOG within its competence shall ensure and make the best effort that before Commencement of the Operation 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.
- 6.13 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.

- 6.14 During Construction Phase of the Facility assist the Company and take any and all steps and actions within its competence in order for the Company to receive back the Value Added Tax, that has to be received by / repaid to the Company and not to hinder the above process in any manner whatsoever provided that the Company has duly applied and complied with all preconditions thereunder as determined under the Applicable Law.
7. For the purposes of implementation of the Project, subject to the terms of this MOU and the applicable legislation of Georgia, the ESCO:
- 7.1.1 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;
- 7.1.2 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 8 of the present MOU;

GENERAL CONDITIONS

8. 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 from the corresponding responsible authority 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 or failure to act by the GOG, ESCO and GSE. The terms and conditions of the compensation (including the increase of price of electricity to be paid by ESCO) shall be reflected in the Memorandum of Understanding and/or any other document signed between the Parties, which might regulate such terms.
- 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.
9. Other than the Initial Operation Period the Company is entitled to sell generated power at its discretion in accordance with Applicable Law.

FORCE MAJEURE

10. 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, illegal strikes of employees of the third companies, civil

commotion, invasion, armed conflict, hostile act of a foreign enemy, act of terrorism, 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.

11. If any Party hereto is affected by Force Majeure as defined in previous Section, it shall give written notice to the other Party immediately after becoming aware thereof. A detailed report elaborating the reasons and consequences of the Force Majeure event shall be provided by any affected Party to the other Party.
12. 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.

DISCRIMINATORY CHANGE IN LAW AND TAX

13. The GOG agrees that it shall not initiate or propose any discriminatory changes in the law of Georgia or approve or otherwise allow, if within its competence, any regulations which would apply expressly to:
 - 13.1 The Project and not to similar projects procured under an agreement with the GOG.
 - 13.2 The Company and not to other persons and/or
 - 13.3 Any contractors or operators with whom the Company has entered into contractual arrangements in connection with the Project and not to other persons.
14. The GOG within its competence 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:
 - 14.1 The Project and not to similar projects procured under an agreement with the GOG;
 - 14.2 The Company and not to other persons and/or
 - 14.3 Any contractors or operators with whom the Company has entered into contractual arrangements in connection with the Project and not to other persons.
15. 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.

EXTENSION OF TIME

16. 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:
- 16.1 a force majeure event; or
 - 16.2 any default or breach under the MOU by GOG or ESCO; or
 - 16.3 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 illegal decisions, injunction of a governmental authority or any illegal delays attributable to the GOG or any State or local self-governing bodies of Georgia; or
 - 16.4 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
 - 16.5 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
 - 16.6 if the Company due to the reasons attributable to GOG cannot access to the site of the Facility to perform necessary works in accordance with the terms and conditions of this MOU despite Company has met relevant requirements in accordance with the Applicable Law; or
 - 16.7 discovery of 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, in case the abovementioned event causes the interruption of the construction works for more than 120 days the Company; or
 - 16.8 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.

TERMINATION OF THE MOU



17. The GOG may terminate the MOU wholly and unilaterally, by serving the written notice to the Company, if the Company has violated the terms of Commencement of Operation of the Facility defined by the Annex 2 and/or any substantial obligation of this MOU for more than 100 (one hundred) days in total.
 17. a) The GOG may terminate the MOU wholly and unilaterally, immediately, upon serving the written notice to the Company, in case the Abandonment of the Project occurs. In this case, the consequences defined by the Articles 18.1, 18.2 and 18.3 shall only apply and the Company shall not have the right to request any kind of compensation (including the investment cost, damage and etc.).
 17. b) The GOG may terminate the MOU partially only in relation to the Optional Facility, immediately, upon serving the written notice to the Company, in case the Company violates the quarterly schedule of the Feasibility Study approved by the GOG for more than 30 days. In this case, the consequences defined by the Articles 18.1, 18.2 and 18.4 shall only apply within the frames of Optional Facility and the Company shall not have the right to request any kind of compensation (including the investment cost, damage and etc.).
 17. c) The MOU shall be automatically terminated upon the expiration of the term defined by the Article 3 of the MOU in relation to Optional Facility in case the Company does not make a relevant decision on whether to conduct the Feasibility Study on Optional Facility. In this case, the consequences defined by the Articles 18.1, 18.2 and 18.4 shall only apply within the frames of Optional Facility and the Company shall not have the right to request any kind of compensation (including the investment cost, damage and etc.).
18. The termination of the MOU by the GOG partially or wholly and unilaterally shall cause the following:
 - 18.1 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.
 - 18.2 The Company shall be deprived the right to implement the relevant Project.
 - 18.3 GOG shall repay to the Company the Investment Costs within 1 year following the termination date through auction. Herewith, the Company shall have the right to participate in above mentioned open tender/auction.
 - 18.4 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 GOG for free of charge.
19. The Company may terminate the MOU partially or wholly and unilaterally, by serving the written notice to the GOG, in the following cases:
 - 19.1 If the GOG fails to fulfill any of its liabilities as given in Article 6 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.
- 19.2 In case events (or one of them) as specified in Article 16 of the MOU continues for more than 180 (one hundred eighty) days.
- 19.3 In case the amended and restated Guaranteed Power Purchase Agreement with ESCO cannot be executed within 180 (one hundred and eighty) days period of time as provided under the MOU.
- 19.4 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 Guaranteed Power Purchase Agreement and such failure of the ESCO is not remedied by the GOG within 90 (ninety) days as of providing written notification.
- 19.5 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.
- 19.6 If no solution as described in Article 15 of this MOU is reached between the Company and the GOG within 120 days from the date of issuance of notification by the Company.
20. The termination of the MOU according to Article 19 of the MOU by the Company shall cause the following:
- 20.1 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.
- 20.2 The Company shall be deprived the right to implement the Project.
- 20.3 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.
- 20.4 The Company shall be entitled to receive the documented Investment Cost in case the MOU is terminated in accordance with Article 19.2 (on the basis of Articles 16.1 and 16.8), and Article 19.3 of the MOU.
- 20.5 In case the MOU is terminated in accordance with Articles 19.1, 19.2 (on the basis of Articles 16.2 – 16.7), 19.4, 19.5 and 19.6 of the MOU, or is terminated by the GOG without any justified reasons, 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.

21. Termination of the MOU by the GOG or by the Company shall cause the termination of the Guaranteed Power Purchase Agreement and any relevant agreements.

NOTIFICATIONS


22. A notice under or in connection with this MOU (a "Notice"):
- 22.1 Shall be in writing;
 - 22.2 Shall be made in English or Georgian language;
 - 22.3 Shall be delivered personally or sent by post (air mail if overseas), courier, or electronically (with original to follow) to the party;
 - 22.4 Shall be effective when actually received.

GOVERNING LAW AND DISPUTE RESOLUTION

23. This MOU shall be governed by the laws of Georgia.
24. 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.
25. Any dispute between the Parties arising out of this MOU or any of its amendments that cannot be resolved through negotiations shall be resolved by the „Swiss Chambers' Court of Arbitration and Mediation, according to the Swiss Rules of the Swiss Arbitration Institute". Place of arbitration is Geneva, Switzerland;

ADDITIONAL CONDITIONS

26. The MOU enters into force on the Effective Date and is in force until all the obligations are fulfilled by the Parties, unless it is terminated in accordance with the MOU.
- 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 unreasonably withheld or delayed. 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 the Initial Operation Period at its own discretion and without consent of GOG.
27. This MOU may be amended from time to time by mutual consent in writing between the Parties.
28. If any Section or provision of this MOU is or becomes invalid or illegal at any time, such invalidity or illegality shall not affect the validity or legality of the MOU as a whole nor that of




any other provision of the MOU. It is further agreed that the Parties shall make all reasonable endeavors to agree as far as possible that invalid terms shall be amended or replaced by valid terms with similar effect in order to maintain the purpose and continuity of this MOU.

29. From the Effective Date of this MOU the Initial Memorandum of Understanding shall be terminated and the terms and conditions of the Memorandum of Understanding shall only apply. Herewith the terms and conditions of the Initial Memorandum shall only apply up to the Effective Date of the MOU.

30. The MOU is made in English language, into 3 (three) equally binding copies.

SIGNATORIES

The Government of Georgia



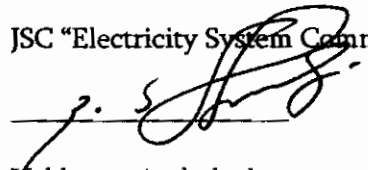
Kakha Kaladze

LLC „Georgian Investment Group Energy“



Dimitri Abesadze

JSC “Electricity System Commercial Operator”



Vakhtang Ambokadze

Annex N1

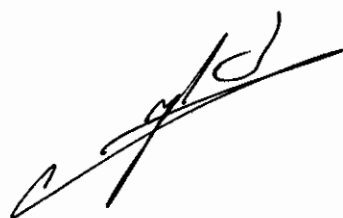
#	NAME	LOCATION	RIVER ELEVATION (Meters a.s.l.)		ANNUAL PRODUCTION (GWH)	CAPACITY (MW)
			Up Stream	Down		
1	Khobi 2 HPP	Chkhorotsku, Riv. Khobistskali	601	325	191,4	41,6
2	Khobi 1 HPP	Chkhorotsku, Riv. Khobistskali	1000	595	320,0	60.0

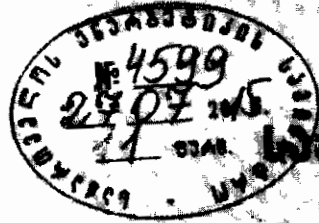
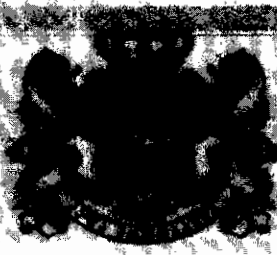
CONSTRUCTION PHASE
Commencement of Operations – 36 months after the Effective Date



Annex N3

<p>The tariff of the Electricity to be sold to ESCO for the Initial Operation Period</p>	<p>6.5 US Cent per KWh</p>
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A handwritten signature in black ink, consisting of several overlapping, stylized strokes.



საქართველოს მთავრობის
განკარგულება

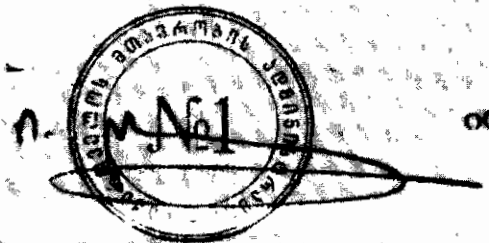
N1613 2015 წლის 23 ივლისი ქ. თბილისი

საქართველოს მთავრობას, სს „ელექტროენერგეტიკული სისტემის
კომერციულ ოპერატორს“ და შპს „ქართულ საინვესტიციო ჯგუფ ენერჯიას“
შორის დასადები ურთიერთგაგების მემორანდუმის თაობაზე

1. მოწონებულ იქნეს საქართველოს მთავრობას, სს
„ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“ და შპს
„ქართულ საინვესტიციო ჯგუფ ენერჯიას“ 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 ვახა კალაძემ

პრემიერ-მინისტრი



ირაკლი დარჩიბაშვილი



საქართველოს იუსტიციის სამინისტრო
MINISTRY OF JUSTICE OF GEORGIA



KA010170139263613

საქართველო, ქ. თბილისი, 0114, ვაჟა-ფშაველას ქ. 24 ა. ტელ: 7 90 21 45, 2 90 28 98; ფაქსი: 7 90 21 45, 2 90 28 98; საილქი: mjustice.gov.ge
24, Gorgasani st., 0114, Tbilisi, Tel.: 2 90 21 45, 2 90 28 98; E-mail: mjustice.gov.ge

№5299

03 / ივლისი / 2015 წ.

საქართველოს ენერჯეტიკის მინისტრის
ზაფხილუს,
ზატონ ირაკლი ზნაღიძეს

ზატონ ირაკლი,

საქართველოს იუსტიციის სამინისტრომ განიხილა თქვენ მიერ 2015 წლის 12 ივლისის №04/2244 წერილით წარმოდგენილი საქართველოს მთავრობას, სს „ელექტროენერჯეტიკული სისტემის კომერციული ოპერატორს“ და შპს „ქართული საინვესტიციო ჯგუფ ქვერჯის“ შორის დასადები ურთიერთგაგების მემორანდუმის პროექტი (შესაბამისი – მემორანდუმის პროექტი), რომელთან დაკავშირებითაც გაცნობებთ შემდეგს:

1. მემორანდუმის პროექტის 1.7 მუხლით დადგენილი „entity names“-ის განსაზღვრის წესი, 1.11 მუხლით გათვალისწინებული საინვესტიციო ხარჯის მოცულობა და 20.5 მუხლის შესაბამისად საქართველოს მთავრობის მიერ კომპანიისთვის გადასახდელი ჯამური კომპენსაციის ოდენობა, რომელიც, ასევე, მოიცავს ზემოაღნიშნულ თანხებს, უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე.

ამასთან, საკითხი ურთიერთგაგების მემორანდუმის პროექტის 6.11 პუნქტის შესაბამისად საქართველოს მთავრობისა და სს „ელექტროენერჯეტიკული სისტემის კომერციული ოპერატორის“ სოლიდარული პასუხისმგებლობის, მათ შორის, ფულად ვალდებულებებთან დაკავშირებით, განსაზღვრის თაობაზე უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე, აქვე შევნიშნავთ, რომ მემორანდუმის პროექტის 1.24 მუხლის თანახმად, საქართველოს მთავრობის მიერ „მარეგულირებელი სამართლის ცვლილებების“ (Change in Law) სამართლებრივი რისკის აღება უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე. დამატებით, შევნიშნავთ, რომ 1.24.2 მუხლის (ii) პუნქტის შინაარსი საჭიროებს დაზუსტებას, რადგანაც მოქმედი რედაქციის თანახმად, იგი ეხება კანონმდებლობის ცვლილებას, რომელიც ძალაში არ ჰქვას შესული. ასეთი გარემოების მარეგულირებელი სამართლის ცვლილებების კონტექსტში განიხილვა კი უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე.

2. მემორანდუმის პროექტის მე-8 მუხლი ითვალისწინებს კომპანიის მიერ კომპენსაციის მოთხოვნის უფლებას მუხლში წითითებული პირების მოქმედება/უმოქმედების შედეგად აღნიშნული პირების ჩამონათვალში – „any other authorized entities“ – წარმოდგენს ზოგად მოითხოვას და მოიცავს განუსაზღვრელ სუბიექტთა წრეს, რომელთა ნაწილიც შეიძლება საერთოდ არ იყოს საქართველოს მთავრობასთან

დაკავშირებული სუბიექტი. ამდენად, მათ ქვედებ/უზოქმედობაზე არ არის მიზანშეწონილი, საქართველოს მთავრობამ აიღოს პასუხისმგებლობა. ამდენად, მიზანშეწონილია, რომ მუხლის ფარგლებში კონკრეტულად განისაზღვროს იმ მუხამე პირთა წრე, რომელთა ქვედებ/უზოქმედობის გამო კომპანიას წარმოებმა კომპენსაციის მოთხოვნის უფლება.

3. მხარეთა თანასწორობის პრინციპის გათვალისწინებით, მემორანდუმის პროექტის მე-12 მუხლით ფორსმეორული გარემოების არსებობისას 180-დღიანი ვადის გასვლის შემდეგ მთავრობას, კომპანიის მსგავსად, მიზანშეწონილია, მიენიჭოს მემორანდუმის გადმორიგად შეწყვეტის უფლება.

4. იმის გათვალისწინებით, რომ მემორანდუმის პროექტის მე-13 და მე-14 მუხლებით განსაზღვრული შედეგების მიღწევა ერთპიროვნულად შეიძლება არ იყოს საქართველოს მთავრობის ქვედებზე დამოკიდებული, მემორანდუმის პროექტის მე-13 მუხლში სიტყვებს - "...apart or otherwise allow..." უნდა დაერთოს ფრაზა "...if within its competence...", ხოლო მე-14 მუხლს უნდა დაემატოს ფრაზა - "...within its competence...".

5. იმის გათვალისწინებით, რომ წარმოდგენილი მემორანდუმის პროექტის მხარე არ არის ISC "Georgian State Electrosystem", მასზე მითითება 16.2 მუხლის კონტექსტში შეკლებულია სამართლებრივ საფუძველს.

6. მემორანდუმის პროექტის 16.3 მუხლიდან ამოღებულ უნდა იქნეს ფრაზა "...or judicial order...", რადგანაც სასამართლო გადაწყვეტილებები აღნიშნული მუხლის კრალში არ წარმოადგენს იმეგარ შემავრთბებელ გარემოებას, რომელზეც საქართველოს მთავრობას აქვს შეკვლეების მოხდენის შესაძლებლობა. სასამართლოს მიერ კომპანიის წინააღმდეგ მოღებული გადაწყვეტილების ასეთი პირობად ჩამოკალიონება არ არის მიზანშეწონილი, რადგანაც ეს ფაქტობრივად უარყოფს ხდის მთავრებს შორის დავის სასამართლო გზით გადაწყვეტას. მოუხედავად ამგვარი სასამართლო გადაწყვეტილების მიწარებისა და დავის შედეგისა, წარმოდგენილი რედაქციის მიხედვით კომპანიის ექვსა შესაძლებლობა, ისეც საქართველოს მთავრობისგან აინაზღაუროს დავის შედეგად მიყენებული ზიანი, რადგანაც მე-16 მუხლით გათვალისწინებული შემავრთბებელი გარემოებები, თავის მხრივ, იძლევა მე-19 მუხლის ძალით მემორანდუმის შეწყვეტის შესაძლებლობას. ანალოგიურად უნდა გადაწყვეტს სახელმწიფო ორგანოს გადაწყვეტილებებზე ("decisions, injunction of a governmental authority") 16.3 მუხლის მითითების მიზანშეწონილია, რადგანაც სახელმწიფო ორგანოს გადაწყვეტილებები, მოუხედავად იმისა, რომ შეიძლება მიმართული იყოს კონკრეტულად კომპანიის წინააღმდეგ, ამავე დროს, შეიძლება სრულად იყოს შესაძინისობაში საქართველოს კანონმდებლობასთან.

7. მიზანშეწონილად მიგვაჩნია, მემორანდუმის პროექტის 17. (b) და 17. (c) მუხლებზე, 17 (a) მუხლს მსგავსად, ასევე, გავრცელდეს 18.2 მუხლით გათვალისწინებული პირობა. წინააღმდეგ შემთხვევაში, წარმოდგენილი რედაქციის მიხედვით, "Optional Facility"-ის ჩაწილში მემორანდუმის შეწყვეტის მოუხედავად, კომპანიას დარჩება აღნიშნული პროექტის განხორციელების უფლება.

8. ურთიერთშესაბამისობაშია მოსაყვანი მემორანდუმის პროექტის 6.8 და მე-19 მუხლები, რადგანაც მემორანდუმის პროექტის 6.8 მუხლით დადგენილ შემთხვევაში, კომპანიის მემორანდუმის შეწყვეტის უფლება წარმოებმა სამშენებლო სამუშაოების 90 დღეზე მეტი ხნით შეწყვეტის შემთხვევაში. ამავე დროს, მე-19 მუხლი, მე-16 მუხლზე მითითებით, რომელიც, თავის მხრივ, ითვალისწინებს 6.8 მუხლით დადგენილ ფაქტობრივ გარემოებებს, შეწყვეტის წინაპირობად ადგენს მითითებული ფაქტობრივი გარემოებების დადგომიდან 180-დღიანი ვადის გასვლას.

9. იმის გათვალისწინებით, რომ 27-ე მუხლში მითითებული "any security" გულისხმობს უზრუნველყოფის ნებისმიერ და წინასწარ არაიდენტიფიცირებად საშუალებებს, მიზანშეწონილად არ მიგვაჩნია, კომპანიის მიერ უზრუნველყოფის გაცემა დიდებულებაროს მთავრობის მხრიდან ამავე მუხლში მითითებული რომელიმე ქვედების საგაღმდეგოდ განხორციელებას. ამდენად, ბუნდოვანების თავიდან აცილების მიზნით, მიზანშეწონილია, მემორანდუმის პროექტის აღნიშნული პუნქტი ჩამოკალიონდეს იმეგვრად, რომ მუხლით განსაზღვრული უზრუნველყოფის გაცემა დადგენილებაროს საქართველოს მთავრობის წინასაყო თანხმობას.

10. მემორანდუმის პროექტის 30-ე მუხლთან დაკავშირებით აღვნიშნავთ, რომ ორპარტიანობის თავიდან აცილების მიზნით, მიზანშეწონილია დაკონკრეტდეს, რომ ძირითადი მემორანდუმით განსაზღვრული უფლება-მოვალეობები რეგულირდება ამავე მემორანდუმით, განსაზღვრული მემორანდუმის პროექტის ძალაში შესვლის შემდეგაც.

11. აქვე შევნიშნავთ, რომ საკითხი მემორანდუმის პროექტის 25-ე მუხლის შესახებ დაგვითა გადაწყვეტის ფორმად - შევიდარიის საერთო ბადატას საარბიტრაჟო და შევიდარიის სასამართლოში, შევიდარიის საარბიტრაჟო ინსტიტუტის შესენის შესახებ, არბიტრაჟის პროცესის შესახებ უნდა გადაწყდეს მიზანშეწონილობიდან გამომდინარე.

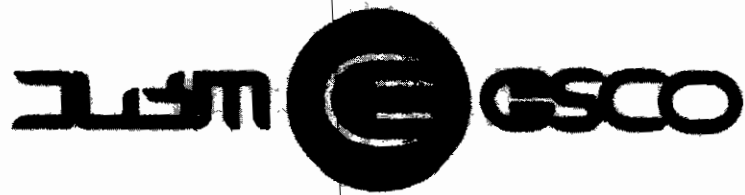
მემორანდუმის პროექტი შეიცავს ტექნიკური ხასიათის ხარგებს, კერძოდ, რაც შემთხვევებში "Construction Works" გამოყენებულია როგორც ტერმინი, მაშინ როცა მემორანდუმის ფარგლებში ასეთი ტერმინი განმარტებული არ არის.

პატივისცემით,

გ. ცხიციფანიძე

მინისტრის მოადგილე

გომა ლორთქიფანიძე



ელექტროენერგეტიკული ბაზრის ოპერატორი
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07/07/2015

693-01-2-201507071124



თანხმობა ხელმოსაწერი
ურთიერთგაგების მემორანდუმის
პროექტზე

საქართველოს ენერგეტიკის მინისტრის
მოადგილეს ბატონ ირაკლი ხმალაძეს

ბატონო ირაკლი,

საქართველოს ენერგეტიკის სამინისტროს 2015 წლის 06 ივლისის #04/2506 წერილის პასუხად გაცნობებთ, რომ ბაზრის ოპერატორმა განიხილა საქართველოს მთავრობას, შპს „ქართული საინვესტიციო ჯგუფი ენერჯია“-სა და სს „ელექტროენერგეტიკული სისტემის კომერციულ ოპერატორს“ შორის დასადები ურთიერთგაგების მემორანდუმის პროექტი (ხობი 1 ჰესი, ხობი 2 ჰესი), რომელთან დაკავშირებითაც შენიშვნები არ გავაჩნია.

პატივისცემით,

ვახტანგი ამბოკაძე

გენერალური დირექტორი

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სს "ელექტროენერგეტიკული სისტემის კომერციული ოპერატორი"
რეგისტრირებულია ქ. თბილისის საგადასახადო ინსპექციის მიერ 07.08.2006; სსიფ-კოდი 205170036

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