

MEMORANDUM OF UNDERSTANDING

Between

Government of Georgia

And

Commercial Operator of Electric Power System, LLC

And

Company

**Tbilisi
2008**

This **Memorandum of Understanding** (hereinafter the “MOU”) is made on _____ (the “Effective Date”) by and between the following parties:

- (1) **Government of Georgia**, represented by the Minister of Energy of Georgia, _____,
- (2) **Commercial Operator of Electric Power System, LLC** (hereinafter the “Operator”), represented by the General Director _____; and
- (3) _____, with legal address at _____, Georgia (the “Company”), represented by _____.

1. Purpose

The purpose of this MOU is cooperation between the parties in order to reach an agreement on the principle terms of agreement and determine in detail the terms and conditions of business relations between the parties.

2. Subject of MOU

- 2.1 The Company shall ensure implementation of the project consisting of construction and operation of the hydro power plants on the territory of Georgia, as described in the Annex to this MOU (the “Project”);
- 2.2 The Annex to this MOU contains a description of hydro power plants to be constructed by the Company (the “Facility/Facilities”), including the following information about each of the Facilities:
 - (a) Location;
 - (b) Capacity;
 - (c) Size of required investment and the approximate recovery term;
 - (d) Terms of obtaining construction permits, commencement of construction and commencement of operations;
 - (e) annual generation capacity.
- 2.3 The Company shall duly notify the Government and the Operator in case of full or partial assignment of its rights and obligations hereunder to any third party.

3. Rights and Obligations of the Parties

- 3.1 For the purposes of implementation of the Project, subject to the terms of this MOU and the applicable legislation, the Company shall:
 - (a) Ensure due review, expertise and analysis of all required technical, economic and legal issues;
 - (b) Submit to the Government the reports prepared by the company on the respective technical, economic and legal issues;
 - (c) Secure the required investments in the total amount of _____ USD;

- (d) Ensure construction of the hydro power plants described in the Annex and commencement of their operations in compliance with the respective terms (timelines). This shall include obtaining any and all licenses and permits required under the applicable legislation of Georgia;
 - (e) Submit to the Government from time to time, on quarterly basis, full information about the progress of the implementation of the Project.
- 3.2 The Company hereby undertakes that during implementation of the Project it shall ensure full compliance with all technical, economic, financial, legal and other terms listed for each of the Facilities in the Annex.
- 3.3 For the purposes of power supply of the country, for the duration of ten years from the date of commencement of operations of the power plant constructed by the Company within the framework of this MOU, in the winter of each year, namely the months of October, November and December, the full power capacity generated by each of the power plants shall be sold (in accordance with the Power Balance) exclusively for the purposes of meeting the internal requirements of Georgia, which shall be reflected in the Power (Capacity) Balance of the respective year or other similar document.
- 3.4 For the purposes of Section 3.3 above, for the duration of ten years from the date of commencement of operations of the power plant, during three months of the winter period as indicated in Section 3.3, each of such power plants shall sell the power at the decision of the respective entity to any purchaser in Georgia under a free (deregulated) tariff and/or in accordance with the Guaranteed Power Purchase Agreement with the Operator (a standard form of which may be attached to this MOU), with tariffs defined in accordance with the applicable legislation.
- 3.5 In the period indicated in Sections 3.3 and 3.4 above, the power generated by the Company through Facilities shall not be dispatched for export and shall be sold in accordance with Section 3.4, while in other months of the year the Company shall be free in the choice of the market (local/export), purchaser of the power and price of the power to the sold.
- 3.6 For the purposes of securing construction and commencement of operations of the Facilities, the Company has provided the Government with a Bank Guarantee for the amount of _____ USD (copy is attached):
- 3.6.1 The Government shall be entitled to redeem the bank guarantee presented by the Company, claim and receive the funds in relation to each of the facilities in the following cases:
- (a) Company breaches the term of commencement of construction of the respective Facility or commencement of operations;
 - (b) Company breaches other conditions related to the respective Facility and contained in this MOU or its Annex.
- 3.6.2 The Bank Guarantee submitted by the Company to the Government shall be valid for ____ months. If, due to reasons independent from the parties, the term

of commencement of operations of the Facility under this MOU is extended (moved), the Government may request extension of the validity term of the Bank Guarantee presented by the Company or submission of a new Bank Guarantee on the same terms. In case of failure by the Company to meet this requirement of the Government within reasonable time, the Government may demand the funds under the Bank Guarantee effective at that time from the issuing Bank.

- 3.7 Following request of a Bank Guarantee under Section 3.6 above, the Government shall determine together with the Company the new terms (timelines) for obtaining construction permits, commencement of construction works and commencement of operations of each of the Facilities. In such case the Company shall submit a new Bank Guarantee on the amount indicated in Section 3.6 within ten business days following such request from the Government. The Government may redeem the new Guarantee in accordance with Section 3.6.1 above, subject to the new terms of obtaining a construction permit, commencement of construction works and commencement of operations of each of the Facilities, as agreed with the Company. In case of failure by the Government to reach an agreement with the Company on the new terms of obtaining a construction permit, commencement of construction works and commencement of operations of each of the Facilities or failure by the Company to submit a new Bank Guarantee, the Government may act in accordance with Sections 3.8 and 3.9 hereof.
- 3.8 In case of breach (delay) by the Company of the term of obtaining a construction permit, commencement of construction works and commencement of operations of each of the Facilities, as indicated in Section 3.7 above, the Government may unilaterally, by serving a written notification, terminate this MOU in relation to the respective Facility. As a result of such termination:
- (a) Respective land plot (transferred to the Company) shall be returned to the initial owner without any compensation, if the initial owner of the land plot is the State or local self-governance bodies;
 - (b) The right of the Company to implement the respective part of the Project shall be terminated.
- 3.9 In case of breach by the Company of the terms of Section 3.6 above, the Government may unilaterally, by serving a written notification, fully or partially (with respect to certain Facilities) terminate this MOU.
- 3.10 The obligations of the Government of Georgia are the following:
- (a) Within its authorities, upon receiving a respective request from the Company, the Government shall provide due assistance to the Company in obtaining the documents and information required for the implementation of the Project;
 - (b) The Government shall assist the Company in implementation of the Project in any manner within its authorities, which may include issuance of required permits, licenses and allocation of required land plots, in accordance with the applicable legislation of Georgia.

- 3.11 In case of adoption of a respective decision by the Company, the Operator hereby undertakes to purchase during three months of winter of each year, as indicated in Section 3.3 above, the full capacity of the power generated by the power plant constructed within the framework of this MOU during 10 years from the commencement of operations in accordance with the terms of Guaranteed Power Purchase Agreement executed in advance (standard form may be attached to this MOU in form of Annex), with the tariffs set in accordance with the applicable legislation.
- 3.12 Sections 3.6 and 3.8 of this MOU shall not apply if the failure by the Company to comply with the terms of the MOU is caused by Force Majeure or unlawful actions on part of the Government and/or any state body.

4. Project Expenses

The expenses related to the implementation of the Project shall be fully borne by the Company.

5. Effectiveness of the MOU and its Termination

- 5.1 This MOU shall enter into force from the moment of its execution and shall remain in full force and effect for _____ years.
- 5.2 The MOU may be terminated in accordance with the terms of Section 3.6.

6. Amendments

This MOU may be amended by written agreement of the parties. If any provision of this MOU becomes invalid or unenforceable, the validity of other provisions shall not be affected.

7. Notifications

Any correspondence sent by the parties within the framework of this MOU shall be made in writing and shall be sent by mail, courier service or facsimile transmission (with the original to follow). The notification shall enter into force immediately upon its receipt by the recipient.

8. Governing Law and Dispute Resolution

- 8.1 This MOU shall be governed by the laws of Georgia.
- 8.2 The parties agree that they shall strictly comply with the terms of this MOU, but in case of a dispute between the parties, they shall attempt to resolve such dispute through negotiations. In case of failure to reach an agreement, all disputes arising out of this MOU shall be resolved by common courts of Georgia, in accordance with the applicable legislation of Georgia.

9. Counterparts, Language of MOU

This MOU is made in two languages – Georgian and English, two original counterparts in each language. In case of any inconsistency between the two texts of the MOU, the Georgian text shall prevail.

Signed:
On Behalf of the Government of Georgia

Signed:
**On behalf of “Commercial Operator
of Electric Power System”, LLC**

Signed:
On behalf of the Company:
