

Standard Conditions of Direct Contract On Purchase of Balancing Electricity

(About the Commercial Operator Selling the Balancing Electricity)

Tbilisi

August 31, 2006

Preamble

- a) *Commercial Operator* carries out the activities allowed by the Law of Georgia on “Electricity and Natural Gas”, including selling and buying *the Balance Electricity*;
- b) Selling and buying of *Balance Electricity* is conducted (a) by *the Commercial Operator* based on the direct contract signed with specific *Qualified Enterprise*, which predetermines the contracted provisions between *the Parties*. According to the established regulations, it is registered with *the Dispatch Licensee*, and (b) by *the Standard Conditions*, which represents sample contract form intended for *the Qualified Enterprises* that have bought *the Balance Electricity*, exceeding the total volume allowed by *the Direct Contract* from *the Commercial Operator*, without having *Direct Contract* with the latter;
- c) *Standard Conditions* herein have been elaborated based on: the Law of Georgia on “Electricity and Natural Gas”; Civil Code; Paragraph 7 of Article 3 of “Temporary Rule on Functioning the Electric Energy Sector During the Transition Period, Including Establishing the System Commercial Operator, its Activities and Signing Direct Contracts”, approved by the Order #68 of the Minister of Energy, dated August 2, 2006 and “The Electricity (Capacity) Market Rules” (further in the text referred to as “*The Market Rules*”), approved by the Order #77 of the Minister of Energy of Georgia, dated August 30, 2006;
- d) *Standard Conditions* is registered with *the Dispatch Licensee*, based on the relevant standard act, as appropriate (date 31-08-06, registration # 1/17-00) and its content is available for all *the Qualified Enterprises*.

Article 1. General Provisions

- 1.1 *Standard Conditions* herein represent the contract terms (sample contract form) worded in advance and intended for multiple use, composed by one party – Ltd “Electricity System Commercial Operator” (further in the text referred to as “*Commercial Operator*”, registered on August 7, 2009 by Tbilisi Tax Inspection, Register #205170036, represented by its General Director Bidzina Chkonia) for the *Qualified Enterprise*, authorized to take part in the wholesale trade of electricity (based on the Law of Georgia on “Electricity and Natural Gas” and *The Market Rules*), which buys *the Balance Electricity* from *the Commercial Operator*, without the *Direct Contract* signed in advance.
- 1.2 The Enterprise can be linked to *the Standard Conditions* in compliance with the Article 4 of these *Conditions*.
- 1.3 *Standard Conditions* regulates the terms and rules of purchase of *Balance Electricity* by *the Enterprise* from *the Commercial Operator* as well as other issues connected with this legal relations.

Article 2. Definition of General Terms

2.1 General terms used in *Standard Conditions* have the same meaning as considered by the Law of Georgia on “Electricity and Natural Gas” and corresponding subordinate legislation, issued (adopted) by the Ministry of Energy of Georgia and the National Water and Energy Regulatory Commission. In addition, below is given the definition of following terms:

Standard Conditions	Standard Conditions herein and all its annexes about the sale of the <i>Balance Electricity</i>
Actual Need (Surplus Consumption)	Below zero subtraction between the <i>Net Consumption</i> and <i>Contracted Volume</i>
Contracted Volume	Total quantity (but not more than the volume of electricity considered by the <i>Direct Contracts</i>) of the electricity actually purchased based on the <i>Direct Contracts</i> on purchase of electricity as well as reserve capacity by <i>the Enterprise</i> , during <i>the Calculation Period</i> .
Direct Contract	Direct contracts on purchase of electricity with the <i>Generation Licensees</i> , <i>Small Capacity Power Plants</i> and <i>the Importers</i> with other <i>Qualified Enterprises</i> as well as <i>the Direct Contracts</i> signed with <i>the Commercial Operator</i> .
Actual Consumption (Purchase)	The electricity purchased (consumed) by <i>the Enterprise</i> during one <i>Calculation Period</i> , metered and confirmed by the rule established by <i>the Market Rules</i> , including the losses considered by these <i>Rules</i> .

Article 3. Subject of the Contract

3.1 According to *the Standard Conditions*, *Commercial Operator* sells and *the Enterprise* buys *the Balance Electricity* aimed at meeting the actual needs and provides for full and timely compensation of its cost according to the rules and conditions established by *the Standard Condition*.

3.2 *Standard Conditions* are fulfilling the norms established by the legislation in force as well as *the Market Rules*. The legislation in force regulates the issues not considered by *Standard Conditions*.

Article 4. Being Linked to the Standard Conditions

4.1 *Balance Electricity* will be considered as purchased by *the Enterprise* on *Standard Conditions* if *the actual purchase (consumption) by the Enterprise* exceeds the contracted volume, confirmed by the receipt/delivery act, signed in compliance with *the Market Rules*. From this very moment, *the Enterprise* will be considered as being linked to the *Standard Conditions*.

4.2 From the moment of being linked to *the Standard Conditions*, *the Enterprise* becomes subject to the rights and obligation imposed by *these Conditions*.

Article 5. Balance Electricity

5.1 For the purpose of *Standard Conditions*, *Balance Electricity* is the electricity purchased by *the Enterprise* (as a result of excessive consumption) from *the Commercial Operator* to meet actual needs.

5.2 The *Balance Electricity* purchased due to actual needs is recorded and confirmed in the receipt/delivery act signed between *the Enterprise* and relevant individual (individuals) in compliance with the rules and terms established by *the Market Rules*. The quantity of electricity purchased and/or consumed by *the Enterprise* during the *Calculation Period*, pointing at the

source (including *Commercial Operator*) of this purchase is also recorded in the above mentioned act.

5.3 *The Market Rules* regulate signing the receipt/delivery act of electricity and submitting it to *the Commercial Operator*.

Article 6. Billing and Payment

6.1 The Tax Legislation regulates the rule of making out and submitting the invoice.

6.2 The cost of *Balancing Electricity* is calculated according to *the Market Rules*;

6.3 After *the Seller* presents the settlement document, *the Buyer* is obliged to compensate the full cost of purchased electricity, not later than 25th day, since the end of the calculation period. This obligation will be considered as fulfilled, after the full amount is transferred to the bank account.

6.4 As a rule, settlement between the parties shall be carried out by the bank transfer unless the written request of using any other recognized way of settlement is received from *the Commercial Operator*.

6.5 Based on *the Standard Conditions* herein, the payment to be made by *the Commercial Operator* is not subject to offset or pay-off, without prior written agreement of *Commercial Operator*. Based on *the Standard Conditions* herein, entrustment of *the Enterprise's* payment liability to the other (third) party is not acceptable without the written approval of *the Commercial Operator*.

6.6 In the event that *the Buyer* fails to provide for timely compensation of the cost of electricity, the penalty - 0,15% of unpaid amount per each delayed day shall be imposed to *the Buyer*. This penalty shall be billed after the 25th day, since the end of calculation period. Billing of this penalty shall stop on the day, when *the Seller* transfers the unpaid amount.

6.7 In the event of disagreement connected with the invoice, the authorized representatives of *Commercial Operator* and *the Enterprise* shall meet immediately and try to settle the argument.

6.8 Amendments to the legal acts, which regulate the activity of *Commercial Operator* and/or *the Enterprise*, connected with the change of price of balance electricity to be delivered to the enterprise, require corresponding corrections to the tariff, the enterprise was supposed to receive from *the Commercial Operator* on *Standard Conditions*. Based on the paragraph herein, rejection of written confirmation of amendment to the balance electricity price established by *Standard Conditions* by any of *the Parties* is unacceptable.

6.9 According to *these Conditions*, the *Commercial Operator* is entitled to take actions allowed by the legislation in the event of non-payment, partial payment and/or delay of payment of any fee or interest, connected with the cost of *Balance Electricity*, which includes but is not limited to the *Commercial Operator's* right on restricting or terminating the electricity delivery to *the Enterprise* according to the rule established by the active legislation.

Article 7. Payment Guarantee

7.1 *The Enterprise* linked to *the Standard Conditions* according to the Article 4.1, which has violated the obligation imposed by the Article 6.3 of *Standard Conditions*, is obliged to present the *Bank Guarantee* to *Commercial Operator*. The amount guaranteed by *the Bank Guarantee* shall not be less than the amount not paid in compliance with the Article 6.3

7.2 *The Enterprise* shall keep the *Bank Guarantee* during the entire period being linked to the *Balance Electricity*, except when *the Enterprise* does not buy *the Balance Electricity* one after another during 1 (one) *Calculation Period* in compliance with *the Standard Conditions*.

7.3 Failure of *the Enterprise* to present *the Bank Guarantee*, shall become the subject to taking measures against *the Enterprise* included in the Articles **???** of *Standard Conditions* herein. *The Commercial Operator* sends the notification about terminating the electricity (capacity) supply to *the Electricity Dispatch Licensee* in compliance with *the Market Rules*.

Article 8. Force Majeur

8.1 In *Standard Conditions* herein, *Force Majeur* and *Force Majeur* occurrence for any of *the Parties* means the circumstances, which cannot be controlled by mentioned *Party*; when they cannot be avoided, stopped or improved, despite all efforts of such *Party*; when as a consequence or as a result, one of *the Parties* cannot fulfill the obligations imposed by *Standard Conditions*. *Force Majeur* occurrence includes (but is not limited to):

- a) the war, military actions, siege, mobilization, requisition or embargo;
- b) unrest, revolution, rebellion, militarization and dictatorship of the government or civil war;
- c) public disorder, civil riot or sabotage;
- d) the actions of enemies of the state or terrorist actions;
- e) lightning, conflagration, explosion, storm, wind, flying debris, flood, tide-wave, earthquake, hurricane or other natural disaster.

8.2 None of *the Parties* is requested to fulfill *the Contract* and it will not be considered as non-fulfillment of their obligations, if the reason for non-fulfillment is *Force Majeur*, provided that lack of funds by any of *the Parties* is not considered as *Force Majeur*. Luck of funds does not liberate relevant *Party* from the payment liability, imposed by *the Contract* herein and *this Party* is not remitted from this liability.

8.3 *The Parties* shall be released from full or partial fulfillment of contract obligations only during the circumstances indicated in Paragraph 8.1. Under such circumstances, deadline for the fulfillment of contracted obligations will be rescheduled by the length of *Force Majeur* period.

8.4 In the even of *Force Majeur*, *the Party* directly affected by it shall send to another *Party* the written notification about the occurrence within 5 work-days. This notification shall include relevant facts, information, possible consequences and duration. The document (the statement issued by the Chamber of Trade and Industry of Georgia), justifying *Force Majeur* occurrence shall be presented within the following 14 days.

Article 9. Dispute Resolution

9.1 *The Commercial Operator* and *the Enterprise* shall take all possible actions to settle any dispute or disagreement occurred in relation with *the Standard Condition* (its definition, usage and/or fulfillment) herein.

9.2 If *the Parties* fail to reach common agreement, the matter of argument shall be submitted to the Georgian National Energy Regulatory Commission or the court within the jurisdiction of Georgia.

Article 10. Other Conditions

10.1 If one of *Standard Conditions*' provision or its part (or use of this provision or its part towards one of the *Parties*) is illegal or impossible to fulfill, all remaining provisions of *Standard Conditions* will be considered effective and sustainable and they will remain in force as far as possible, whereas useless and unsustainable provisions shall be separated from *the Standard Conditions*, so that the legality and fulfillment possibility of others will be retained.

10.2 The terms included in *Standard Conditions* herein are obligatory for *the Parties*, their legatees and assignee. Entrustment of obligations imposed by *Standard Conditions* herein to the other *Party*, without the written consent of the second *Party* is unacceptable.

10.3 *Standard Conditions* herein are regulated and defined by the Legislation of Georgian

**Energy System
Commercial Operator**

**Bidzina Chkonia
General Director**

AMENDMENT #1

Tbilisi

September 18, 2008

To the Contract
“Standard Conditions of the Direct Contract on Purchase of Balance Electricity”
(About the Commercial Operator Selling the Balance Electivity),
Dated August 31, 2008 (Dispatch Licensee Registration #1/17-00, dated 31.08.2006)

The following amendment shall be introduced to the Contract “Standard Conditions of Direct Contract on Purchase of Balance Electricity” (about the Commercial Operator selling the Balance Electivity), dated August 31, 2008 (Dispatch Licensee Registration #1/17-00, dated 31.08.2006):

1. The Paragraph 6 of Article 6 of the Contract shall be edited as follows:

6.6 “In the event that *the Buyer* fails to fully or partly cover the cost of electricity according to the rules and terms established by this Contract, the penalty - 0,15% (per each delayed day) shall be added to the unpaid amount, starting from the date determined as a payment date. This penalty shall be billed after the 26th day since the end of the calculation period. Billing of this penalty shall stop on the following day (excluding the following day), after *the Seller* transfers the unpaid amount.”

2. The amendment becomes effective on October 1, 2008.

**Ltd “Energy System
Commercial Operator”**

47 Al. Kazbegi Ave, Tbilisi
Tel: 31-14, 31-14-70
JSC “Bank of Georgia”
Central Branch
Address: #3 Pushkin Street, Tbilisi
Bank Code: 220101502
A/A 168285400
Identification Code 205170036

**Bidzina Chkonia
General Director**

AMENDMENT #2

Tbilisi

September 18, 2008

To the Contract
“Standard Conditions of Direct Contract on Purchase of Balance Electricity”
(About the Commercial Operator Selling the Balance Electivity),
Dated August 31, 2008 (Dispatch Licensee Registration #1/17-00, dated 31.08.2006)

The following amendment shall be introduced to the Contract “Standard Conditions of Direct Contract on Purchase of Balance Electricity” (about the Commercial Operator selling the Balance Electivity), dated August 31, 2008 (Dispatch Licensee Registration #1/17-00, dated 31.08.2006):

1. The Paragraph 6 of Article 6 of the Contract shall be edited as follows:

6.6 “In the event that *the Buyer* fails to fully or partly cover the cost of electricity according to the rules and terms established by this Contract, the penalty - 0,075% (per each delayed day) shall be added to the unpaid amount, starting from the date determined as a payment date. This penalty shall be billed after the 26th day since the end of the calculation period. Billing of this penalty shall stop on the following day (excluding the following day), after *the Seller* transfers the unpaid amount.”

2. The amendment becomes effective from the day of registration by the Dispatch Licensee.

Ltd “Energy System Commercial Operator”

47 Al. Kazbegi Ave, Tbilisi
Tel: 31-14, 31-14-70
JSC “Bank of Georgia”
Central Branch
Address: #3 Pushkin Street, Tbilisi
Bank Code: 220101502
A/A 168285400
Identification Code 205170036

**Bidzina Chkonia
General Director**

AMENDMENT #3

Tbilisi

April 21, 2009

To the Contract
“Standard Conditions of Direct Contract on Purchase of Balance Electricity”
(About the Commercial Operator Selling the Balance Electivity),
Dated August 31, 2008 (Dispatch Licensee Registration #1/17-00, dated 31.08.2006)

The following amendment shall be introduced to the Contract “Standard Conditions of Direct Contract on Purchase of Balance Electricity” (about the Commercial Operator selling the Balance Electivity), dated August 31, 2008 (Dispatch Licensee Registration #1/17-00, dated 31.08.2006):

1. The Paragraph 10 shall be added to the Article 6 of the Contract:

6.10 “If the cost of balance electricity increases as a result of correction, under such circumstances the enterprise is obliged to compensate the amount indicated in the correcting invoice in favor of the Commercial Operator not later than 25th day after the end of billing month. In the event that the buyer partly covers or fails to cover the amount indicated in the correcting invoice within the period established by the rule and provisions of this Paragraph, the penalty - 0,075% (per each delayed day) shall be added to the unpaid amount, starting from the date determined as a payment date. This penalty shall be billed on the 26th day since the end of the month when the correcting invoice was issued. Billing of this penalty shall stop on the following day (excluding the following day), after *the Seller* transfers the unpaid amount.”

2. The amendment becomes effective from the day of registration by the Dispatch Licensee and the duration extends until April 21, 2009.

Ltd “Energy System Commercial Operator”

47 Al. Kazbegi Ave, Tbilisi
Tel: 31-14, 31-14-70
JSC “Bank of Georgia”
Central Branch
Address: #3 Pushkin Street, Tbilisi
Bank Code: 220101502
A/A 168285400
Identification Code 205170036

Bidzina Chkonia
General Director