

Loan Agreement

dated 19.12, 2008

between

**KfW, Frankfurt am Main,
("KfW")**

and

**Georgia
represented by the
Ministry of Finance
("Borrower")**

for

EUR 45,000,000.-

- Rehabilitation of Municipal Infrastructure Facilities in Batumi -

Phase II

(BMZ 2006 65 802)

Preamble

1. Loan
 2. Disbursement
 3. Fees
 4. Interest
 5. Repayment and Prepayment
 6. Calculations and Payments in General
 7. Guarantee from the Federal Republic of Germany
 8. Negative Pledge and Pari Passu
 9. Costs and Public Charges
 10. Special Obligations
 11. Events of Default
 12. Representation and Notices
 13. General Provisions
-

Preamble

The bases for this Agreement are the Agreement dated 24.07.2007 between the Government of the Federal Republic of Germany and the Government of Georgia on Financial Cooperation (FC) 2006-2007 (GA I) and the agreement still to be concluded between the Government of the Federal Republic of Germany and the Government of Georgia on Financial Cooperation 2008-2009 (GA II) ("Government Agreements").

KfW will finance the Loan granted in accordance with the conditions of this Agreement from its own funds as well as from low-interest budget funds provided by the Federal Republic of Germany for projects that meet development-policy standards for eligible projects. The terms and conditions of the Loan comply with the OECD requirements for recognition as Official Development Assistance (ODA).

1. Loan

1.1 Amount: KfW will extend to the Borrower a Loan not exceeding a total of

EUR 45,000,000.

1.2 The Borrower shall channel EUR 35,000,000.- of the Loan to the Self-Governing City Batumi ("Project-Executing Agency") and EUR 10,000,000.- of the Loan to the Government of the Autonomous Republic of Adjara, represented by the Ministry of Finance and Economy, in accordance with the conditions set forth in Article 1.4. The Borrower will ensure that the Project-Executing Agency and the Government of the Autonomous Republic of Adjara will use the Loan exclusively to finance the rehabilitation and extension of water supply and wastewater systems and construction of a wastewater treatment plant in Batumi ("Project Part I") and to finance the rehabilitation and extension of wastewater systems in the coastal villages of the Khelvachauri Municipality ("Project Part II"), and primarily to pay the foreign exchange costs. The Project-Executing Agency, the Government of the Autonomous Republic of Adjara, represented by the Ministry of Finance and Economy, Khelvachauri Municipality and KfW shall determine the details of the Project Part I and Project Part II (together the "Project") as well as the goods and services to be financed from the Loan by a separate agreement, which is known to the Borrower and to which the Borrower hereby agrees.

1.3 Taxes and other public charges to be borne by the Borrower and import duties shall not be financed from the Loan.

1.4 *Channelling of the Loan to the Project-Executing Agency and to the Government of the Autonomous Republic of Adjara.* The Borrower shall channel EUR 35,000,000.- of the Loan to the Project-Executing Agency and EUR 10,000,000.- of the Loan to the Government of the Autonomous Republic of Adjara, represented by the Ministry of Finance and Economy, under separate loan agreements at the terms and conditions set forth in Articles 4.1 and 5.1 hereof. The channelling of the Loan shall neither constitute any liability of the Project-Executing Agency nor of the Government of the Autonomous Republic of Adjara to KfW for payment obligations under this Agreement.

2. Disbursement

2.1 *Request for disbursement.* As soon as all conditions precedent to disbursement pursuant to Clause 2.4 are fulfilled, KfW will disburse the Loan in accordance with the progress of the Project upon request of the Project-Executing Agency.

2.2 *Separate Agreement.* In a separate agreement, the Project-Executing Agency (PEA), the Government of the Autonomous Republic of Adjara, Khelvachauri Municipality and KfW will define the disbursement procedure. In particular the evidence to be furnished by the PEA proving that the requested loan amounts are used for the purpose stipulated in this Agreement.

2.3 *Deadline for requesting disbursement.* KfW has the right to refuse requests for disbursement after 31.12.2012.

2.4 *Conditions precedent to disbursement.* KfW must effect disbursements under this Agreement only if

- a) the Borrower has provided evidence satisfactory to KfW that it has met all requirements under its constitutional and other laws for the valid assumption of all of its obligations under this Agreement;
- b) the specimen signatures mentioned in Clause 12.1 (*Representation of the Borrower*) have been submitted to KfW;
- c) the Guarantee from the Federal Republic of Germany mentioned in Clause 7 is in force and effect without any restriction;
- d) the Borrower has paid the Management Fee stated in Clause 3.2;

- e) no events of default have occurred and
- f) no extraordinary circumstances have arisen that preclude or seriously jeopardise the implementation, the operation, or the purpose of the Project, or the performance of the payment obligations assumed by the Borrower under this Agreement.

Prior to disbursement from the Loan KfW has the right to demand such further documents and evidence as it reasonably deems necessary.

2.5 *Waiver of disbursement.* Subject to the fulfilment of its obligations under Clause 10 the Borrower may waive the disbursement of undisbursed loan amounts with the consent of KfW against payment of a compensation pursuant to Clause 2.6. This shall, however, not apply in the event of a termination by the Borrower pursuant to Article 4.1 second sentence.

2.6 *Compensation.* If the Borrower waives disbursement of a loan amount, or if a loan amount is not disbursed at all or is not disbursed by the deadline stated in Clause 2.3 for other reasons for which KfW cannot be held accountable, the Borrower will promptly pay to KfW upon its request such amount as is necessary to compensate KfW for any losses, expenses or costs incurred by KfW as a result of the waiver of disbursement of the loan amount in question¹. This shall, however, not apply in the event of a termination by the Borrower pursuant to Article 4.1 second sentence.

3. Fees

3.1 *Commitment fee.* The Borrower will pay a non-refundable commitment fee of 0.25% p.a. on undisbursed loan amounts. The commitment fee will be computed for the period beginning with the elapse of a three-month period following the signing of this Agreement and lasting until the Loan has been fully disbursed. It is due for payment semi-annually and in arrears on June 30th and December 30th of each year (each a

¹ calculation is as follows: the excess (if any) of (i) the interest for a Loan amount, which KfW would have been entitled to claim until the end of the Interest Period applying for the Loan amount had the Borrower not dispensed with the disbursement of the Loan amount, over (ii) the interest which KfW could receive by reinvesting the respective Loan amount until the end of the Interest Period, applicable to that Loan amount taking into consideration the repayment of principal as agreed in the Loan Agreement, provided that such excess amount must be discounted by the reinvestment interest rate curve thus determined by KfW.

SK

"Payment Date"). It is first due for payment on June 30th, 2009 but no earlier than the Payment Date following the day on which this Agreement enters into force and effect pursuant to Clause 13.10.

- 3.2 *Management fee.* Subject only to the Borrower's termination right pursuant to Article 4.1 second sentence, the Borrower will pay KfW a non-refundable one-time, lump-sum management fee equalling 1.0 % flat of the principal amount of the total Loan stated in Clause 1.1 (EUR 45,000,000), at the latest upon elapse of a three-month period after this Agreement is signed by KfW or upon elapse of a one-month period after this Agreement takes effect (depending on which is the later date) but in any case prior to the first disbursement from the Loan.

4. **Interest**

- 4.1 *Interest (fixed interest rate set upon entering into force of the Loan.)* The Borrower shall pay to KfW a fixed interest rate on the Loan, which will be notified by KfW to the Borrower within two Banking Days after notification by the Borrower to KfW of the effectiveness of this Loan Agreement. The Borrower may with immediate effect terminate the Loan Agreement without having to pay management fee if the interest rate exceeds 2.25 % p.a. The Borrower's notification of termination must be communicated to KfW in written form by facsimile within twenty four hours after receipt of the notification by KfW to the Borrower of the fixed interest rate on the Loan, provided that the day following the notification by KfW to the Borrower of the fixed interest rate on the Loan is a banking day. If the following day is not a banking day, the Borrower's notification of termination must be communicated to KfW in written form by facsimile by 5 p.m. CET on the day of the notification by KfW to the Borrower of the fixed interest rate on the Loan.
- 4.2 *Calculation of interest and interest payment dates.* The interest on a disbursed loan amount will be charged from the date (exclusively) on which the respective loan amount is paid out of the loan account kept by KfW for the Borrower until the date (inclusively) on which the respective repayments are credited to KfW's account stated in Clause 8.3. The interest will be calculated in accordance with Clause 6.1 (*Calculation*). Interest is to be paid in arrears on the Payment Dates (as defined in Clause 3.1).

5. **Repayment and Prepayment**

5.1 *Repayment Schedule.* The Borrower will repay the Loan as follows:

Instalment	Date		Amount	
1	June 30,	2014	1.500.000,00	EUR
2	December 30,	2014	1.500.000,00	EUR
3	June 30,	2015	1.500.000,00	EUR
4	December 30,	2015	1.500.000,00	EUR
5	June 30,	2016	1.500.000,00	EUR
6	December 30,	2016	1.500.000,00	EUR
7	June 30,	2017	1.500.000,00	EUR
8	December 30,	2017	1.500.000,00	EUR
9	June 30,	2018	1.500.000,00	EUR
10	December 30,	2018	1.500.000,00	EUR
11	June 30,	2019	1.500.000,00	EUR
12	December 30,	2019	1.500.000,00	EUR
13	June 30,	2020	1.500.000,00	EUR
14	December 30,	2020	1.500.000,00	EUR
15	June 30,	2021	1.500.000,00	EUR
16	December 30,	2021	1.500.000,00	EUR
17	June 30,	2022	1.500.000,00	EUR
18	December 30,	2022	1.500.000,00	EUR
19	June 30,	2023	1.500.000,00	EUR
20	December 30,	2023	1.500.000,00	EUR
21	June 30,	2024	1.500.000,00	EUR
22	December 30,	2024	1.500.000,00	EUR
23	June 30,	2025	1.500.000,00	EUR
24	December 30,	2025	1.500.000,00	EUR
25	June 30,	2026	1.500.000,00	EUR
26	December 30,	2026	1.500.000,00	EUR
27	June 30,	2027	1.500.000,00	EUR
28	December 30,	2027	1.500.000,00	EUR
29	June 30,	2028	1.500.000,00	EUR
30	December 30,	2028	1.500.000,00	EUR

SA

- 5.2 *Undisbursed loan amounts.* Undisbursed loan amounts will be credited against the repayment instalments proportionally pursuant to the Repayment Schedule unless KfW, at its own discretion, determines another offsetting alternative in individual cases.
- 5.3 *Disbursements after the start of repayment.* If loan amounts are disbursed after repayment has started, the Repayment Schedule as listed in Clause 5.1. will remain unaffected as long as the respective repayment instalment due in accordance with the Repayment Schedule is less than the outstanding loan amount. If the repayment instalment due for payment exceeds the outstanding loan amount, KfW will deduct the amount equal to the difference from the repayment instalment due, divide it by the remainder of the repayment instalments still outstanding, and add this sum to each outstanding repayment instalment. KfW reserves the right to postpone taking disbursements that are made within 45 days prior to the respective Payment Date into consideration for the determination of the outstanding loan amount until the next but one Payment Date.
- 5.4 *Prepayment.* The following will apply to prepayments:
- a) *Right to prepayment.* On any Payment Date the Borrower may repay the Loan in full or in part in advance of maturity but at least in the amount of one repayment instalment pursuant to Clause 5.1. If the Borrower makes such a prepayment it must pay a prepayment compensation pursuant to Clause 5.4 e).
 - b) *Notice.* A prepayment of a loan amount pursuant to Clause 5.4 a) is subject to notification of the prepayment by the Borrower to KfW no later than on the 15th banking day in Frankfurt am Main prior to the intended prepayment date. Such notice is irrevocable; it must specify the date on which the prepayment is to be made and the amount thereof and obligates the Borrower to pay to KfW the stated amount on the stated date.
 - c) *Mandatory prepayment.* The Borrower must immediately reimburse to KfW, upon its request, any and all loan amounts as the Borrower is unable to prove to have been used for the agreed purpose.

- d) *Amounts due.* The Borrower will also pay the following amounts together with the prepayment:
 - aa) any prepayment compensation pursuant to Clause 5.4 e) due as a result of the prepayment; and
 - bb) all interest accrued on the prepaid loan amount up until the date of the prepayment.
- e) *Prepayment compensation.* If the Borrower repays a loan amount in advance of maturity, the Borrower must immediately pay to KfW upon the latter's request such amount as is necessary to compensate for any losses, expenses or costs incurred by KfW as a result of the prepayment. KfW will determine the amount of the prepayment compensation and communicate it to the Borrower².
- f) *Offsetting.* Clause 5.2 (*Undisbursed loan amounts*) will apply mutatis mutandis to the offsetting of prepayments.

5.5 *Revised Repayment Schedule.* In the event that Clause 5.3 (*Disbursements after the start of repayment*) or Clause 5.4 (*Prepayment*) applies, KfW will send the Borrower a revised Repayment Schedule that will become an integral part of this Agreement and will replace the Repayment Schedules valid until such time.

6. Calculations and Payments In General

6.1 *Calculation.* Interest, the commitment fee, default interest pursuant to Clause 6.5, lump-sum compensation for overdue amounts pursuant to Clause 6.6, compensation pursuant to Clause 2.6 and prepayment compensation pursuant to Clause 5.4 e) will all be calculated on the basis of a 360-day year with 30-day months.

6.2 *Due date.* If a payment to be made in connection with this Agreement falls due on a date that is not a Banking Day, the Borrower must make such payment on the following Banking Day. If the following Banking Day falls within the next calendar month, such payment must be made on the preceding Banking Day.

² calculation is as follows: the excess (if any) of (i) the interest for a Loan amount, which KfW would have been entitled to claim until the end of the Interest Period applying for the Loan amount had the Borrower not repaid the loan amount in advance of maturity, over (ii) the interest which KfW could receive by reinvesting the respective Loan amount until the end of the Interest Period, applicable to that Loan amount taking into consideration the repayment of principal as agreed in the Loan Agreement, provided that such excess amount must be discounted by the reinvestment interest rate curve thus determined by KfW.

2/1

- 6.3 *Account number, time of crediting.* The Borrower will be released from its payment obligations in connection with this Agreement if and as soon as the respective amounts have been credited to KfW at its free disposal without any deductions in Euros and not later than 10:00 a.m. to KfW's account number 31.96386908 held with KfW, Frankfurt am Main (bank sort code 500 204 00, BIC KFWIDEFF, with additional reference "Ref. YYYYMMDD") or to any other account as notified by KfW.
- 6.4 *Counterclaims of the Borrower.* The Borrower is not entitled to assert any rights of retention or set-off or comparable rights against payment obligations under this Agreement unless such rights are recognised by declaratory judgment (*rechtskräftig festgestellt*) or have not been contested by KfW.
- 6.5 *Default interest.* If any repayment instalments or prepayments pursuant to Clause 5.4 (*Prepayment*) are not at the disposal of KfW when due, KfW may without prior reminder charge default interest at the base rate plus 3% p.a. for the period beginning on the due date and ending on the date on which such payments are credited to the account of KfW specified in Clause 6.3. This rate must at least equal the interest rate pursuant to Clause 4.1 (*Interest*). The "Base Rate" is the interest rate announced as such by the German central bank (Deutsche Bundesbank) prevailing on the respective due date. Such default interest must be paid immediately upon KfW's first request.
- 6.6 *Lump-sum compensation.* For overdue amounts (with the exception of such repayment instalments and prepayments as mentioned in Clause 6.5 on *Default interest*) KfW may, without prior reminder, request lump-sum compensation of 3% p.a. above the Base Rate applicable on the respective due date for the period beginning on the due date and ending on the date of payment of such overdue amounts. The lump-sum compensation must be paid immediately upon KfW's first request.
- 6.7 *Offsetting.* KfW has the right to offset payments received against payments due under this Agreement or under other loan agreements concluded between KfW and the Borrower.
7. **Guarantee from the Federal Republic of Germany**

KfW will have payment claims under this Agreement guaranteed by the Federal Republic of Germany prior to the first disbursement.

21

8. **Negative Pledge and Pari Passu**

8.1 *Project assets.* The Borrower may not and the Borrower shall ensure that neither the Project-Executing Agency nor the Government of the Autonomous Republic of Adjara pledge, mortgage, create other charges or sell the project assets before repayment in full of the Loan without the prior consent of KfW.

8.2 *Pari passu.* To the extent permitted by law, the Borrower undertakes to perform the obligations under this Agreement *pari passu* with all its other existing or future unsecured and not subordinated payment obligations.

9. **Costs and Public Charges**

9.1 *No deductions or withholdings.* The Borrower will make all payments to KfW under this Agreement without any deductions for taxes, other public charges or other costs. In the event that the Borrower is obligated by law or for other reasons to effect deductions or withholdings on payments to KfW, the payments made by the Borrower will increase by such amount as is necessary in order for KfW to receive in full the amounts due under this Agreement after deduction of taxes and charges.

9.2 *Costs.* The Borrower will bear all costs and expenses accruing in connection with the disbursement of the Loan, in particular remittance and transfer costs (including conversion fees), as well as all costs and expenses accruing in connection with the maintenance or enforcement of this Agreement and of all other documents related to this Agreement as well as all rights resulting from this Agreement.

9.3 *Taxes and other charges.* The Borrower will bear all taxes and other public charges accruing outside the Federal Republic of Germany in connection with the conclusion and execution of this Agreement. If KfW advances such taxes or charges, the Borrower will transfer them without delay upon request to KfW's account as specified in Clause 6.3.

10. **Special Obligations**

10.1 *Project implementation and special information.*

The Borrower will itself ensure and will ensure that the Project-Executing Agency will

- a) prepare, implement, operate and maintain the Project in conformity with sound financial and technical practices and substantially in accordance with

the project conception agreed upon between the Project-Executing Agency and KfW;

- b) assign the preparation and supervision of construction of the Project to independent, qualified engineering consultants, and the implementation of the Project to qualified firms;
- c) award the contracts for the goods and services to be financed from the Loan upon prior international competitive bidding;
- d) ensure the full financing of the Project and furnish to KfW upon its request evidence proving that the costs not paid from this Loan are covered;
- e) will keep books and records or commission a third party to do so that unequivocally show all costs of goods and services required for the Project and clearly identify the goods and services financed from this Loan;
- f) enable the representatives of KfW at any time to inspect such books and records and any and all other documentation relevant to the implementation and operation of the Project, and to visit the Project and all the installations related thereto;
- g) furnish to KfW any and all such information and records on the Project and its further progress as KfW may request;
- h) of its own accord and without delay
 - aa) forward to KfW any queries received by the Borrower from the OECD or its members under the so-called "Agreement for Untied ODA Credits Transparency" following the award of the contracts for the supplies and services to be financed from the Loan and will coordinate the reply to any such queries with KfW, and
 - bb) notify KfW of any and all circumstances that exclude or seriously jeopardise the implementation, the operation or the purpose of the Project.

10.2 *Separate Agreement.* The Project-Executing Agency, the Government of the Autonomous Republic of Adjara, Khelvachauri Municipality and KfW will determine the details of Clause 10.1 by a separate agreement.

- 10.3 *Assistance of the Borrower.* The Borrower shall assist the Project-Executing Agency in conformity with sound engineering and financial practices in the implementation of the Project and in the performance of the Project-Executing Agency's and the Government of the Autonomous Republic of Adjara's obligations under this agreement and, in particular, grant the Project-Executing Agency and the Government of the Autonomous Republic of Adjara any and all permissions necessary for the implementation of the Project.
- 10.4 *Compliance.* The Borrower will ensure that the persons whom it entrusts with the preparation and implementation of the Project, the award of any contract for the supplies and services to be financed, and with requesting the loan amounts do not demand, accept, make, grant, promise or accept the promise of unlawful payments or other advantages in connection with these tasks.
- 10.5 *Transport of goods.* The provisions set forth in the Government Agreement I and the Government Agreement II, which are known to the Borrower, will apply to the transport of the goods to be financed from the Loan.
- 10.6 *Separate loan agreements (channelling of the Loan):* The separate loan agreements specified in Article 1.4 hereof shall contain a regulation on the financing of VAT payments to be borne by the Georgian side. Prior to the first disbursement from the Loan, the Borrower shall send KfW a certified translation of these loan agreements. These loan agreements are subject to prior approval by KfW.

11. Events of Default

- 11.1 *Events of default.* KfW may terminate the Loan in whole or in part if
- a) the Borrower fails to perform its obligations to KfW to make payments when due,
 - b) obligations under this Agreement or under separate agreements pertaining to this Agreement have been breached or
 - c) this Agreement or the Arbitration Clause mentioned in Article 13.8 or any parts thereof ceases to have a binding effect upon the Borrower or ceases to be enforceable against the Borrower.

11.2 *Legal consequences of an event of default.* If any of the events specified in Clause 11.1 has occurred and has not been resolved within a period determined by KfW that must be at least 30 days, KfW may terminate this Agreement or any parts of it with the consequence that

- a) its obligations under this Agreement terminate, and
- b) KfW may demand full or partial repayment of the outstanding loan amount together with the interest accrued and any and all other amounts due under this Agreement, with Clauses 6.5 (*Default interest*) and 6.6 (*Lump-sum compensation*) applying to accelerated amounts *mutatis mutandis*.

11.3 *Compensation for damages.* In the event that this Agreement is terminated in full or in part the Borrower will pay the compensation in accordance with Clause 2.6 and/or prepayment compensation in accordance with Clause 5.4 e).

12. **Representation and Statements**

12.1 *Representation of the Borrower.* The Minister of Finance of Georgia and such persons as designated by him or her to KfW and authorised by specimen signatures authenticated by him or her will represent the Borrower in the execution of this Agreement. The power of representation will not expire until its express revocation by the representative of the Borrower authorised at such time has been received by KfW.

12.2 *Addresses.* Notices or statements in connection with this Agreement must be in writing. They must be sent as originals or – with the exception of requests for disbursement - via facsimile. Any and all notices or statements made in connection with this Agreement must be sent to the following addresses:

SL

for KfW:

KfW
L III a 5
Postfach 11 11 41
60046 Frankfurt am Main
Germany
Fax: +49 69 7431-2944

for the Borrower:

Ministry of Finance (MOF)
16. Gorgasali str.
0114 Tbilisi, Georgia
Fax.: +995 32 45 74 42

13. General Provisions

- 13.1 *Banking Day.* Where reference is made in this Agreement to a "Banking Day", this means a day, other than a Saturday or Sunday, on which commercial banks in Frankfurt am Main are open for general business.
- 13.2 *Place of performance.* The place of performance of all obligations under this Agreement is Frankfurt am Main.
- 13.3 *Partial invalidity and gaps.* If any provision of this Agreement is or becomes invalid, or if there is a gap in any of the provisions of this Agreement, this will not affect the validity of the remaining provisions hereof. The parties to this Agreement will replace any invalid provision by a legally valid one which comes as close as possible to the spirit and purpose of the invalid provision. The parties will fill any gap in the provisions with a legally valid provision which comes as close as possible to the spirit and purpose of this Agreement.
- 13.4 *Written form.* Amendments and supplements to this Agreement must be in writing to be effective. Any waiver of this requirement of written form must be declared by the parties in writing.
- 13.5 *Assignment.* The Borrower may not assign or transfer, pledge or mortgage any claims from this Agreement.
- 13.6 *Applicable law.* This Agreement is governed by German law.
- 13.7 *Limitation period:* All claims of KfW under this Agreement expire after five years from the end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.

Sts

13.8 *Arbitration.* All disputes arising out of or in connection with the present Agreement shall be settled exclusively and finally by an arbitration tribunal. In this regard, the following will apply:

- a) The arbitration tribunal will consist of one or three arbitrators who will be appointed and will act in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) applicable from time to time.
- b) The arbitration proceedings will be conducted in Frankfurt am Main. The proceedings will be held in the English language.

13.9 *Transmission of information.* KfW is entitled to disclose information related to the conclusion and execution of this Agreement to the Federal Republic of Germany. KfW and the Federal Republic of Germany are all entitled to pass on information related to the Loan and to the Project including the award of the contracts for the supplies and services to be financed from the Loan to international organisations engaged in the collection of statistical data, particularly in connection with aspects of debt service, and/or the collection and publication of data related to the award of the contracts for the supplies and services to be financed from the Loan. The above right to forward information to international organisations also includes the right to directly pass on such information to members of such organisations.

13.10 *Entry into force and effect.* This Agreement will not enter into force and effect until the Government Agreement still to be concluded on which it is based has entered into force and effect.

This Agreement is executed in two originals in the English language.

Tbilisi, 19.12. 2008
KFW

Tbilisi, 19.12 2008
Ministry of Finance of Georgia





