



## Share Purchase Agreement – SPA

### Main Points

Under the Share Purchase Agreement («SPA»), MSCIF Dynami BidCo («Investor» or «Buyer») will agree to buy, and Public Power Corporation (the “Seller”) will agree to sell 49% of its shares in HEDNO (48,569,534 shares). The SPA will be signed following selection of the Investor, with completion (i.e., the sale of the shares and payment of the purchase price) (“Completion”) occurring on a later date following satisfaction of the conditions precedent (outlined below). The Shareholders’ Agreement will be in agreed form at signing of the SPA and executed at Completion.

### Hive - Down

The SPA assumes that the hive-down of the remaining distribution assets from the Seller to HEDNO (the “Hive-Down”) will occur following signing of the SPA as a condition precedent to Completion.

It is clarified that all costs, expenses and taxes (including migration costs) incurred in connection with the Hive-Down will be borne by the Seller. The Seller will use its best endeavours to obtain any necessary consents of contractual counterparties (i.e., the lenders under the EIB and Black Sea facilities) to the Hive-Down.

The SPA requires that no assets or liabilities other than those required or desirable for the Company’s conduct of the Business will be transferred. It also contains “wrong-pockets” provisions dealing with assets that were inadvertently transferred (or mistakenly not transferred) pursuant to the Hive-Down.

PPC agrees that conduct of any potential legal dispute regarding the Hive-Down between the Seller and HEDNO will, on HEDNO’s side, be delegated to the non-conflicted directors appointed by the Purchaser.

### Consideration

The payment for the shares by the Investor at Completion will be in cash, based on the Investor’s offer price, adjusted according to the Completion Accounts Mechanic as described below. The maximum consideration payable by the Purchaser will be capped at 115% of the reference price derived from the Pro-Forma Accounts. The base price (subject to any adjustment under the completion accounts mechanic) is €1,311,994,119.



## Completion Accounts

The purchase price is adjusted by way of a "completion accounts" pricing mechanic.

The Investor will price the deal on the basis of pro-forma accounts of HEDNO prepared before signing and showing the expected effect of the Hive Down, prepared as at 31 December 2020 (the "Pro-Forma Accounts").

The price is adjusted following Completion by reference to a set of accounts drawn up as at the date of Completion (the "Completion Accounts"), by an amount equal to the difference between the net assets of HEDNO as shown in the Pro-Forma Accounts and the net assets as shown in the Completion Accounts (such difference multiplied by 49% to reflect the Investor's stake). The reference net assets, derived from the Pro-Forma Accounts, is specified as €825,086,900. Any increase in net assets as against the Pro-Forma Accounts will increase the price payable, whereas any decrease will reduce the price. Any adjustment to the price is subject to a €1 million de minimis, below which no adjustment (whether positive or negative) will be made.

The Seller will estimate the size of the adjustment before Completion so that the payment at Completion is as close as possible to the final price. Grant Thornton will prepare the Completion Accounts on behalf of the Seller following Completion in accordance with agreed accounting policies.

## SPA signing

The SPA will be signed prior to, but conditional upon, the approval of the transaction by the Sellers' shareholders at a General Meeting held following signing of the SPA (the "**Seller GM Approval**").

The Seller is required to circulate the notice for the General Meeting as soon as reasonably practicable following delivery of the Performance Guarantee and include a recommendation from the Seller's board to approve the resolution. If Seller GM Approval is not obtained within 60 calendar days after delivery of the Performance Guarantee, the Purchaser may terminate the SPA.

There are no break fee or similar provisions if Seller fails to obtain Seller GM Approval (as initially requested by certain bidders).



## **Conditions Precedent**

- Completion is conditional on:
  - EU antitrust clearances,
  - Completion of the Hive-Down and
  - Seller GM Approval.

In order to satisfy the Hive-Down related condition, the financing agreements to be transferred to HEDNO must be transferred on materially no worse terms than currently, and with the consent of the relevant lenders (i.e., EIB and Black Sea) having been obtained.

Investor is responsible for satisfying the antitrust and other regulatory conditions (on a "best endeavours" basis").

Seller is responsible for satisfying Hive-Down and Seller GM Approval conditions on a best endeavours basis.

If the conditions precedent are not satisfied by a specified Long Stop Date 9 months from signing) then either party may terminate the SPA and walk away from the transaction.

## **Interim covenants**

The Seller will undertake to operate HEDNO's business in the ordinary course during the interim period between signing and Completion, and not to undertake certain specific matters without the consent of the Investor (including customary matters such as material asset acquisitions/ disposals, non-ordinary course expenditure, amendments to material contracts, incurrence of material debt, conduct of material legal proceedings and dismissal of key employees), in accordance with the budget and business plan disclosed to bidders.

The interim covenants apply to the Seller as owner of the Distribution Business prior to the Hive-Down (as well as to HEDNO).

The Seller commits to provide customary co-operation with the Purchaser's financing process after signing (subject to usual Seller protections).

## **Performance Guarantee and Equity Commitment Letter**

Since the Investor is a Private Equity bidder, it will be required to enter into an equity commitment letter, whereby the funds standing behind the bidder will agree to provide sufficient funding to the bidder to enable it to pay the price at



Completion, or to pay any damages arising from its failure to complete in breach of the SPA. The ECL will be provided by Macquarie Super Core Infrastructure Fund SCSp.

In addition, within 15 Business Days of signing the SPA, the Investor will be required to provide a performance guarantee issued by an eligible bank in an amount equal to €65,599,705.05 [5% of the consideration]. If it fails to do so, the SPA terminates and the Seller may claim damages). The Seller may claim under the performance guarantee if the Investor does not pay any amount when due under the SPA, or if the SPA terminates before Completion due to a breach by the Investor of its SPA obligations.

The Performance Guarantee is the sole remedy of the Seller in the circumstances in which it is payable.

### **Seller Warranties**

The Seller will give a range of warranties in respect of the assets to be transferred to HEDNO pursuant to the Hive-Down, as well as HEDNO, at the SPA signing date.

The Seller warranties cover topics including: (a) historical accounts and events since the accounts date; (b) indebtedness, material assets, insurance, IP/IT and material contracts of HEDNO; (c) compliance with law, including data protection and anti-bribery and corruption laws; (d) permits and licenses; (e) litigation and regulatory investigations; (f) tax; (g) real estate; (h) employees and pensions, and accommodate the comments of bidders which were thought to be acceptable.

The list of warranties have been reviewed and commented on by HEDNO.

Certain "fundamental" warranties, including those relating to title to the sale shares, will be repeated by the Seller at Completion.

The Seller will not be liable for any breach of warranty which has been fairly disclosed in the transaction data room.

### **Seller liability limitations**

The SPA contains the following limits on the Seller's liability, which are consistent with a reasonable auction draft position in an English law M&A deal:

#### *Quantum limitations:*

- De minimis: 0.1% of consideration (i.e. any claims with a value below this threshold are disregarded)



- Tipping basket: 1% of consideration (i.e. Seller is liable for the whole amount once the threshold is reached, not the excess only).
- (Cap):
  - 15% of consideration for claims other than the Fundamental Warranties and in respect of Hive-Down costs,
  - 100% of consideration for all claims including Fundamental Warranties, and
  - €44.8 million in respect of claims under the litigation indemnity (see further below)
  - Uncapped in respect of Hive-Down costs (i.e. all such costs are for the Seller).

*Time limitations:*

- Claims must be notified by the Investor by no later than:
  - For all claims other than in respect of the tax warranties, **18 months** following Completion
  - For claims under the tax warranties, **six months following** the Greek statutory limitation period
  - For claims in respect of the litigation indemnity, within six months of a final judgment against the Company or the relevant period for appeal having lapsed

In either case, proceedings must be brought within **6 months** of the end of the time period within which the claim was required to be notified.

### **Governing law and dispute resolution**

SPA is governed by English law

Disputes are to be determined by LCIA arbitration, in Geneva. The arbitration agreement is governed by Greek law.

### **Existing litigation indemnity**

The SPA includes an indemnity in relation to existing litigation up to a total amount of €44.8m (in addition to the existing provision for such litigation in the reference accounts of €44.8m), giving bidders c.€90m comfort in total. In addition, the accounting policies have been amended so that the provision for such existing



litigation in the Completion Accounts will be equal to that contained in the reference accounts.

### **Additional provisions**

Fibre Optics Interface Agreement – the Seller agrees not to operate its fibre optics network in a way that is materially adverse to HEDNO's business, and – after signing of the SPA – to negotiate an agreement between the Seller and HEDNO governing the terms on which the Seller is able to access the distribution infrastructure for the purpose of deploying its fibre optic network.

Seller arrangements – following Completion, the parties agree that the Company may undertake a process to determine whether any services provided by the Seller could be obtained on more favourable terms from a third party. Seller agrees to discuss in good faith a transitional plan to implement the transition of any such services to be undertaken by a third party.

Customer contributions – Seller undertakes to reimburse HEDNO in respect of any amounts payable to a customer claiming reimbursement of customer contributions collected by the Seller in relation to connections to the distribution network that have not yet been constructed.