

WATER CONCESSION AGREEMENT
ON CONSTRUCTION OF SMALL HYDRO POWER PLANTS FOR ELECTRICITY
GENERATION

between

Government of the Republic of Macedonia
and

[_____]

**WATER CONCESSION AGREEMENT
ON CONSTRUCTION OF SMALL HYDRO POWER PLANTS FOR ELECTRICITY
GENERATION**

This Agreement was signed in Skopje, the Republic of Macedonia on (_____).

between

The Government of the Republic of Macedonia (hereinafter referred to as the „Grantor“) represented by

the Ministry of Economy,

and

[_____], a registered company in compliance with the applicable law of the Republic of Macedonia having its unique register number _____ and a head office in [Skopje, the Republic of Macedonia], (hereinafter referred to as the „Concessionaire“).

DESCRIPTION

(1) The Grantor invited the interested parties to submit Bids in compliance with the International Public call for granting water concession for electricity generation from small hydro power plants under the model Design, Build, Operate and Transfer, published in the Official Gazette of the Republic of Macedonia and the printed media: „Dnevnik“, „Kocha“ and „Financial Times“ on 13 September 2007 and thereby selected the most successful Bidders including the company _____; and

(2) The Grantor selected the Concessionaire and granted the right to the Concessionaire to use water for electricity generation and design, build, operate, maintain and manage the small hydro power plant in the location in compliance with the Conditions of this Agreement, the Tender Documentation, the Concessionaire’s Bid and the applicable law of the Republic of Macedonia in which the Concessionaire undertook the obligation to be responsible towards the Grantor to fulfill the obligations under the Concession Agreement and the Tender Documents.

NOW AND THEREFORE, in compliance with the mutual understanding of here defined Agreement including the understanding of all other valid documents, the Grantor and the Concessionaire have agreed upon the following:

DEFINITIONS

Article 1 Definitions

Certain terms used in this Agreement shall have the following meaning:

Water Supply License	means a license that acquires the right to use water issued by a competent water management authority in compliance with the Law on Waters.
Year	means a period of a calendar year commencing on 1 st January and ending on 31 st December.
Performance Security	means a bank guarantee, issued by an acceptable bank, which the Concessionaire is liable to submit to the Grantor and the Grantor has

(Guarantee)	the right to activate in case that the Concessionaire fails to construct the facility in compliance with the Bid, this Agreement and the applicable law of the Republic of Macedonia.
Concession Agreement	means an Agreement signed between the Grantor and the Concessionaire accompanied with all the Attachments, Tender Documentation and Concessionaire's Bid constituting an integral part of this Agreement.
Licences	means approvals, consents, power of attorneys, authorizations, or similar documentation that may be requested from the Concessionaire and which shall be issued by a government authority or another competent body in compliance with the applicable law of the Republic of Macedonia.
Government Authority	means an authority of the government administration as a part of the executive authority in the form ministries, other bodies of government administration and administrative organizations.
Documents of Concessionaire	means a complete offered documentation, all opinions, consents, licences and other project documentation subject to the Concession required for construction and the period of operation.
DBOT	means a model of Concession consisting of designing, building, operating and transferring of a small hydro power plant from the Concessionaire to the Grantor.
Denar	means a basic paying assets of Republic of Macedonia.
Termination Date	means the date when this Agreement has been terminated and stopped being valid
Commencement Date of Production	means the date on which the Concessionaire is liable to commence with the energy activity, the electricity generation, and/or three (3) years following the date of effectiveness of this Agreement.
Date of Effectiveness	means a date on which this Agreement shall have been signed by the contracting parties and has entered into force.
Connecting Point	means the point on which the facility shall be connected with the distribution network.
Termination Notice	means a written notice from the contracting party notifying the other contracting party for termination of the Agreement under the provisions of this Agreement and the Applicable Law of the Republic of Macedonia.
Concession	means an act granting water to be used as goods of common interest of the Republic of Macedonia with respect to doing the business for electricity generation.
Concession Fee	means fee paid for the Water Concession granted by the Concessionaire and it is paid in the Budget of the Republic of Macedonia.

Grantor	means the Republic of Macedonia represented by the Government of the Republic of Macedonia.
Concessionaire	means the selected Bider with which the Grantor shall sign this Agreement.
Site/Location	means the land on which the facility shall be constructed.
Energy Licence	means a licence for doing energy business, electricity generation from the facility, issued by the Energy Regulatory Commission of the Republic of Macedonia.
Rated Production Power	means the power produced by the generating unit at rated voltage, rated number of rotations, rated power factor and rated parameters of flow and rated head at the outlet of turbine.
Facility	means all the facilities necessary to capture, inflow and discharge of waters and other ancillary facilities including equipment for electricity generation, accompanying equipment and controlling systems located on the connecting point on the side of the Concessionaire, as described in Attachment 2 construing an integral part of this Agreement.
Electricity Market Operator	means a holder of a licence performing the activity in terms of organizing and managing the electricity market in the territory of the Republic of Macedonia.
Insurance	means a contract by means of which one party (insurer) undertakes the obligation to pay the other party (the insured) in case of some damages (risks) occurred.
Applicable Law of the Republic of Macedonia	means the Constitution, the laws, the decisions or the regulations, and other types of the primary or secondary legislation in effect in the Republic of Macedonia including rulings, solutions and decisions made by the competent court in the Republic of Macedonia, including also International Agreements in effect and ratified by the Assembly of the Republic of Macedonia.
Affected Party	means a party prevented to fulfill its obligations in compliance with the Agreement as the result of a Force Majeure.
Acceptable Bank	means <ol style="list-style-type: none"> 1. a first class bank, valued with at least BBB credit rating according to the Standard and Poor rating or Baa2 according to Moodis rating and accepted by the Grantor, and 2. domestic bank registered pursuant to the applicable law in the Republic of Macedonia and existing in the legal system of the Republic of Macedonia.
Term of Concession	means the term for which the Water Concession is granted.
Concessionaire's Bid	means the entire documentation to be submitted by the Bidder in relation to the International Public Call for granting Water Concession

for electricity generation from 20small hydro power plants under the model DBOT published on 13 September 2007.

Revenues of Energy Business	means revenues generated by the Concessionaire in doing the energy business.
Dispute	means any disagreement of the parties to the agreement related to the implementation of the Agreement.
Event of Default on Obligations	means any failure to discharge the obligations under this Agreement by the parties to the Agreement, and which represent a reason to terminate the Agreement.
Force Majeure	means any events beyond the control of the contractual parties that are not predictable as follows: Acts of God and proclamation of war situation which directly impact on the party to the Agreement and make impossible the fulfilment of obligations in due time under this Agreement.
Parties to this Agreement	means the Grantor and the Concessionaire, signatories to this Agreement.
Technical Dispute	means any dispute related to the technical, engineering and operating activities connected with this Agreement, which in any case, is subjected to settlement by an expert in the relevant area.

II. SUBJECT OF AGREEMENT

Article 2

II. Scope of Agreement

(1) The scope of this Agreement is to regulate the rights and obligations between the Grantor and the Concessionaire resulting from granting of Concession for using water for electricity generation, and the rights and obligations resulting from the designing, building, operating and transferring of facility.

Article 3

Scope of Concession

(1) The scope of Concession is to provide the Concessionaire the right to use water as goods of common interest to the Republic of Macedonia for electricity generation in a small hydro power plant _____, on a water flow from _____, with rated flow-----m³/s, with minimum installed capacity of _____ kW, on the basis of which the Concessionaire shall undertake to design, build, operate and transfer at its expense and after the expiry of the Term of Concession granted, to transfer it to the Concessionaire (DBOT – Design, Build, Operate, Transfer).

Article 4 Term of Water Concession Granted

(1) The Grantor shall grant to the Concessionaire Water Concession for a period of 20 years following the date of obtaining the License for doing the energy activity.

(2) The Concessionaire has the right at least three (3) months prior to expiration of the period referred to in paragraph 1 of this Article to file an application to the relevant ministry to extend the Concession. The Grantor may make a decision which shall establish the conditions on extending the Term of Concession for using water and the facility in a period not longer than the Term of the Concession granted laid down in paragraph (1) of this Article in compliance with the applicable law of the Republic of Macedonia. In case of extending the Concession the Concessionaire shall be permitted to sell the own generation of electricity in compliance with the applicable law of the Republic of Macedonia.

Article 5 Concession Fee

(1) The Concessionaire is liable to pay the Grantor the following fees:

- **An upfront Fee** for water concession in the amount of _____ Denars, not later than 30 days after the Effective Date of this Agreement consisting of legally established minimum upfront fee and the offered mark-up to the upfront fee.
- **Annual Water Concession Fee** in the amount of 2% of the total revenue from generated na purchaes electricity in every year of usage until 15 January at the latest of the current year, for the previous year, in accordance with the decision for determining the amount of the concession fee for water usage, published in the Official Gazette of Republic of Mcedonia no.53/7.

(2) The fees of this Article shall be paid on a suitable payment account within the treasury account. The Grantor shall notify the Concessionaire on the treasury account on which payments are made.

Article 6 Design and Technical Documentation

(1) The Concessionaire is liable to produce a complete project documentation: Preliminary design, Primary design, As- built design and a Design of Construction Status in compliance with the applicable law of the Republic of Macedonia.

(2) The Terms of Reference in relation to producing of the Primary Design should be verified by the Grantor. The Grantor undertakes to submit its opinion on the Draft Terms of Reference related to drafting of the Primary Design to the Concessionaire within 15 days in written form with explanation. In case that the Grantor shall not provide its opinion within the set time the Draft Terms of Reference on Primary Design shall be deemed accepted without any comments. The Concessionaire is liable to implement the comments of the Grantor's opinion in the Terms of Reference related to producing of the Primary Design.

(3) The Operating and Maintenance Instructions on hydro power facilities and equipment should be accepted by the Grantor that is why these Instructions shall be forwarded to the Grantor. The Grantor shall undertake to submit its Opinion on the Instructions to the Concessionaire within 20 days in writing with clarification. In case that the Grantor shall not provide its opinion to the Concessionaire within the defined period of time the Instructions shall be deemed accepted without any comments. The Concessionaire is liable to implement its comments on the Grantor's opinion in terms of the use of facilities.

Article 7 Total Estimate of Investment Value

- (1) The total investment value includes all costs borne by the Concessionaire and are in relation with design and construction of facility up to the date of putting the facility into operation.
- (2) The total investment estimate shall amount Euro ____, and/or _____ in Denars equivalent.
- (3) Attachment 3 provides the Time Schedule of construction and financing, which construes an integral part of this Agreement.

III. LOCATION/SITE AND CONSTRUCTION OF FACILITY

Article 8 Property and Legal Relations

(1) In case that the Concessionaire constructs the facility on a land that is owned by the Grantor, the Concessionaire shall acquire the right to a long term leasing of the construction land during the overall Term of Concession, pursuant to Article 47, paragraph 1 and paragraph 5 of the Regulation for the way and procedure for expropriation and long time and short time leasing construction land that is ownership of the Republic of Macedonia, with public bidding, by collecting bids and with direct agreement, the amount of costs of the procedure for expropriation and leasing as for the costs of the land and the leasing (Official Gazette of RM No. 147/2008) after previously obtained consent by the Government of the Republic of Macedonia.

The amount of one year leasing of the construction land ownership of the Republic of Macedonia which is granted under a long term lease for construction of facilities with public interest with law – small power plants is determined by Government of the Republic of Macedonia and the same can't be smaller than 0.2% in accordance with the sheet overview of the Regulation, with use for infrastructure facilities depending on the zone in which the subject construction land is located. The amount of the price of the long term lease as one-year lease is the denar amount expressed in foreign currency counter value in Euros, according to the foreign exchange of the National Bank of the Republic of Macedonia on the day of payment, and is valid during the the period of the long term lease.

(2) In case that the construction of the facility is on a land that is a private property and is registered in the Republic Geodetic Bureau and when there are no facilities on the land that would be damaged during construction and operation of facility, then the Concessionaire is obliged to undertake the following activities:

- he shall try to enter into a Contract of Land Purchase with the land owner and if after the reasonable efforts made it is impossible for the the Concessionaire to sign the Land Purchase Contract or time limited Land Use Contract with all the concerned parties, then

- It has the right to request initiating a procedure for expropriation of the necessary land in compliance with the applicable law of the Republic of Macedonia. All costs related to the conducting of expropriation shall be borne by the Concessionaire, whereas the expropriation will be made on behalf and in favour of the Grantor.

(3) The Concessionaire shall register the purchased or expropriated land on Grantor's name in the Agency of catastare of real estate, whereas the Grantor shall grant it the land through a long-term leasing as defined in paragraph (1) of this Article for the Term of the Concession granted.

Article 9 Access for Special Demands

(1) The Concessionaire is obliged, upon a request by the Grantor, to provide an access to the site and facility for installing telephone lines, electric lines or another necessity of

public character to the Grantor and to third persons. The Grantor undertakes that such an access to the site and the facility shall not cause fully or partially closing of the facility.

(2) The works referred to in paragraph (1) of this Article if not undertaken upon request by the Concessionaire shall be at the expense of the Grantor and third persons, and if constructed upon Concessionaire's request and for the Concessionaire needs, these shall be undertaken at Concessionaire expense.

Article 10 Obligations for Environment Protection

(1) The Concessionaire is liable to undertake an assessment of project influence on environment in compliance with the Law on Environment and Regulations adopted on its basis.

(2) The Concessionaire is liable during the term of concession in which the Concession has been granted to undertake measures on environment protection, nature, life and health of population in compliance with the measures and solutions defined in the documentation related to assessment of impact on environment as well as properties of other persons in accordance with the applicable law of the Republic of Macedonia.

Article 11 Protection and Safety of Facility

For the purpose of protecting the environment and workers' health, the Concessionaire or the contractor is liable to organize and arrange safety at work accordingly to the specific conditions and dangers in the facility and/or in due time to implement the measures of safety at work in a manner and under conditions laid down in the applicable law of the Republic of Macedonia.

Article 12 Construction of Facility

(1) The Concessionaire is obliged to start the construction of facility within one year following the Effectiveness Date of this Agreement.

- (2) As a starting date of the facility construction will be the date when the Grantor:
- provided all the necessary consents and licences
 - concluded agreement for facility performance and
 - started with construction work at the site.

(3) The Concessionaire shall construct the facility at its expense in compliance with the project documentation referred to in Article 6 of this Agreement.

(4) The Concessionaire undertakes to provide all the approvals and licenses in accordance with the applicable law of the Republic of Macedonia necessary for construction and operation of the facility.

(5) The Concessionaire is liable under the applicable law of the Republic of Macedonia to ensure an Investment Supervision over the construction of facility for the purpose of its construction in accordance with the As-build design, and particularly over the part relating to the construction works, equipment installation and connection to the distribution network.

(6) The supervision referred to in paragraph (4) of this Article shall not limit the supervision of other legally authorized government authorities to monitor the construction of facility and meet the urban – technical conditions, which completion has been ordered to the Concessionaire in the building permit, as a condition for construction of the facility.

(7) The Concessionaire shall undertake to act by order of the government authorities with the aim of meeting the required conditions for facility construction.

(8) The Grantor has the right and obligation to supervise all the stages of construction and operation of facility in compliance with the applicable law of the Republic of Macedonia and this Agreement. The Concessionaire is liable to proceed according to the comments of Grantor's supervision .

(9) The construction of facility must be completed within three (3) years following the Effectiveness Date of this Agreement.

(10) The deadlines given in this article, as well as the other articles in this agreement which refer to or are in a separate connection with the deadline for the start or the finalisation of the facility construction, determined in item 1 and item 9 of this article, can be extended, in case of stoppage caused when the Grantor can not provide the necessary permits, consents, licences, expropriation of land and everything else which is condition for starting the facility construction, if the stoppage is not caused by concessionaire's fault.

The Grantor, on the basis of the submitted documentation, will determine how long the deadline will be extended in the cases given in this paragraph, where the maximum extension of the deadline may not be longer than the stoppage duration.

Article 13 Local Component

(1) The Concessionaire shall undertake to hire local companies in the project implementation at least in the amount of 70% of the direct investment costs, except for the equipment supply costs.

(2) The percentage referred to in the previous point may be reduced at least 40% of the direct costs for investment if there are no competitive proposals by local companies relating to equipment and services for which the Concessionaire shall submit suitable evidence to the Grantor.

Article 14 Performance Security (Guarantee)

(1) The Concessionaire is liable not later than 30 days following the Effectiveness Date of this Agreement to submit to the Grantor a bank guarantee for construction, irrevocable upon the first demand in the amount not less than (2800 MKD/kW _____ Euro (or in Denars equivalent), in the form defined in Attachment 4, which shall be valid in the course of the term of facility construction and/or at least 30 days after the date of starting with generation.

(2) In case that the Concessionaire shall fail to deliver the obligation laid down in paragraph (1) of this Article, the Grantor has the right to terminate this Agreement and activate the Bid Guarantee deposited as a part of the Concessionaire's Bid .

(3) The Performance Guarantee shall be charged by the Grantor in case of:

- Delay in the commencement of facility construction following the date specified as the deadline for commencement stated in Article 12 of this Agreement and the Time Schedule Plan of Construction provided in Attachment 3, which construes an integral part of this Agreement, longer than six (6) months. In the period up to the expiry of six (6) months the Concessionaire shall cover in loss (damage indemnity) in the amount four (4) percent of the value of Performance Guarantee for every week of delay,
- Delay in the completion of facility construction and starting with electricity generation following the date of commencement of construction and the Time Schedule Plan for Construction provided in Attachment 3, which construes an integral part of this Agreement. The cover of loss shall amount four (4) percent of the value of Performance Guarantee for every week of delay to the total

amount of Guarantee until the early Agreement termination, if the construction fails to end till the last day provided for construction.

- Lower installed power at threshold of facility in accordance with the value declared in the Bid and the technical specifications in Attachment 2, construing an integral part of this Agreement.
- and other damage claims which the Grantor has the right to indemnify from the Concessionaire due to failure to fulfill its contractual obligations before starting with the commercial facility operation.

(4) Performance Guarantee shall be renewed and added to the full amount referred to in paragraph (1) of this Article in the entire time of validity until the start of the commercial facility operation. If in any case in this period the Guarantee becomes effective and partial or entire amount disbursed, the Concessionaire is liable to add (replace) it up to the full amount at the shortest possible time.

(5) If for any reasons the construction period and commercial operation are reasonably prolonged and approved by the Concessionaire, the Concessionaire shall extend the Guarantee validity for that period.

(6) The Performance Guarantee shall be returned to the Concessionaire within 20 working days following the successful completion of the following:

- The Concessionaire have been granted a License to do energy business prior or on the date stipulated to start with electricity generation and commenced the commercial operation,
- The least installed power of facility is the rated production capacity of _____ kW as demonstrated in Attachment 2, construing an integral part of this Agreement. Determining the guaranteed parameters at the power plant threshold will be done according to the international IEC recommendations and the relevant standards in this field.

IV. PLANT MANAGEMENT, OPERATION AND MAINTENANCE

Article 15

Commencement of Commercial Operation

(1) The Concessionaire shall commence with the commercial operation of the hydro power plant at least by the day of starting the operation as specified in this Agreement and the Time Table but not later than three (3) years after the Effectiveness Date of this Agreement.

(2) A commercial operation may be deemed to commence after the Concessionaire shall ensure the following:

- Completed construction and technical acceptance of the facility as a whole;
- Obtained all consents, permits, licenses and confirmations necessary to start with the commercial operation in compliance with the applicable law of the Republic of Macedonia and the requirements of Macedonian authorized institutions;
- Signed contracts related to connection with the electric power grid and the market Operator for purchase the electricity generated

(3) Ten days at least prior to the date specified as a commencement day to start with the commercial operation, the Concessionaire shall give a written notice to the Grantor of the conditions met as specified in paragraph (2) of this Article. If the Grantor within 30 days does not submit its opinion to the Concessionaire, it would be deemed that the conditions for commencement of the commercial operation have been met.

(4) In case of failure to comply with the conditions of commercial operation up to the specified commencement day, the Grantor has the right to cover the loss in the amount of

four (4) percent out of the Performance Security (Guarantee) for every week of delay until the full amount of the Performance Security (Guarantee), including also early termination of the Agreement.

Article 16 Purchase of Electricity Generated

The electricity generated in the hydro power plant in the concession period shall be purchased by the Electricity Market Operator in compliance with the preferential rates for small hydro power plants published in a Decision by the Energy Regulatory Commission of the Republic of Macedonia (ERC) in the Official Gazette No. 16/07 of the Republic of Macedonia .

Article 17 Ownership and Utilization of Intellectual Property

(1) The Concessionaire shall reserve the copyright and other intellectual properties over the documentation prepared from or for account of the Concessionaire.

(2) The Concessionaire shall provide the Grantor with unlimited, transferable, free of charge license to utilize, use and copy the documentation referred to in paragraph (1) of this Article.

(3) The license referred to in paragraph (2) of this Article shall apply until the termination of this Agreement.

(4) The Grantor shall reserve the copyright and other intellectual properties over the documentation prepared from or for account of the Grantor. The Concessionaire may, at its expense, copy and use these documents for the purposes of this Agreement.

(5) The documentation drawn up by the Grantor and the Concessionaire may not be copied, utilized or used by a third party other than necessary for the requirements of this Agreement.

Article 18 Measure to be Undertaken in Case of Failure to Maintain or Repair the Facility

(1) In case that the Concessionaire fails to maintain and/or repair the facility in compliance with the applicable safety and environmental standards and to start the measures indicated by the competent Inspection Bodies within 30 days following the day of receiving of the Minutes by the Grantor, the Grantor may undertake the required repairs and removal of damages on environment and maintenance of facility at Concessionaire's risk and charge.

(2) The Concessionaire is liable to refund all the costs to the Grantor incurred in relation to paragraph (1) of this Article after the submission of a detailed summary sheet with regard to expenditures incurred by the Grantor.

V. HANDLING OF FACILITY AND TRANSFER IN THE END OF THE CONCESSION TERM

Article 19 Limitation

(1) This Agreement does not grant the right and authorization to the Concessionaire to transfer and assign or in another manner to alienate the Facility.

Article 20 **Binding**

- (1) The Concessionaire must not make any mortgage, pledge or another form of obligation or burden of the facility or of any of its parts. Any transfer of stocks/shares from the Concessionaire to the Concessionaire's Borrower or any other entity shall, because of failure to meet its obligation, be subject to prior consent given by the Grantor.
- (2) Concessionaire may perform transfer of the rights from this Agreement in favour of the lenders, as a mean for securing their claim to the Concessionaire, under a condition that by this it doesn't jeopardise the continuous operation and quality performance of the concession activity.
- (3) The transfer of shares or stocks to the Concessionaire which separately or in total would lead to change of the management package in the company, may not be performed without previous written consent by the Grantor.

Article 21 **Return of Facility After Ending of Concession Term**

(1) At the end of Concession Term, or for the sake of early termination of the Agreement, the Concessionaire shall transfer to the Grantor all facilities, equipment, land including overall documentation concerning the facility, the location, the entire facility value with all rights, authorizations. The stated subject of transfer shall be clear of any kind of debts, loans, losses, claims and/or interests and/or contaminations (damages) to environment. The transfer shall be performed under the provisions of this Agreement in a manner described in Attachment 5.

(2) The facility transfer, subject to this Agreement, shall be performed by the Concessionaire in favour of the Grantor or of any other entity that shall be designated by the Grantor, free of charge.

(3) the facility transfer shall be completed latest by the final day of the Concession Term indicated in this Agreement and the Time Plan. In case of early termination of Agreement, the transfer shall be made within three (3) months after the issue of Termination Statement by the Grantor. The transfer shall be deemed to be completed where the Grantor shall issue the Concessionaire a Certificate of Transfer.

(4) The Concessionaire guarantees that at the time of facility transfer the overall components of facility and equipment shall be in sound operating condition and correspond to the requirements specified in Attachment 5 that construes an integral part of this Agreement, the applicable international standards and the applicable law of the Republic of Macedonia. The Concessionaire shall be obliged prior to the transfer, to repair all the defaults or damages in the hydro power plant and all the other components of the facility so they are fully sound and correspond to the envisaged requirements for transfer. This refers to all material errors, workmanship or design of any effect or Concessionaire's negligence in the course of the Concession term in relation to maintenance or other obligations under this Agreement.

(5) During the whole time of the procedure for transfer of facility and the Concession project, the Concessionaire and the Grantor are obliged to implement and use all legal and other documents accordingly and undertake all legal and other procedures that might be necessary to bring to the end the transfer in compliance with this Agreement and the applicable law of the Republic of Macedonia.

(6) Where the facility transfer and Concession project shall occur for the reason of early termination of Agreement, this transfer shall be executed immediately after the termination day in compliance with the provisions of this Agreement and Attachment 5.

(7) In case of early termination of the Agreement by the Grantor, the Concessionaire may be entitled to a fee for the investments related to the property that is subject to return, made due to providing continuity or modernisation of performing the concession activity, which have not been paid yet or worn out, after the performed estimation by the Grantor.

(8) The Concessionaire has a right to fee determined pursuant to paragraph (7) of this Article, reduced for the amounts it owes on the basis of the sanctions for violence of the obligation determined in the provisions of this Agreement and on the basis of the responsibility for damage compensation.

VI. INSURANCE

Article 22

Evidence of Insurance

The Concessionaire is liable every year at the beginning of the insurance period to submit a copy of the Insurance Contract to the Grantor of which shall be evidently the insurance of the facility as follows:

- insurance of facilities, equipment and stocks, both in the process of construction and installation and in the stage of operation, against risks estimated at exposure, at least in the amount of the total investment value and/or the contractual works during the overall time of construction, installation and operation, increased by 15% of contingent works.

- Contractor's third party liability insurance and their property in the process of construction and installation,

- Contractor's third party general liability insurance and their property under construction and in the process of installation and operation,

- Third party liability insurance of movables, motor vehicles and operating machines and full coverage including employees insurance of contractor/insurant against accident during the whole duration of construction, installation and operation.

- the insurance shall be made in compliance with the applicable law of the Republic of Macedonia.

The Concessionaire is liable to submit a written information for not renewing, revocation or significant change in any of the insurance contracts given in paragraph 1 of this Article, within 60 days before the day of expiration Insurance Agreement, i.e. its cancellation or its modification.

The Insurance Agreements of paragraph 1 of this Article must contain provision that would provide giving up the right to file suits against the Grantor, its bodies, officials, directors, representatives, producers and employees.

Article 23

Insurer Status

The insurer should have a rating or be reinsured through a reinsuring contract or optionally with a re-insurer having the credit rating at least A⁺ according to A.M. Best or Standard and Poor or an equivalent. The Contract must be written clearly and precisely and contain a provision based on which the Insurance Contract of Concessionaires shall be primary in all the cases regardless of the coverage of the Insurance Contract, if the Grantor has any.

VII. FINANCIAL STATEMENTS AND OTHER REPORTS

Article 24

Financial Statements and Other Reports

(1) The Concessionaire is liable to submit to the Grantor annual audited financial statements and technical reports on maintenance and condition of facility, not later than April every year for the preceding year.

(2) The Concessionaire is liable to submit to the Grantor periodical progress reports related to the specified time scheduled in Attachment 3 that construes an integral part of this Agreement, every six (6) months during one year.

VIII. FORCE MAJEURE

Article 25 Event of Force Majeure

(1) An event of force majeure are all the events occurring after the Effectiveness Date of this Agreement, beyond the control of the parties to the agreement and which directly influence or prevent the party to the agreement from duly execute the obligations under this Agreement.

(2) The occurrence of force majeure is beyond control and is not the fault of the Concessionaire. If the Concessionaire because of force majeure is fully or partially prevented from carrying out its obligations of this Agreement, this shall be exempted from its obligations for all the term and scope of duration in which such Force Majeure has prevented its execution.

Article 26 Obligation for Notification

The Affected Party must deliver the following obligations in relation to information to the other Party on the occurred event of Force Majeure.

(1) The Affected Party shall not seek any relief for or in relation to the event of Force Majeure if it failed to notify the other Party in writing on the occurrence of the event of Force Majeure as soon as possible, but in any case not later than 7 working days after the Affected Party knows or should know of the occurrence and possible material effect that the event of Force Majeure shall have on the realization of obligations under this Agreement.

Any notification shall include details on:

- The nature and level of any event of Force Majeure subject to any request of exemption in compliance with Article 26 of this Agreement accompanied by an attached evidence;
- Estimate of the duration and effect or possible effect that such an event of Force Majeure shall have on the execution of obligations by the Affected Party resulting from this Agreement;
- The measures that the Affected Party undertakes or tends to undertake to mitigate the influence of such an event of Force Majeure; and
- Any other significant information to the request of the Affected Party.

(2) The Affected Party is liable to inform the other party (at least once in a week) with reports in writing on regular basis containing also other information as the other Party may request from the Affected Party during the time of the event of Force Majeure.

Article 27 Obligation for Consultation

In case that the event of Force Majeure continues or according to an objective assessment of the parties shall continue to last longer than 120 days following the occurrence of Force Majeure, the Concessionaire and the Grantor shall consult mutually and may decide to terminate this Agreement or extend it by mutually agreed reviewed conditions.

Article 28 Allocation of Costs Following the Event of Force Majeure

All the Concessionaire's costs resulting from the event of Force Majeure and which are not covered through the insurance policy of the Concessionaire shall be covered by the Concessionaire.

Article 29
Termination of Agreement

If after 120 days following the commencement of event of Force Majeure, the Concessionaire and Grantor are not capable to come to an agreement as stated in Article 28 of this Agreement, the Affected Party may break the Agreement by giving a notice on terminating the agreement.

Article 30
Obligation to Cover Other Losses and Indemnities

Neither party shall be liable to indemnify the other party of the losses, indemnity and costs resulting from the event of a Force Majeure.

IX. CANCELLATION OF CONCESSION AND TERMINATION OF AGREEMENT

Article 31
Cancellation of Concession

The Concession shall be cancelled with the expiry of the Term for which the Concession has been granted provided that the Concession is not extended in compliance with Article 4 of this Agreement and one sided termination of the Agreement prior to expiry of the Term for which the Concession has been granted.

Article 32
One Side Termination of Agreement

(1) The Grantor, under this Agreement, in case of infringement and failure to deliver the obligations of this Agreement laid down in Article 34 of this Agreement shall have the right to terminate this Agreement by giving a Notice of Termination.

(2) After the occurrence of an event of failure to deliver the obligations as specified in Article 34 of this Agreement, the Grantor shall activate the Performance Guarantee.

(3) The one-sided termination shall be made by a Decision of the Grantor stating the reasons of terminating this Agreement and the Concessionaire's rights after the decision made.

(4) Prior to decision-making referred to in paragraph (3) of this Article and if the Concessionaire failed to act in compliance with the notification, the Grantor is liable to explain to the Concessionaire the reasons of one-sided termination of the Agreement.

(5) The Grantor is liable in a reasonable period of time prior to decision-making on breaking the Concession to inform the Concessionaire in writing on the offenses under Article 34 of this Agreement and to invite it to recover the shortcomings in behavior in order to ensure respect of this Agreement within the time laid down in the notification. The time must be sufficient to enable the Concessionaire to act in accordance with the notification.

(6) The Concessionaire has the right to appeal against the Decision referred to in paragraph (3) in compliance with the applicable law of the Republic of Macedonia. The appeal shall not delay the execution of decision.

Article 33
Event of Default of Obligations Representing Reasons
for Termination of Agreement and Cover of Loss

(1) Any of the following events shall be an event of failure to discharge the obligations by the Concessionaire under this Agreement (Event of Default of Obligation) except if such an event is not the result of an event of a Force Majeure and they are a reason for which this Agreement shall be terminated in case the Concessionaire:

- Fails to start the construction of the facility within one year following the day of Effectiveness Date of this Agreement, pursuant to Article 12, item 10;
- transfers the Concession to another entity without the Grantor's consent;
- fails to effect the Concession fees under conditions and in a manner laid down in this Agreement;
- fails to complete the construction of the facility within three years following the day of Effectiveness Date of this Agreement;
- the constructed facility shall not reach the declared power according to proposal in this Agreement for more than 10%;
- is forbidden by a final judicial award to do the concession activity;
- fails to maintain the facility on regular basis or arbitrary change the conditions under which the Concession is granted for which it may endanger or destruct the water regimes or disturb the legal right to use waters by other users if within the time set by the competent body fails to reestablish the original situation;
- Cease to do the activity of the Concession granted longer than six (6) months without justified reasons;
- Fails to submit on time the audited annual financial statements and technical report and periodical statement;
- Shall not allow or make difficult the access to the site/location and the facility;
- Fails to provide Performance Guarantee within 30 days after the Effectiveness Date of this Agreement;
- Fails to provide the Energy License and start to do the activity within three (3) years following the Effectiveness Date of this Agreement;
- Fails to provide Insurance in accordance with this Agreement;
- In case it starts bankruptcy procedure and liquidation of the Concessionaire;
- Assigns the stock or shares that would lead separately or collectively to a change in the managing package in the company, without prior consent by the Grantor;
- Assigns the stocks or shares from the Concessionaire to the Concessionaire's Borrower because of failure to deliver its obligation, without prior consent given by the Grantor.
- In another manner has made significant infringements to provisions of this Agreement or the applicable law of the Republic of Macedonia applicable to this Agreement;
- Failed to act according to the measures stated in the procedure of supervision implemented in compliance with the applicable law in the Republic of Macedonia; and
- Fails to meet its other obligations determined and resulting from this Agreement.
- Fails to implement the protective measures of environment or restitution of environment in its original status within the period that shall be determined by the competent authority.

(2) In case of terms overdue as laid down in this Agreement, the Grantor shall provide additional time in which the Grantor is liable to meet its obligations in compliance with paragraph 5 of Article 33 under this Agreement.

(3) The Grantor has the right to indemnify the damage in the amount of four (4) percent of the value of the Performance Guarantee for each week of delay until the full value of Guarantee including also the early termination of the Agreement.

(4) The payment of indemnity referred to in paragraph (3) of this Article shall not free the Concessionaire from delivery of the agreed obligations.

(5) The obligation for payment of indemnity shall be activated at the moment of failure to meet the agreed time and/or failure to do the works according to the time schedule determined in this Agreement.

(6) In case that the Concessionaire fails to discharge the agreed obligations in the extended timing provided by the Grantor, the Grantor shall initiate a one side termination of the Agreement.

X. CONCESIONAIRE'S RESPONSIBILITY FOR OBLIGATIONS UNDER THE CONCESSION AGREEMENT AND THIRD PARTY CONTRACTS

Article 34

Concessionaire's Responsibility for Obligations under Concession Agreement and Third Party Contracts

(1) The Concessionaire is liable to fulfill the obligations of this Agreement and is responsible for all damages caused to the Grantor and to third parties in relation to executing the Concession.

(2) The Concessionaire may enter third party contracts to construct the works or implement the activities related to the subject of Concession or finance the Concession, however the content of these contracts to contain obligatory paragraph (3) of Article 35 of this Contract Agreement

(3) The Contracts signed among the Concessionaire and third parties may not create a legal relation among the three parties and the Concessionaire.

XI. SUPERVISION OF CONCESSION PROJECT

Article 35

Supervision of Concession Project

(1) The Grantor shall make supervision on permanent and regular bases over the manner and execution of concession activity and meeting of obligations by the Concessionaire under this Agreement in compliance with the Applicable Law of the Republic of Macedonia, in a manner and under a procedure laid down in this Agreement.

(2) The supervision over the payment of fees (royalties) for the granted Concession on Water shall make the competent body pursuant to the Applicable Law of the Republic of Macedonia.

(3) The Grantor has the right to authorize an authority or another independent institution to make a regular supervision over the fulfillment of obligations by the Concessionaire during all the stages of construction, use and maintenance of facility in the course of the Concession term, at its own expense.

XII. SETTLEMENT OF DISPUTES

Article 36

Negotiations

In case of a dispute, the dispute shall be considered in the first instance between the parties and their authorized representatives. In case that the dispute is not resolved by

negotiations within 60 days any party may give a notice on the intention to initiate a judicial proceedings.

Article 37 Technical Expert

In case that the parties fail to reach an agreement within sixty (60) days following the commencement of the dispute, any party may seek a technical expert. Any party may suggest a suitable expert in certain area and should the parties are unable to bring into accord with the proposed expert within thirty (30) days, one party may request from a specialized institution (to hire an independent specialist – in relevant area) to select a suitable expert and his decision shall be binding for the parties. The remuneration to the technical expert and the accompanied expenditures shall be divided between the parties.

Article 38 Judicial Proceedings

Any dispute that may not be settled in amicable manner in compliance with Article 37 of this Agreement including any issue in relation to existence, importance, or breaking of legal relations governed by this Agreement shall be a subject to take proceedings to the competent court in the Republic of Macedonia.

Article 39 Extension of Agreement in Case of Dispute

In resolving disputes in judicial proceedings pursuant to Article 40 of this Agreement, both parties shall continue in good faith to discharge their obligations under this Agreement.

XIII. NOTIFICATION

Article 40 Notification

(1) The overall communication and/or all notifications between the Concessionaire and the Grantor relating to this Agreement shall be deemed duly given if made in writing and signed by authorized Concessionaire and Grantor's persons.

- (2) The following dates shall be deemed as dates of giving the Notification:
1. date of submission – in case being handed over
 2. date and receipt of registered parcel – in case of delivery by post office
 3. Date and receipt – in case transmitted by fax with confirmation for the receipt and supported by an original document.

Article 41 Addresses for Notification

The overall communication and/or Notification should be submitted at the following address:

For the Grantor:

To: _____.
15 Jurij Gagarin St.
1000 Skopje
Republic of Macedonia
Telefax: _____.

For the Concessionaire:

To: _____.
Address: _____.
Telefax: _____.

XIV. TRANSFER OF CONCESSION AND OTHER LIMITATIONS

Article 42 Transfer

(1) The Concessionaire may not assign the right to Water Concession subject to this Agreement, fully or partially, without prior consent by the Grantor in writing. Any assignment (transfer) without prior written approval shall be made null and void and deemed to be an event of default of obligations and a reason of one side termination of this Agreement.

(2) The transfer of stocks or shares to the Concessionaire that would lead separately or collectively to a change in the managing package in the society may not be made without prior consent by the Grantor.

Article 43 Subcontracts

The Concessionaire may assign a part of duties or obligations stated in this Agreement to the sub-contractors by sub-contracts, however, all the duties and obligations stated in this Agreement shall remain to the Concessionaire and it is responsible for their failure to be fulfilled.

Article 44 Waiver

Neither waiver of seeking responsibility from one contractual party with respect to a mistake made by the other contractual party in the implementation of any provisions of this Agreement

- May not be or deemed to be a waiver of seeking responsibility for any other or further omission or omissions of the same or different nature; and
- May not be effective if not in writing signed by an authorized person of one contractual party.

XV. GENERAL

Article 45 Amendments

This Agreement may be amended only by an Annex to this Agreement in writing approved by both parties.

Article 46 Completeness of Agreement

This Agreement shall contain the Agreement and Attachments construing an integral part of this Agreement.

Article 47 Governing Law

This Agreement is governed and fully subjected to the Applicable Law of the Republic of Macedonia.

Article 48 Further Certainty

Any party shall agree to do all the actions that are necessary for the execution of this Agreement.

Article 49 Expenditures

Either party shall bear its costs and expenditures incurred in relation to signing of this Agreement.

Article 50 Language of Agreement

(1) The language of the Agreement and the Attachments construing an integral part of this Agreement shall be the Macedonian language with translation into English language.

(2) The language of the entire communications between the parties to the Agreement shall be the Macedonian language with translation into English language.

(3) In case of a dispute the version of the Agreement in Macedonian language shall prevail.

Article 51 Number of Original Copies

This Agreement has been signed in eight (6) equal copies, out of which three for each party.

IN WITNESS WHEREOF, the parties have hereonto set their respective hands on this Agreement and it is entered on the day and the year written above:

SIGNED, VERIFIED WITH A SEAL AND SUBMITTED

**For the Grantor:
On behalf of
THE GOVERNMENT OF THE
REPUBLIC OF MACEDONIA**

MINISTER OF ECONOMY

**On behalf of
CONCESSIONAIRE**

PROJECT COMPANY

**BIDDER COMPANY
(All Consortium Members)**

**WATER CONCESION AGREEMENT
FOR CONSTRUCTION OF SMALL HYDROPOWER PLANT
AND ENERGY PRODUCTION**

ANNEX 1**Section 1.2 Site location and geographic map of the project**

1 .	Hydropower plant name	
2 .	Reference number	
3 .	Site location in the map of R Macedonia	See attachment
4 .	Site and facilities disposition	See attachment 1 : 25000
5 .	Gaus-Kryger coordinates of the powerhouse	
6 .	Gaus-Kryger coordinates of the intake	
7 .	Length of the access road	

ANNEX 2

Technical specifications

1 .	(1) Basic Data	
1 . 1	Water shed	
1 . 2	Intake elevation	
1 . 3	Powerhouse elevation	
1 . 4	Average discharge per year	

2 .	(2) Operational Parameters	
2 . 1	Gross head	
2 . 2	Net head	
2 . 3	Rated discharge	
2 . 4	Nominal output	
2 . 5	Average production per year	
3 .	(3) Facilities Description	
3 . 1	Intake type	
3 . 2	Intake channel <ul style="list-style-type: none"> • Channel type • Length • Cross section Dimensions B / H 	
3 . 3	Water chamber <ul style="list-style-type: none"> • Type 	

	<ul style="list-style-type: none"> • Over-all dimensions L / B 	
3.4	Penstock <ul style="list-style-type: none"> • Type • Length • Diameter 	
3.5	Powerhouse <ul style="list-style-type: none"> • Construction type • Over-all dimensions 	
3.6	Tail race type	
4.	(4) Main Equipment	
4.1	Number of units	
4.2	Turbine type	
4.3	Generator type	
4.4	Transformer type	
4.5	Grid connection <ul style="list-style-type: none"> • Voltage level • Length of the new line 	

ATTACHMENT 4
PERFORMANCE SECURITY (GUARANTEE) OF FACILITY

TABLE OF CONTENTS

This Attachment shall contain:

- Performance Guarantee

The format of this Guarantee shall be irrevocable on the first demand in the amount and time duration as defined in this Agreement and Attachments. The Guarantee should be issued by a first class bank, acceptable to the Grantor.

The value of Guarantee shall be in compliance with the provisions of the Agreement.

PERFORMANCE SECURITY (GUARANTEE)

To Ministry of Economy,
15 Jurij Gagarin St. 15
1000 Skopje

The Concession of using water to generate electricity in the location having:
Identification Number _____
Name of waterflow _____

We have been informed that _____ (hereinafter referred to as „Responsible") has received Water Concession in reply to your Invitation to Tenders, and that the conditions of your Tender („Tender Conditions" demonstrated in the document titled Instructions to Tenderers) shall require its Tender to be supported by a Bank Guarantee.

Upon a request by the Responsible We (name, address and Bank head office) _____ irrevocably accept to pay you, to the Ministry of Economy, every sum that shall not exceed the total value of Denars _____. (saying: _____ Denars) following the receipt of your written Disbursement Form and your statement in writing (in the application) where it is maintained that:

- The construction of the hydro power plant has been delayed
- The electricity generation has been delayed
- There is lower installed power at the threshold of the hydro power plant in comparison to the value declared in the Bid

Any Disbursement Form for payment must contain your signature that must be verified by your bankers or a notary. The verified Disbursement Form and statement must be received in the Bank Administration prior to _____, at the time where this Guarantee shall expire and be returned to us.

This Guarantee is in compliance with the Law on Concessions of the Republic of Macedonia.

Date: _____ Signature: _____

ATTACHMENT 5

PROCEDURE OF TRANSFERRING THE FACILITY TO GRANTOR FOLLOWING THE EXPIRY OF CONCESSION

TABLE OF CONTENTS

This Attachment shall contain:

1. Concessionaire's obligations before setting the time of facility transfer as follows:
 - Drafting of technical report on the status of facility and equipment
 - Drafting of technical report on the performances of facility and equipment
 - Producing and completing of technical documentation in relation to the construction status of facility and equipment, operating and maintenance instructions etc.
2. Establishment of Transfer Commission (transfer) of facility:
 - Composition and tasks of commission
 - Method of operation and measuring of performances
 - Format and substance of report for transfer

Method of Transfer

1. The Grantor and the Concessionaire shall, not later than three (3) months prior to expiry of the Concession Term, or in case of early termination of Agreement not later than ten (10) days after the date of notice of termination, establish a joint Commission of Transfer with equal number at least three (3) representatives from each party responsible to execute the transfer of facility and the Concession Project in compliance with the provisions of this Agreement and this Attachment.

2. The Commission of Transfer shall adopt a Plan of Activities during the transfer, including all appropriate tests that shall be made at Concessionaire expense to determine that all envisaged technical and other requirements for the facility in the course of the transfer have been fulfilled. The Commission shall implement all activities of transfer including tests within 60 days after starting its work and submit a Report to the Grantor and the Concessionaire in relation to the transfer of facility. In case that any defects or damages are found or recognized contrary to the requirements for transfer of facility and project, they shall be stated and described in the Commission's Report providing a recommendation to the Concessionaire for

their repair at their expense in the defect liability period or another period and manner specified in the Report.

3. At any time during the procedure of transfer, the Commission shall make the Concessionaire and/or the Grantor to act according to some Law(s) or other acts to fully complete the transfer, and connected with the requirements of this Agreement and the Applicable Law of the Republic of Macedonia, including legal and other documents for which the parties should act accordingly.

4. When the Commission shall found that all activities for ending of the procedure of transfer are implemented but not later than 15 days prior to the date of transfer, it shall prepare and submit to the Grantor and the Concessionaire a Final Transfer Report that shall include at least:

- Opinion of Commission that all conditions regarding the successful transfer are fully satisfied, or
- In case that the Commission finds that the condition of successful transfer are not fully met, it shall note the statement that the conditions for successful transfer are not met, stating the reasons and procedures to be undertaken to remove the causes.

5. In case that the Commission's Final Report on transfer concludes that the conditions of transfer are fully met in compliance with the above provision 4, then the Grantor shall, within 15 days after receiving the Report and confirming such a finding on its behalf, issue a certificate of facility transfer to the Concessionaire confirming the execution of the transfer.

6. In case that the Commission's Final Report of Transfer of the above provision 4 finds that the conditions for successful transfer are not satisfied, the Grantor may act according to one of the manners as follows:

- order the Concessionaire to repair the defects and remove the damages of the hydro power plant and/or the other parts of facility within a reasonable extra time, determined by the Grantor.
- If the Concessionaire fails to act according to the above order, the Grantor may start to repair the defects or damages at Concessionaire's expense.
- remove the stated defects or damages at Concessionaire's expense ensuring also that the Grantor is authorized to charge the sum of the envisaged costs for defects and damages.

After the removal of the stated defects and/or damages by the Concessionaire or Grantor, the Grantor shall issue a certificate of transfer according to the above provision 4 within seven (7) days.

7. Any discrepancy or disagreement on the technical issues that may arise during the transfer shall be resolved in the spirit of good business cooperation within seven (7) days after the occurrence. In case this is impossible, an independent technical expert (experts) may be hired, whose opinion shall be binding for both parties, unless prior to making the final decision, these disagreements are referred from any of the parties to the competent court in the Republic of Macedonia.

8. Other than the costs stated in the provisions above, the Concessionaire and the Grantor shall bear their own costs related to the implementation of the procedure of transfer.