

## Agreement for the Transfer of Real Property

The Parties to this Agreement are:

- A The KOSOVO TRUST AGENCY (“KTA”), an independent body established pursuant to UNMIK Regulation 2002/12 of 13 June 2002 On the Establishment of the Kosovo Trust Agency (as now amended by UNMIK Regulation 2005/18), acting as trustee on behalf of the Enterprise identified in Schedule 1 hereto which is in formal liquidation (the “Enterprise”) ; and
- B The person or entity identified in Schedule 1 hereto as the Transferee (the “Transferee”)

### Background and Purpose

- A The KTA, pursuant to Sections 8 and 9 of UNMIK Regulation No. 2002/12 of 13 June 2002 On the Establishment of the Kosovo Trust Agency (as amended by UNMIK Regulation 2005/18), has the authority to transfer the real property of the Enterprise.
- B Through an open and public sealed bid tendering process, the Transferee was selected by the KTA as the winning bidder to purchase real property of the Enterprise.
- C The KTA, acting as trustee on behalf of the Enterprise, has agreed to sell certain real property of the Enterprise, and the Transferee has agreed to purchase said real property, upon and subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:

### 1 Definitions and interpretation

- 1.1 In this Agreement (including the Schedules), the following definitions shall apply unless the context otherwise requires or except as otherwise expressly provided:

“**Bank Account**” means the bank account of the KTA into which the Transferee has deposited an amount (in Euro) equal to (1) the Purchase Price less (2) any bid deposit previously paid by the Transferee, in accordance with the Rules of Tender;

“**Leasehold**” shall have the meaning set out in UNMIK Regulation No. 2003/13 of 9 May 2003 On the Transformation of the Right of Use to Socially-Owned Immovable Property, as amended;

“**Property**” means collectively, (1) the Real Property and (2) the movable property, if any, listed in schedule 4 hereto.

“**Purchase Price**” means the amount of money specified in Schedule 1 hereto which is equal to the bid price that the Transferee bid for the Property pursuant to the tender process under the Rules of Tender;

**“Real Property”** means certain land plots and any structures located within the boundaries of such plots, for which the Enterprise holds a right of use or other right of ownership, possession or use in accordance with the applicable law, particulars of which are set out in a copy of the cadastral plot records attached as Schedule 2 hereto;

**“Rules of Tender”** means the Rules of Tender for Sale of Property Through a Competitive Sealed Bidding Process under which the Transferee submitted its bid for the Property and pursuant to which the Transferee was selected as the winning bidder.

- 1.2 The construction of this Agreement and the schedules hereto are not to be affected by any heading.
- 1.3 The provisions of Schedules to this Agreement shall form an integral part of this Agreement.

## **2 Terms of Transfer of Property**

- 2.1 The KTA, acting as trustee on behalf of the Enterprise, hereby transfers all of the Enterprise’s rights and title to and interest in the Property from the Enterprise to the Transferee, subject to or with the benefit and burden of all easements, rights, agreements, restrictions, licences, tenancies and other encumbrances whatsoever affecting the Property and existing as at the date of entry into force of this Agreement, including but not limited to any leases with respect to the Real Property set out in Schedule 1. No burdens or liens shall be transferred if they are extinguished by operation of law. The Transferee hereby purchases the Property.
- 2.2 In the event that leases are transferred pursuant to Schedule 1, then to the extent permitted by law, the benefits, subject to the burdens, of these leases are hereby assigned to the Transferee. The Transferee agrees that it shall fully indemnify and keep indemnified the KTA and the SOE from and against all actions, proceedings, costs, claims, damages and demands against the KTA or the SOE that arise as a consequence of any breach under the leases by the Transferee.
- 2.3 The Transferee agrees that it is accepting the SOE’s rights and title to and interest in the Property “as is”, and in the condition in which it was in at the time of transfer, and covenants that it shall not assert any claim against the SOE or the KTA on account of any condition of, or other factor affecting, the Property, whether or not such condition or factor is open and obvious, difficult to discover upon a reasonable inspection or hidden and impossible to discover. Without prejudice to the generality of the preceding sentence, the Transferee agrees that it is purchasing the Property (a) subject to any occupation of the Property and is acquiring any rights which have accrued to the SOE in relation to any illegal occupation or any unregistered property rights that the SOE has; and (b) regardless of whether or not structures upon the Real Property have been built and/or registered in accordance with the applicable law.
- 2.4 The Transferee has paid the Purchase Price into the Bank Account and provided proof of the deposit to the KTA.

- 2.5 Completion of the transfer of all of the Enterprise's rights and title to and interest in the Property shall be deemed to have taken place immediately upon the entry into force of this Agreement, unless otherwise specified in the applicable law.
- 2.6 The transfer pursuant to Clause 2.1 shall include the transfer of all of the Enterprise's rights and title to and interest in structures on the Real Property, unless expressly excluded in Schedule 3 hereto, notwithstanding any discrepancy between structures actually existing and structures detailed in cadastral plot records shown in Schedule 2 hereto. The Transferee acknowledges and agrees that should any structure on the Real Property have been erected in a manner not consistent with the applicable law and procedures, that the Transferee will hold the KTA and the SOE harmless for such inconsistency.

### **3 Representations and Warranties**

- 3.1 The Transferee represents and warrants to the KTA and the Enterprise, from the date of entry into force of this Agreement, that:
- 3.1.1 if it is a legal entity, (a) it is a duly incorporated legal entity and in good standing in the jurisdiction of its incorporation, (b) it has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby and (c) its representative under this Agreement is duly authorised to execute this Agreement on behalf of the Transferee;
- 3.1.2 it is purchasing the Property for its own use and of its own will and not as an agent for a third party and during the tender for the Property, it has not formed any informal or formal agreement with any other bidder or with any undisclosed third party;
- 3.1.3 it has (a) received and reviewed any sale brochures or other documents prepared by the KTA which describe the Property and (b) it was advised by the KTA of the existence of any data room in relation to the Property and the Enterprise (if relevant) containing important information in relation to the Property and the Enterprise (if relevant) and it was given the opportunity to visit any data room and either did so visit any data room in relation to the Property and the Enterprise or chose not to visit the same. Without prejudice to the foregoing provisions of this paragraph, it further confirms that it has reviewed any document entitled "Certain Legal and Other Risks" in relation to the Property and the Enterprise, contained in any data room;
- 3.1.4 it has carried out such due diligence in relation to the Property, the Enterprise and the legal regime in Kosovo as it believes to be appropriate for the purposes of the purchase contemplated by this Agreement, including but not limited to checking public records, visiting and inspecting the Property and investigating issues such as construction and similar permits and any legal or illegal (1) occupation of the Property (temporary or otherwise) and (2) construction of structures on the Property;

- 3.2 it acknowledges that many laws applicable in Kosovo have only relatively recently been promulgated and therefore lend themselves to differing interpretations and are judicially untested and further that the records in Kosovo are often incomplete or out of date;

#### **4 Title**

- 4.1 The Transferee shall accept the Enterprise's right and title to and interest in the Property and neither the KTA nor the Enterprise shall provide any representation or warranty as to the validity of such rights, title and interest.
- 4.2 As from the date of entry into force of this Agreement, to the extent that the transfer or assignment of any of the Property has not been completed, the KTA shall be deemed to hold such Property on trust for the Transferee.

#### **5 Other**

- 5.1 The KTA (and the KTA shall use reasonable endeavours to procure that the Enterprise) shall provide reasonable documentary assistance and information to the Transferee, at the Transferee's expense, to give effect to this Agreement, within the scope of the Enterprise's and the KTA's limited administrative resources.
- 5.2 The KTA (and the KTA shall use reasonable endeavours to procure that the Enterprise) shall, at the request of the Transferee, give the Transferee such further information and documentary assistance as the Transferee shall reasonably require in order to achieve an effective transfer of the rights and title to and interest in the Property to the Transferee.
- 5.3 This Agreement shall enter into force immediately upon being signed, unless the KTA determines that KTA Board ratification is necessary for such entry into force.
- 5.4 Without prejudice to any other provision in this Agreement, each Party shall bear its own taxes and the Transferee shall bear all responsibility for and the costs of carrying out any registration required by law of this transfer, including but not limited to the cadastre records and undertakes to notify the relevant authorities (including any tax authorities).

#### **6 Dispute Resolution**

- 6.1 The Transferee and the KTA (each, a "**Party**", together the "**Parties**") shall promptly notify the other in writing (including full details) of any dispute arising under or relating to the rights and obligations of the Parties under this agreement or the breach, validity or existence thereof. Within ten (10) Business Days, the KTA shall appoint a reasonable time and place for a meeting to negotiate in good faith a resolution of the dispute.
- 6.2 If the dispute is not resolved within fifteen (15) days after notification of the dispute:
- (a) The Transferee may file suit in the Special Chamber of the Supreme Court, provided that the KTA has been properly notified in accordance with UNMIK

Regulations 2002/12 (as amended by UNMIK Regulation 2005/18) and 2002/13.

- (b) The KTA may either, in its capacity as a claimant or respondent:
- (i) proceed with a suit in the Special Chamber of the Supreme Court of Kosovo; or
  - (ii) require that the dispute (including counter-claims thereto) be referred to arbitration in accordance with, the United Nations Commission on International Trade Law Arbitration Rules (“UNCITRAL”) as in force and effect on the date of entry into force of this agreement. In the event of such arbitration, the number of arbitrators shall be three (3), with each Party designating one (1) arbitrator and those two (2) arbitrators together jointly appointing the third arbitrator. The arbitral tribunal shall not be authorised to take or provide, and the Transferee shall not be authorised to seek from any judicial authority, any interim measure of protection or pre-award relief against the KTA, any provisions of UNCITRAL notwithstanding. The seat of arbitration shall be Pristina, Kosovo, and the English language shall be used throughout the arbitration proceedings. The Parties agree that the arbitration shall be the exclusive and final means of dispute resolution. The arbitration award rendered shall apportion the costs of the arbitration.

The provisions of Clauses 5.1.1 and 5.1.2 shall provide the Parties’ exclusive fora for dispute resolution under this Agreement.

- 6.3 Pending settlement of any dispute, the Parties shall abide by their obligations under this Agreement without prejudice to a final adjustment in accordance with an award rendered in an arbitration or court case settling the dispute.

## 7 General

- 7.1 Entire Agreement. This Agreement and the applicable rules of tender together comprise the entire agreement between the Parties in relation to the matters referred to herein and supersedes any previous agreement or arrangement between the Parties or any of them in relation to the sale of the Property and the Parties acknowledge that no claim shall arise in respect of any agreement or arrangement so superseded.
- 7.2 Severability. If any of the provisions of this Agreement is found by a court or other competent authority to be void and unenforceable, such provision shall be deemed to be deleted from this agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision for the provision so found to be void or unenforceable.
- 7.3 No Waiver. No delay or omission on the part of the KTA in exercising any right, power or privilege hereunder shall operate to impair such right, power or privilege or be construed as a waiver thereof and no single or partial exercise or non-exercise of

any right, power or privilege shall in any circumstances preclude any further or other exercise thereof or the exercise of any other right, power or privilege.

- 7.4 No Liability. The Transferee hereby agrees to hold harmless the staff, officers, independent contractors and seconded staff associated with the KTA from any and all liability and claims whatsoever arising out of or related to any loss or damage that may be sustained by the Transferee and its successors and assigns and any cause of action of the Transferee arising under this Agreement shall be exclusively lodged against the KTA and/or the Enterprise.
- 7.5 Variance. Save as otherwise specifically provided herein, any variation of this Agreement shall be binding only if it is recorded in a document signed by the Parties.
- 7.6 Costs. Each Party to this Agreement shall pay its own costs, charges and expenses incurred in the preparation, completion and implementation of this Agreement and the documents referred to herein.
- 7.7 Language and Copies. This Agreement shall be executed in two (2) original English language versions. Any other language versions of this Agreement shall be offered as a courtesy and should any discrepancy arise between the language versions, the English language version of this Agreement shall prevail.
- 7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the applicable law of Kosovo.
- 7.9 Notices. The address (and facsimile number) for service of notices to the KTA under this Agreement shall be as set out below, and the address (and facsimile number) for service of notices to the Transferee shall be as set out in Schedule 1 hereto, provided always that either Party may, by written notice to the other, substitute another address or facsimile number for the service of notices hereunder:

***KTA***

Postal Address: No. 8 Ilir Konushevci Street (former UN Communications Compound, UNCC)  
Pristina, Kosovo

Facsimile number: +381 38 248 076

Notices may be given by being delivered by hand to the notice address of the addressee, by facsimile or by international courier.

7.10 Voidability of Sale

Notwithstanding section 10.5 of UNMIK Regulation No. 2002/13 or other provisions in applicable law, should it be determined that (a) the funds used by the Transferee to acquire the Property were derived directly or indirectly from illegal activity; or (b) the Transferee was involved in collusion during the bidding process or any other violation of the Rules of Tender, then this Agreement shall be voidable by the KTA and any bid deposit shall be forfeited.

The properly authorised representatives of the KTA and the Transferee have executed this Agreement in Kosovo.

**KTA**

**Transferee**

By:

By:

Title:

Title:

Date:

Date:

### Schedule 1

**Declaration under Section 8.2 of Regulation No 2004/2 on the Deterrence of Money Laundering and the Related Criminal Offences as amended by Regulation No 2004/10 and regulation No 2005/9.**

**Enterprise**

**Transferee**

(Details incl. notice address and phone/fax; identity of any person or entity which has a financial interest in or is a beneficiary of the property being transferred, and the nature of that interest or beneficiary status)

**Notice of Public Sale details**

Sale number	
Item number	
Description of Property and Location	

**Purchase Price:**

**Manner of Payment:**

**KTA Bank Account to which the purchase price was transferred:**

**Transferee's Bank Account from which the payment was made:**

**Leases being transferred:**

**For KTA:**

**For Transferee:**





**PROPERTY TRANSFERS**

**Schedule 3 –Structures not transferred with the Property**