

**Rules of Tender
for the
Special Spin-Off Privatisation
of Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C./KTA 020**

These Rules of Tender set out the guidelines and procedures for submitting a Bid (as hereinafter defined) in the tender of the Company (as hereinafter defined). A person, through their participation in any aspect of the tender, agrees and undertakes to be bound by the terms of these Rules of Tender.

1 Definitions and Interpretation

1.1 *Definitions*

Unless the context otherwise requires the following definitions shall apply throughout the Rules of Tender:

“**Affiliated Company**” means any corporation or business entity that:

- (1) (a) directly or indirectly owns and also controls a Bidder or (b) is owned or controlled by the Bidder. For the purposes of this definition the meaning of the word “owns” shall mean ownership of more than 50% of the share capital of such corporation or an ownership interest of more than 50% in such other entity; or
- (2) has a collaborative working relationship with a Bidder established through a legally binding written instrument such as (i) a joint venture agreement, (ii) jointly owned joint venture company, or (iii) management services contract. The obligations of the parties under such a written instrument must clearly (a) relate to the Required Business Activity of the Subsidiary post-privatisation; (b) establish a material degree of involvement by each of the parties in accordance with the norms of the Required Business Activity industry standards; (c) state the material undertakings by each party in furtherance of the intended business activities of the Subsidiary; and (d) state the commitments, obligations and liabilities of each of the parties in furtherance of the activities mentioned in (a), (b) and (c) above.

“**Agency**” means the Kosovo Trust Agency, an independent body established pursuant to the KTA Regulation, or any legal successors of the Kosovo Trust Agency.

“**Agent**” means anyone acting as agent or acting directly or indirectly on behalf of, or under the instructions of, another person, whether in a disclosed or undisclosed manner.

“**Applicable Law**” means the laws applicable in Kosovo pursuant to UNMIK Regulation 1999/24 On the Law Applicable in Kosovo (as amended by UNMIK Regulation 2000/59).

“**Annex C**” mean Annex C to these Rules of Tender.

“**Background Checks**” means any investigations or checks carried out by the Agency or on behalf of the Agency to (i) confirm the origin of the purchase price funds (ii) for the purposes of the Agency confirming that the Provisional Winning Bidder is not a Prohibited Bidder, (iii) for the purposes of compliance with Applicable Law or international best practice and (iv) any other checks or investigations as may be determined by the Agency.

“**Beneficial Owner**” means the natural or legal person or persons or entity or entities, enjoying the legal or beneficial ownership, howsoever arising or structured, of some or all of a Bidder, regardless of in whose name the ownership of the Bidder is registered.

“**Bid**” means the collection of information and documentation contained in either the First Bid or the Second Bid, or both, as the case may be.

“**Bidder**” means any Potential Bidder, Eligible Bidder, Qualifying Bidder or Provisional Winning Bidder, as the case may be, but excluding a Prohibited Bidder.

“**Bid Deposit**” means the refundable bid deposit of € 50,000 (Fifty Thousand Euro) paid by an Eligible Bidder to the Agency, in accordance with section 9.2.

“**Bid Submission Fee**” means the non refundable bid submission fee of €1,000 (one thousand euro) paid by an Eligible Bidder to the Agency in accordance with section 9.1.

“**Bid Submission Form**” means the document, in the form set out in Annex D, to be submitted by each Eligible Bidder in accordance with section 9.3(a)(i).

“**Board**” means the board of directors of the Kosovo Trust Agency.

“**Business Day**” means a day on which banks and UNMIK institutions are generally open for business in Prishtinë/Priština, Kosovo and specifically excluding Saturdays, Sundays and public holidays in Kosovo.

“**Capital Investments**” means (i) money paid to purchase a capital asset or a fixed asset during the Commitment Period and (ii) capital expenditure incurred during the first six months of the Commitment Period for the purposes of enhancing and improving the capital or fixed assets

transferred to the Company, pursuant to the Declarations of Transfer. Capital assets and fixed assets shall include (but not be limited to) all tangible property which cannot easily be converted into cash and which is usually held for a long period of time, including (but not limited to) real estate, equipment, plant and machinery. For the avoidance of doubt, such capital assets and fixed assets are long-term tangible assets held in connection with the Required Business Activities that are not expected to be converted to cash in the current or upcoming fiscal year and whose costs are, under recognised accounting standards, treated as capital expenditure and shown as such in the Balance Sheet. In regard to costs of (1) transporting and installing equipment, plant and machinery, (2) consulting or management fees where such fees are an integral part of the installation or construction of the Capital Investment and (3) taxes or duties that are directly a part of the importation of the Capital Investment and not recoverable in the normal course of business, then such costs (1), (2) and/or (3) may be included in the reckoning of Capital Investment provided they would, under recognised accounting standards, be treated as capital expenditure. Costs of feasibility studies, etc. shall not be included as Capital Investment. The Agency's decision on what is included in capital investment will be final.

“Commitments” means together (i) the Investment Commitment and (ii) the Employment Commitment, details of which are set out in Annex C.

“Commitment Agreement” means the agreement between (1) the Agency, acting as trustee for and on behalf of the SOE; (2) the Agency, acting for and on behalf of Company; (3) the Agency; and (4) the Provisional Winning Bidder, pursuant to which the Company shall, and the Provisional Winning Bidder shall procure and guarantee that the Company shall (i) implement the Commitments and (ii) be bound by the enforcement mechanism related to the Commitments.

“Control Person” means any legal or natural person or entity to whose orders, directions and control a legal person or entity is accustomed to act, whether the Control Person occupies a formal position, such as, **by way of example only**, a managing director, a chief executive officer, a chairman of the board of directors or otherwise as, **by way of example only**, a major shareholder.

“Current Liabilities” means certain debts and liabilities of the SOE, which have arisen during the normal course of the SOE's business, an **illustrative** list only of which is set out in the Information Memorandum and information in relation to which is included in the Data Room, and which shall include the following: (1) the net unpaid VAT liability of the SOE, exclusive of interest and penalties, arising during the 12 month period ending on the date of the completion of the sale of the Subsidiary; (2) the unpaid property tax liability of the SOE, in respect of the immovable property comprised in the Tendered Items, arising during the 12 month period ending on the date of the completion of the sale of the Subsidiary; (3) the unpaid goods and services liabilities of the SOE (e.g. KEK and other utility debts or debts to suppliers but *not* including salaries, pensions or other payments to or on behalf of employees of the SOE in their capacity as employees), arising in the normal course of business during the 3 month period ending on the date of the completion of the sale of the Subsidiary; and (4) any other liabilities to be transferred from the SOE to the Subsidiary, which are identified in the Information Memorandum (or any update thereto) or in the Data Room.

“Data Room” means the data room established by the Agency wherein certain information and documentation relating to the SOE and the Tendered Items shall be placed for inspection by the Bidders.

“Designated Account” means the bank account that is designated by the Agency for the purpose of receiving the Purchase Price from the Provisional Winning Bidder, details of which will be provided by the Agency to the Provisional Winning Bidder.

“Eligible Bidder” means a Potential Bidder who has been registered as an Eligible Bidder, in accordance with section 6.

“Eligible Bidders Register” means the confidential register of all registered Eligible Bidders, which is compiled and maintained by the Agency, in accordance with 6.6.

“Eligibility Registration Form” means the form issued by the Agency to an Eligible Bidder, in accordance with section 6.5, evidencing that the Eligible Bidder has successfully been registered as an Eligible Bidder and included on the Eligible Bidders Register.

“Eligibility Registration Number” means the unique number corresponding to an individual Eligible Bidder that is issued by the Agency to an Eligible Bidder, in accordance with section 6.5, and which is noted on the Eligibility Registration Form.

“Employee Bidder” means:

- (1) any current employee or employees of the SOE either solely or in partnership with any other person; or
- (2) an entity in which one or more current employees of the SOE is a Beneficial Owner;

which is/are a Potential Bidder.

“Employment Commitment” means the number of employees to have been employed by or on behalf of the Subsidiary to which a Bidder commits for at least the first 2 years following the entry into force of the Sale Agreement, as noted in Annex C.

“External Bidder” means any natural or legal person or entity, not including an Employee Bidder, which is a Potential Bidder.

“Financial Statements” means a structured representation of financial information, which ordinarily includes accompanying notes, derived from accounting records and intended to communicate an entity’s economic resources or obligations at a point in time or the changes therein for a period of time, in accordance with a financial reporting framework. This financial information must evidence and confirm that either the Bidder or an Affiliated Company meet the Financial Requirement and must include either audited financial statements or a certified copy annual tax return/declaration made to the tax authorities in the jurisdiction of residence of either the Bidder or an Affiliated Company.

“First Bid” means the collection of information and documentation set out in section 9.3 (including (but not limited to) information as to Purchase Price, Investment Commitment and Employment Commitment), which is submitted by an Eligible Bidder in accordance with section 9.4(a).

“First Bid Number” means the number assigned to an Eligible Bidder’s First Bid, being the number that will be written on the third sealed envelope referred to at section 9.3(c) and also recorded on the First Bid Receipt.

“First Bid Receipt” means the receipt, issued by the Agency in accordance with section 9.4(b), signed by or on behalf of the panel of Agency employees receiving First Bids, and stating the date, hour and minute of the Agency’s receipt of a First Bid and noting the First Bid Number.

“First Bid Submission Period” means 24th January, [2007, between [10:00 and 12:00] Kosovo time, during which First Bids must be submitted to the Agency, details of which are also set out in the Tender Schedule, unless the Agency, in its sole discretion, amends the First Submission Period, pursuant to any amendments to these Rules of Tender.

“Highest Bidder” means the Qualifying Bidder who submits the Highest Total Bid Score during the Second Bid Submission Period.

“Highest Bid Score” means the highest Total Bid Score of any Qualifying Bidder, following the calculation of all Total Bid Scores resulting from the Second Bids, which shall in all cases be constituted of the same weighted proportions of Purchase Price, Employment Commitment and Investment Commitment.

“Highest Bid Purchase Price” means the highest bid Purchase Price submitted by a Qualifying Bidder during the Second Bid Submission Period.

“Highest Bid Score Purchase Price” means the Purchase Price bid by the Highest Bidder, being a constituent element of the Highest Bid Score.

“Information Memorandum” means the document (including all updates) prepared by the Agency and circulated to Bidders, which sets out background information on the SOE including (but not limited to): (1) a summary of the history, location and business of the SOE; (2) the key assets of the SOE; (3) an illustration of the Tendered Items; (4) details of any contracts that will be transferred to the Subsidiary; and (5) other information in respect of the SOE deemed pertinent by the Agency.

“Initial Charter Capital” means €1,250 (one thousand two hundred fifty euro), which was or will be paid into the charter capital of the Subsidiary by the Agency for the purposes of establishing the Subsidiary (and which amount, for the avoidance of doubt, is to be paid to the Agency (by way of reimbursement) by the Provisional Winning Bidder, in addition to the Highest Bid Score Purchase Price, in accordance with these Rules of Tender).

“Initial Payment” means the amount equal to the total of 25% (twenty five percent) of the Highest Bid Score Purchase Price bid by the Highest Bidder plus the Initial Charter Capital, less the Bid Deposit.

“Investment Commitment” means the amount stated in euro (€) of capital investments to be made by or on behalf of the Subsidiary, as committed by a Bidder and which should occur in respect of the Tendered Items. The Investment Commitment should occur over the 2 years following the entry into force of the Sale Agreement, as noted in Annex C.

“KTA Regulation” means UNMIK Regulation 2002/12 On the Establishment of the Kosovo Trust Agency (as amended by UNMIK Regulation 2005/18), as may be re-enacted, amended, consolidated, varied, replaced or extended from time to time.

“PISG” means the Provisional Institutions of Self-Government as established by UNMIK Regulation No. 2001/9 “On a Constitutional Framework of Self-Government”

“Potential Bidder” means an Employee Bidder or an External Bidder making an application to be registered as an Eligible Bidder, in accordance with the Pre-Qualification Procedure.

“Production Report” means a written record showing the total annual production of an entity, including (but not limited to) information in respect of the total annual production capacity of the entity and the total annual production of the entity represented as a percentage of the total annual production capacity of the entity. This report must be supported by written, verifiable records from the entity and must evidence and confirm that either the Bidder or an Affiliated Company meet the Production Requirement.

“Production Requirement” means a minimum annual production attributable to the Required Business Activity during the past three years

“Pre-Qualification Procedure” means the procedure set out in section 6.5 of these Rules of Tender, whereby a Potential Bidder makes an application to be registered as an Eligible Bidder.

“Prohibited Bidder” means any natural or legal person or entity, details of which are set out in section 3.1, that shall not be eligible to be registered as an Eligible Bidder and are accordingly prohibited from submitting a Bid.

“Provisional Winning Bidder” means any of the Highest Bidder, the Second Highest Bidder or the Third Highest Bidder that has been notified by the Agency that it is the Provisional Winning Bidder and that is entitled to complete the purchase of the Subsidiary at the Highest Bid Score.

“Publicly-owned Enterprises” shall have the same meaning ascribed to that term as in the KTA Regulation

“Purchase Price” means the amount stated in euro (€) bid by a Bidder.

“Qualifying Bidders” means each of the three Eligible Bidders who have submitted the three highest Total Bid Scores during the First Bid Submission Period.

“Representative” means any person legally authorised to act on behalf of a Bidder throughout the Tender, including the negotiation and execution of the Share Sale Agreement and any documents related thereto.

“Required Business Activity” means the activities related to the milling industry for at least the past three years

“Sale Agreements” means the Share Sale Agreement and/or the Commitment Agreement, as the case may be.

“Second Bid” means the collection of information and documentation set out in section 10.3 (including (but not limited to) information as to Purchase Price, Investment Commitment and Employment Commitment) and submitted by a Qualifying Bidder in accordance with section 10.4(a).

“Second Bid Number” means the number assigned to an Qualifying Bidder’s Second Bid, being the number that will be written on the sealed envelope referred to at section 10.3(a) and also recorded on the Second Bid Receipt.

“Second Bid Receipt” means the receipt, issued in accordance with section 10.4(b), signed by or on behalf of the panel of Agency employees receiving Second Bids, and stating the date, hour and minute of the Agency’s receipt of a Second Bid and noting the Second Bid Number.

“Second Bid Submission Period” means **31st January, 2007**, between **[10:00 and 12:00]** Kosovo time, during which Second Bids must be submitted to the Agency, details of which are also set out in the Tender Schedule, unless the Agency, in its sole discretion, amends the Second Bid Submission Period, pursuant to any amendments to these Rules of Tender.

“Second Highest Bidder” means the Qualifying Bidder who submits the second highest Total Bid Score during the Second Bid Submission Period.

“Second Highest Bidder Purchase Terms” means the Highest Bid Purchase Price plus the identical Investment Commitment and the Employment Commitment pledged by the Second Highest Bidder as a constituent part of its Second Bid.

“Second Highest Bidder Initial Payment” means the amount equal to the total of 25% (twenty five percent) of the Highest Bid Purchase Price plus the Initial Charter Capital, less the Bid Deposit.

“Share Sale Agreement” means the agreement to be entered into between the Provisional Winning Bidder and the Agency (where the Agency is acting on behalf of the SOE) pursuant to

which the entire issued share capital of the Subsidiary shall be sold to the Provisional Winning Bidder in consideration for the payment to the Agency of the Highest Bid Purchase Price.

“SOE” means SOE Mulliri” Fushë Kosovë UNMIK Bus. Reg.Number 80280521

(also previously known as in 1989 “Zhitopromet-Mulliri” FI-707/89; in 1992 “PKB Žitopromet Mlin” DOO - “PKB Žitokondit” DOO, Kosovo Polje, FI-5221/92; and in 1995 “Žitokondit” D.D, Kosovo Polje, FI-3278/95 a socially-owned enterprise established under the laws of the Federal Republic of Yugoslavia or any other Applicable Law.

“Socially-owned Enterprise” shall have the same meaning ascribed to that term as in the KTA Regulation

“Subsidiary” means the limited liability company to be established by the Agency (where the Agency is acting on behalf of the SOE) that will receive the Tendered Items and which will be tendered for sale pursuant to the Tender.

“Tender” means the entire process whereby the Agency arranges the sale of the Tendered Items and the Subsidiary, including the identification of the Highest Bid Score and the completion of the sale of the Subsidiary with a Provisional Winning Bidder.

“Tender Documents” mean (1) these Rules of Tender, (2) the Tender Schedule, (3) the Tender Notice, (4) the Information Memorandum, (5) a confidentiality agreement to be signed by each Bidder and the Agency, (5) the draft Share Sale Agreement and draft declarations of transfer (including any attachments to any of these documents) and (6) any other document that may reasonably be determined to be a Tender Document by the Agency.

“Tender Notice” means the notice issued by the Agency, announcing the Tender, which provides specific details of the Tender.

“Tender Schedule” means the document setting out important time periods and dates in respect of the Tender, which is attached hereto as Annex A.

“Tendered Items” means certain of the moveable and immovable assets and Current Liabilities of the SOE, details of which are set out in the Information Memorandum, which are to be tendered for sale pursuant to the Tender and will in due course be transferred to the Subsidiary.

“Third Highest Bidder” means the Qualifying Bidder who submits the third highest Total Bid Score during the Second Bid Submission Period.

“Third Highest Bidder Purchase Terms” means the Highest Bid Purchase Price plus the identical Investment Commitment and the Employment Commitment pledged by the Third Highest Bidder as a constituent part of its Second Bid.

“Third Highest Bidder Initial Payment” means the amount equal to the total of 25% (twenty five percent) of the Highest Bid Purchase Price plus the Initial Charter Capital, less the Bid Deposit.

“**Total Bid Score**” means the weighted total of the Purchase Price, the Employment Commitment and the Investment Commitment, bid by a Bidder for the purchase of the shares in the Subsidiary, which is calculated in accordance with the procedures set out in Annex C.

“**UNMIK**” means the United Nations Interim Administration Mission in Kosovo.

1.2 *Interpretation*

- (a) Unless the context otherwise requires:
 - (i) the term person includes natural persons, unincorporated associations or corporate bodies;
 - (ii) any reference to the masculine gender includes reference to the feminine gender and any reference to the neuter gender includes the masculine and feminine genders;
 - (iii) any reference to the singular includes reference to the plural.
- (b) Headings are inserted for convenience only and do not affect the construction or interpretation of these Rules of Tender.
- (c) Any reference to a clause means a clause or sub-clause, of these Rules of Tender, as the case may be.
- (d) If any term or provision in the Rules of Tender is held to be illegal or unenforceable in whole or in part, such term shall be deemed not to form part of these Rule of Tender but the remaining terms of these Rules of Tender shall not be affected

2. **Introduction**

2.1 *Overview of the Agency’s Role*

The Agency was established as an independent body pursuant to the KTA Regulation. Part of the Agency’s mandate is the administering of Socially-owned Enterprises and carrying out activities that will preserve or enhance the value and viability of such entities, including the sale of the business and assets of such entities to physical or legal persons.

For additional information regarding UNMIK and the Agency, please visit the following websites: www.unmikonline.org and www.kta-kosovo.org

2.2 *Sale Structure and Bid Overview*

The Agency will establish the Subsidiary on behalf of the SOE and the Agency shall hold the issued share capital of the Subsidiary in trust for the SOE. As an integral part of Tender the Agency will undertake the sale of the issued share capital of the Subsidiary, on behalf of the SOE, and the Tendered Items will, in due course, be transferred to the Subsidiary.

The Subsidiary will be tendered for sale in a public international auction and these Rules of Tender set out the procedures governing the Tender, including the manner in which a Potential Bidder can be registered as an Eligible Bidder and the information and documentation to be included with Bids. There shall be two rounds of bidding during the Tender and as the Tender is a special spin off tender, Bidders for the Subsidiary will, as a component part of their Bids, be required to bid a Purchase Price and to agree to make an Employment Commitment and an Investment Commitment. Details of the Commitments and the process for evaluating Total Bid Scores and establishing the Highest Bid Score are summarised in Annex C of these Rules of Tender.

In order for Bids to be considered, a Bid must comply with these Rules of Tender. Through a Bidder's participation in any step of the Tender or the submission of a Bid, the Bidder agrees and undertakes to be bound by the terms of these Rules of Tender.

By submitting a Bid, a Bidder understands and agrees that it is bidding to purchase the Subsidiary and the Tendered Items and that:

- (a) **the Highest Bidder will, subject to the Rules of Tender, have the right to complete the purchase of the Subsidiary at the Highest Bid Score; or**
- (b) **if, for whatever reason, the sale does not proceed with the Highest Bidder then the Second Highest Bidder shall, subject to the Rules of Tender, have the option, but not the obligation, to complete the purchase of the Subsidiary on the Second Highest Bidder Purchase Terms; or**
- (c) **If, for whatever reason, the sale does not proceed with the Second Highest Bidder then the Third Highest Bidder shall, subject to the Rules of Tender, have the option, but not the obligation, to complete the purchase of the Subsidiary on the Third Highest Bidder Purchase Terms.**

2.3 *Tender Schedule*

The Agency shall prepare the Tender Schedule. All Bidders are urged and recommended to consult the Tender Schedule in order to inform themselves of the important time periods and dates set out in the Tender Schedule.

3. **Prohibited Bidders**

3.1 For the purpose of this Tender the following shall be Prohibited Bidders:

- (a) Publicly-owned Enterprises and Socially-owned Enterprises;
- (b) PISG departments, agencies or institutions or legal persons or entities in respect of which the PISG is the Beneficial Owner or Control Person;
- (c) In respect of any sovereign government or state, its organs of state, departments, agencies or institutions or legal persons or entities of which a sovereign government or state is the Beneficial Owner or Control Person;
- (d) natural and legal persons who are currently subject to bankruptcy or insolvency proceedings;
- (e) natural persons who have been found guilty of a felony which was committed after June 1999 or who are otherwise subject to criminal proceedings;
- (f) natural and legal persons who (i) are in material breach of a contract entered into with the Agency or with any of the enterprises administered by the Agency (the existence and materiality of such breach to be determined by the Agency in its sole discretion) (ii) have any fine or debt outstanding to the Agency or an enterprise administered by the Agency; (iii) are on a list of persons or entities with whom the Agency, UNMIK or the European Union is prohibited by a recognized international entity, such as OFAC, from carrying out transactions, including a list of persons who are the subject of international sanctions or export control rules; or (iv) are natural or legal persons who have not paid fines imposed upon them by the Agency pursuant to its powers set out in section 27 of the KTA Regulation or subject of any claim or dispute (whether the matter is in court or otherwise) related to section 28 of the KTA Regulation;
- (g) natural and legal persons who, in the reasonable opinion of the Agency:
 - (i) have performed acts that allow the Agency to cancel a privatization-related tender in accordance with section 15.2(e);
 - (ii) have otherwise been in breach of the rules of tender for any privatization-related tender conducted by the Agency; or
 - (iii) have withdrawn from their position as the provisional winning bidder under a privatization-related tender more than one (1) time, through the failure to deposit the amount of their winning purchase price within the time period required by the Agency or through their refusal to execute the sales documentation,

during any privatization-related tender conducted by the Agency after the so-called “Wave 7” tenders.

- (h) natural and legal persons acting as an Agent for any of the persons or entities referred to in sections 3.1(a) – 3.1(g) above or any Agent who has not disclosed his/her/its principal(s), as required by these Rules of Tender;
 - (i) legal entities whose Beneficial Owners or Control Persons fall within the categories outlined at section 3.1 (a) – 3.1(h) above.
- 3.2 Any Bid submitted by a Prohibited Person shall automatically be disqualified, notwithstanding that it would otherwise be in full compliance with the terms and conditions set out in these Rules of Tender.
- 4. Due Diligence**
 - 4.1 **Due diligence and information collection and analysis in respect of the SOE, the Tendered Items and the Subsidiary shall be the sole responsibility of, and at the total risk of, each Bidder.**
 - 4.2 The Agency shall establish a Data Room in respect of the SOE and the Tendered Items. The Agency shall allow Bidders to access the information and documentation contained in the Data Room in relation to the SOE and the Tendered Items, for the purpose of their due diligence in respect of the SOE and the Tendered Items. Bidders are hereby put on notice of the existence of the Data Room and deemed to be on notice of the contents of the Data Room.
 - 4.3 The Agency shall be solely responsible for coordinating access by Bidders to the Data Room. Access by Bidders to the Data Room may only take place on the dates and at the times specified in the Tender Schedule. The Agency may decline to grant access to the Data Room to any person and to any and all other information and documentation controlled by the Agency, where such person, in the sole discretion of the Agency, does not appear to be a genuine Bidder.
 - 4.4 Before submission of a Bid, the Agency shall, within the limits of the Agency's administrative resources, use reasonable endeavours to allow all Bidders an opportunity to visit the site and premises of the SOE and the Tendered Items.
 - 4.5 The Agency shall be solely responsible for coordinating visits by Bidders to the site and premises of the SOE and to the Tendered Items. Visits by Bidders to the site and premises of the SOE and the Tendered Items may only take place on the dates and at the times specified in the Tender Schedule. The Agency may decline to grant access to any person to the site and premises of the SOE and the Tendered Items, where such person, in the sole discretion of the Agency, does not appear to be a genuine Bidder.
 - 4.6 Bidders shall not contact the SOE directly and Bidders shall raise inquiries and schedule appointments with the Agency only.

- 4.7 By submitting a Bid, a Bidder acknowledges and confirms to the Agency that the Bidder has carried out a due diligence and an independent investigation and assessment of the SOE, the Tendered Items and any and all information and documentation in the Data Room and accordingly the Bidder has satisfied itself as to the conditions and operations of the SOE, the Tendered Items and the accuracy of any and all of the information and documentation in the Data Room.
- 4.8 **The failure of a Bidder to carry out a due diligence and an independent investigation and assessment of the SOE, the Tendered Items and any and all information and documentation in the Data Room shall not relieve such a Bidder from performing its obligations under the Share Sale Agreement and/or any related documentation. Neither the Agency nor the SOE shall assume any risk or responsibility for any conclusions or interpretations made by any Bidder following such a Bidder's due diligence and an independent investigation and assessment of the SOE, the Tendered Items and any and all information and documentation in the Data Room.**
- 4.9 Any Bid contingent upon further due diligence or investigation or upon another Bidder's Bid may be deemed incomplete and unacceptable by the Agency.
- 4.10 As a result of circumstances in Kosovo, it is acknowledged and confirmed by all relevant parties that certain information and documentation concerning the SOE and the Tendered Items may have been lost, destroyed or removed from the site and premises of the SOE and accordingly shall be considered to be no longer available. Therefore, Bidders are hereby put on notice that any analysis of the information or documentation may be incomplete and should be accompanied by a thorough assessment of the SOE and the Tendered Items. Neither the Agency nor the SOE shall be responsible or liable in respect of any deficiency in the information or documentation available in respect of the SOE or the Tendered Items.
- 4.11 The Agency shall not be required to translate any of the information or documentation in respect of the SOE, the Tendered Items or the Subsidiary for Bidders or to provide any interpretation services. The Bidder shall be responsible for any required interpretation and translation of information or documentation during the due diligence process. Any persons supplying translation or interpretation services to the Bidder shall be required to comply with any confidentiality obligations set out in these Rules of Tender and may be required by the Agency to sign a confidentiality statement.
- 4.12 The Bidder must sign the confidentiality agreement included with the Tender Documents and return it to the Agency before the Bidder will be permitted to access the information and documentation contained in the Data Room or to conduct a visit to the site or premises of the SOE or the Tendered Items for the purpose of their due diligence.. A Bidder may also be required to agree to Data Room rules, before being granted access to the Data Room.

5. Obtaining Tender Documents

- 5.1 Bidders shall be entitled to obtain copies of the Tender Documents.
- 5.2 Bidders shall be instructed in the Tender Notice to contact a named person at the Agency, prior to a deadline stated in the Tender Notice, in order to receive the Tender Documents.
- 5.3 The Agency shall endeavour to provide the Tender Documents to the Bidders within 3 Business Days of receipt of a request for the Tender Documents and the Tender Documents shall normally be provided to Bidders free of charge, if sent by the Agency to a Bidder by e-mail or by the regular post. A Bidder wishing to receive the Tender Documents by another method shall bear the cost of delivery of such other method.

6. Eligibility Registration Procedures

- 6.1 Prohibited Bidders are ineligible for registration as an Eligible Bidder.
- 6.2 In order to be eligible to submit a Bid in the Tender a Potential Bidders must participate in the Pre-Qualification Procedure, in order to be registered as an Eligible Bidder.
- 6.3 The purpose of the Pre-qualification Procedure is to assist the Agency to assess the ability of Potential Bidders to effectively run and develop the business and assets of the Subsidiary and their ability to satisfy the Commitments. The Agency shall, based on the on the information provided to the Agency, in the context of the Pre-Qualification Procedure, make an assessment of these matters and determine, accordingly, the eligibility of a Potential Bidder to be registered as an Eligible Bidder. The Agency will, in the context of the Pre-Qualification Procedure adopt a purposive approach.
- 6.4 All Potential Bidders must submit an application for registration as an Eligible Bidder, pursuant to the Pre-Qualification Process, at least 5 Business Days prior to the First Bid Submission Period.
- 6.5 **Pre-Qualification Procedure:** in order to be considered for registration as an Eligible Bidder, a Potential Bidder must submit the following information and documentation to the Agency, for the purposes of the Pre-Qualification Procedure:
 - 6.5.1 Each External Bidder must provide the Agency with documentary proof, to the satisfaction of the Agency at the Agency's sole discretion, that the External Bidder satisfies the following criteria:
 - (a) that either it or an Affiliated Company has a management team which can illustrate substantial experience operating or managing a business whose core business is the Required Business Activity which is activities related to the milling industry for at least the past three years.

- (b) that either it or an Affiliated Company must provide the necessary **Business Mill Registration Certificate** from the relevant Business Registration Authority, to the satisfaction of the Agency at the Agency's sole discretion, to confirm that it or such Affiliated Company meet the **industrial experience of three years operation in the Milling Industry:**
- (c) if an External Bidder has an Affiliated Company as defined in Part (2) of the definition of *Affiliated Company* in these Rules of Tender, the External Bidder shall provide the Agency with a copy of the legally binding written instrument that establishes the External Bidder's relationship with such Affiliated Company, with such instrument containing the information referred to in sub-sections (a)-(d) of Part (2) of the definition of *Affiliated Company*.

In addition to the **Business Mill Registration certificate** required pursuant to section 6.5.1(b), the documentary proof for this section 6.5.1 should also include other relevant documentation in support of the application of the External Bidder (and any Affiliated Company) for registration as an Eligible Bidder including, but not necessarily limited to, *curriculum vitae* and/or management statements.

6.5.2 Each Employee Bidder must provide the Agency with documentary proof, to the satisfaction of the Agency at the Agency's sole discretion, that the Employee Bidder satisfies the following criteria:

- (i) that either it or an Affiliated Company has a management team which can illustrate substantial experience operating or managing a business whose core business is the Required Business Activity and which business meets the **Production Requirement**; and
- (ii) if an Employee Bidder has an Affiliated Company as defined in Part (2) of the definition of *Affiliated Company* in these Rules of Tender, the Employee Bidder shall provide the Agency with a copy of the legally binding written instrument that establishes the Employee Bidder's relationship with such Affiliated Company, with such instrument containing the information referred to in sub-sections (a)-(d) of Part (2) of the definition of *Affiliated Company*.

Documentary proof for section 6.5.2(a) must include the furnishing of **Business Mill Registration certificate** to the satisfaction of the Agency at the Agency's sole discretion, to confirm that it or such Affiliated Company meet the **Production Requirement** and a *curriculum vita* for each member of the Employee Bidder's management team. The documentary proof for this section 6.5.2 should also include other relevant documentation in support of the application of the Employee Bidder (and any Affiliated Company) including, but not necessarily limited to, *curriculum vitae* and/or management statements.

6.5.3 In addition to the information required to be submitted by a Potential Bidder, pursuant to either section 6.5.1 or section 6.5.2 as relevant, a Potential Bidder shall also submit the following information and documentation to the Agency:

- (a) the Potential Bidder's name, address, and other contact details and the name and contact details of the Representative who shall serve as the Potential Bidder's principal contact person with the Agency;
- (b) the following information in respect of the Potential Bidder:
 - (i) if the Potential Bidder is a **physical person**, a certified copy of his/her identification card or passport;
 - (ii) if the Potential Bidder is a **legal entity**, a certified copy of the entity's business registration information and the identity of all its Beneficial Owners and Control Persons. (Proof of the identity of Beneficial Owners and Control Persons under this section 6.5.3(b)(ii) shall not be required for legal entities listed on internationally-recognised stock exchanges provided details of such listing(s) are provided).
 - (iii) if the Potential Bidder is a **partnership**, a certified copy of the partnership's founding document and the identity of its partners and its Beneficial Owners and Control Persons;
 - (iv) if the Potential Bidder is a **consortium** of **natural persons**, **partnerships** or **legal persons or entities**, certified copies of the founding documents of such consortium, along with certified copies of identification cards, passports and business registration information of the participants in the consortium including the identity of the Beneficial Owners and Control Persons of the consortium members; or
 - (v) if the Potential Bidder is bidding as an Agent for another party, a statement to that effect, the name and description of that other party, along with information about that other party as set out in sections 6.5.3(b)(i) – 6.5.3(b)(iv) above, including the identity of the Beneficial Owners and Control Persons of such other party where applicable.
 - (vi) a written statement that the Potential Bidder is not a Prohibited Bidder, along with any supporting documentation deemed relevant in relation to the same.

- (c) The Agency may, during the Tender, request that a Potential Bidder provide such further confirmations, information or documentation as the Agency may require, in the Agency's absolute and sole discretion, to confirm any of the matters referred to in the Pre-Qualification Procedure.
- 6.6 The Agency shall issue an Eligibility Registration Form and an Eligibility Registration Number to each registered Eligible Bidder. An Eligible Bidder may use its Eligibility Registration Form and its Eligibility Registration Number in any future tenders organised by the Agency, unless the Eligibility Registration Form and the Eligibility Registration Number have been cancelled or otherwise determined invalid by the Agency, in the Agency's absolute discretion.
- 6.7 The Agency shall compile and maintain the Eligible Bidders Register.
- 6.8 All information and documentation submitted by a Potential Bidder by way of application for registration as an Eligible Bidder shall be in typewritten form.
- 6.9 All information and documentation submitted by a Potential Bidder in the context of the Pre-Qualification Procedure shall be submitted in an English language version, as well as the original language version (with the exception of passports and/or identification cards referred to at section 6.5.3, which Bidders may choose to submit in their original language only).
- 6.10 By participating in the Pre-Qualification Procedure, a Potential Bidder is confirming and representing that it has the authority, whether implied or otherwise, to disclose all of the information and documentation submitted in the context of the Pre-Qualification Procedure and that all natural or legal persons or entities mentioned in the Pre-Qualification Procedure have consented to such disclosure. By participating in the Pre-Qualification Procedure, a Potential Bidder also agrees to hold harmless and indemnify the Agency in respect of any claim that may be made against it by any person or entity in relation to such disclosure.
- 6.11 The Agency shall use reasonable efforts to ensure that its staff treat all information provided by a Potential Bidder in the context of the Pre-Qualification Procedure as confidential and the Agency shall not disclose such information to third parties except (a) as may be required by Applicable Law or by an order of a court of competent jurisdiction or (b) to law enforcement agencies inside or outside of Kosovo or (c) to any organs instructed by the Agency for the purposes of the Background Checks and any other reasonable investigations or (d) if a Potential Bidder has otherwise agreed in writing.
- 6.12 The Agency reserves the right to revoke the registration of an Eligible Bidder and to strike such an Eligible Bidder from the Eligible Bidders Register, at any time, if the Agency determines that an Eligible Bidder is a Prohibited Bidder or if an Eligible Bidder is not otherwise in compliance with the requirements of this section 6.

- 6.13 The Agency may, at anytime during the Tender, up to and including the completion of the sale of the Subsidiary, request that a Bidder provide such further information, confirmations, or documentation as the Agency may require for the purpose of confirming any of the matters referred to in this section 6.

7. Background Checks

- 7.1 The Agency shall carry out the Background Checks in respect of a Provisional Winning Bidder.
- 7.2 Each Eligible Bidder, by submitting a Bid, acknowledges and confirms that should the Eligible Bidder receive notification from the Agency that the Eligible Bidder is entitled to be the Provisional Winning Bidder then:
- (a) the Eligible Bidder in question shall be required to supply to the Agency any and all information and documentation requested by the Agency to facilitate the carrying out of the Background Checks;
 - (b) the Agency may use UNMIK Pillar I (or any successor or alternative institution) or other third parties to carry out the Background Checks on the Agency's behalf and, accordingly, the Agency shall be entitled to furnish to UNMIK Pillar I (or any successor or alternative institution) or other third parties any and all information and documentation supplied to the Agency by a Provisional Winning Bidder for the purpose of the Background Checks;
 - (c) while the Agency will endeavour to do everything within the Agency's power to facilitate as speedy a completion of the Background Checks as possible, the completion of the Background Checks is outside of the Agency's control and accordingly the Agency is not responsible for any delay to the completion of the sale of the Subsidiary or any consequential loss occasioned by a Provisional Winning Bidder associated with the length of time it takes to complete the Background Checks.
- 7.3 In the event that the Background Checks provide the Agency with an adverse finding in respect of a Provisional Winning Bidder then the Agency shall:
- (a) not complete the sale of the Subsidiary with the Provisional Winning Bidder in question; and
 - (b) not be responsible or liable for any consequential loss or damage to the Provisional Winning Bidder in question; and
 - (c) return to the Provisional Winning Bidder in question the Initial Payment, the Second Highest Bidder Initial Payment or the Third Highest Bidder Initial Payment, as the case may be.

8. Bid Submission Fee and Bid Deposit

- 8.1 To offset administrative and communication costs associated with reviewing and processing Bids, each Eligible Bidder shall submit the Bid Submission Fee to the Agency with its First Bid. The Bid Submission Fee shall be paid by way of a bank transfer to a bank account designated for that purpose by the Agency.
- 8.2 To ensure the good faith of Eligible Bidder, each Eligible Bidder shall also submit the Bid Deposit to the Agency with its First Bid. The Bid Deposit shall be paid by way of a bank transfer to a bank account designated for that purpose by the Agency. The Agency shall credit the Bid Deposit of a Provisional Winning Bidder to the total of the Highest Bid Score Purchase Price and the Initial Charter Capital to be paid to the Agency to complete the purchase of the Subsidiary.
- 8.3 The Agency shall endeavour to return the Bid Deposits of all Eligible Bidders that are not declared a Qualifying Bidder, within 10 (ten) Business Days following the First Bid Submission Period. The Bid Deposits of Qualifying Bidders not being the Provisional Winning Bidder will be returned in accordance with section 8.4 of these Rules of Tender.
- 8.4 The Agency shall endeavour to return the Bid Deposits of all Qualifying Bidders that are not declared the Provisional Winning Bidder, within 10 (ten) Business Days following the Second Bid Submission Period.
- 8.5 Bid Deposits will not be returned by the Agency to any Bidder that has forfeited their Bid Deposit in a manner provided under these Rules of Tender.

9. Contents of the First Bid and First Bid Submission

- 9.1 All Bids must be submitted in one English language version. An Eligible Bidder, however, may, if it so chooses and at its own expense, submit a copy of its Bid in the Albanian language or the Serbian language provided that in so doing the required the English language version of the Bid is also submitted by such an Eligible Bidder. The English language version of a Bid shall control in case of a discrepancy between different language versions.
- 9.2 Only Eligible Bidders shall be entitled to submit a First Bid in accordance with this section 9.

9.3 Contents of the First Bid:

- (a) The following information and documentation must be placed in a sealed envelope with the words “**Supplemental Bid Information for Tender No. KTA**

020 Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C.” printed on the outside of the envelope:

- (i) an original of the Bid Submission Form completed and signed by or on behalf of the Eligible Bidder;
 - (ii) a copy of the Eligibility Registration Form;
 - (iii) an original of a letter duly signed by or on behalf of the Eligible Bidder stating that the Eligible Bidder agrees to be bound by the Commitments and agrees to enter into the Commitment Agreement, as specified in Annex C;
 - (iv) an original bank letter, substantially in the form of Annex E to these Rules of Tender, from a reputable bank (and not being a bank registered in a country which is on the ‘blacklist’ of the Financial Action Task Force (FATF)) confirming that the Bidder will have access to sufficient funds during the entire Tender period to pay (aa) its full Purchase Price, (bb) the Initial Charter Capital, and (cc) to fulfil the Investment Commitment and Employment Commitments set out in Annex C. **Such bank letter must not state the amount of the Bidder’s Purchase Price;**
 - (v) proof that the Bid Submission Fee has been transferred to an account designated for that purpose by the Agency; and
 - (vi) proof that the Bid Deposit has been transferred to an account designated for that purpose by the Agency.
- (b) The amount of (i) the Purchase Price, (ii) the Investment Commitment and (iii) the Employment Commitment must be placed in a second, separate sealed envelope with the words “**First Bid Offers**” printed on the outside of the envelope. The amounts of the Purchase Price, the Investment Commitment, and the Employment Commitment should be printed in numbers and in letters. **Annex B to these Rules of Tender provides a worksheet to calculate the total amount of money to be paid by an Eligible Bidder to the Agency if the Eligible Bidder’s Total Bid Score is deemed to be the Highest Bid Score and the Eligible Bidder is declared the Provisional Winning Bidder. Bidders must complete this worksheet and include the completed worksheet in the sealed envelope marked “First Bid Offers”.**
- (c) The sealed envelopes at section 9.3(a) and section 9.3(b) above must together be placed in a third sealed envelope with the words “**First Bid for Tender No. KTA 020 Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C.”**. There must be no other information provided on the outside of this third envelope and no information or marks which could identify the Eligible Bidder in question.

- (d) Upon the receipt of a First Bid by the Agency, the First Bid Number will be written on the third sealed envelope, referred to at section 9.3(c), and will also be recorded on the First Bid Receipt.

9.4 Submission of the First Bid:

- (a) All First Bids must be submitted to the Agency by Eligible Bidders, during the First Bid Submission Period, at either the Agency's Pristina office or at the Agency's Mitrovica office. The Agency shall not receive any First Bids that are presented other than during the First Bid Submission Period or that are delivered to any other location.
- (b) A First Bid Receipt will be issued to the person submitting a First Bid on behalf of an Eligible Bidder. The person submitting the First Bid shall not identify the Eligible Bidder on whose behalf they are submitting the First Bid. The determination of the panel of the Agency in respect of the time of submission of a First Bid shall be final and may not be appealed to a court or other organ.
- (c) All First Bids, submitted in accordance with section 9.4(a), shall be opened in public within three hours of the end of the First Bid Submission Period. Following the opening of all the First Bids each of the First Bids received will be checked by Agency staff to ensure that they are in accordance with section 9.3. Thereafter the Total Bid Scores for each of the First Bids received will be determined using the formulae set out in Annex C. The Total Bid Score for each First Bid shall be declared publicly. At that time the highest Purchase Price, the highest Investment Commitment, and the highest Employment Commitment, received during the First Bid Submission Period, shall also be identified and announced.
- (d) Pursuant to identifying the Total Bid Scores for each of the First Bids, the First Bid Number of the three highest Total Bid Scores will be declared publicly with the corresponding Eligible Bidder each to be a Qualifying Bidders. Only the Qualifying Bidders will be entitled to submit a Second Bid.
- (e) In the event that there are two or more Total Bid Scores of equal value that would rank as the third highest Total Bid Score, then both/all of the First Bid Numbers will be declared publicly with each of the corresponding Eligible Bidders to be a Qualifying Bidders.

10. Contents of the Second Bid and the Second Bid Submission

- 10.1 Only Qualifying Bidders shall be entitled to submit a Second Bid in accordance with this section 10.

- 10.2 In its Second Bid, a Qualifying Bidder shall be given the opportunity to increase the amounts set out in their First Bid in respect of (i) the Purchase Price, (ii) the Investment Commitment and (iii) the Employment Commitment, subject always to the terms of Annex C. Qualifying Bidders should note that it is not permitted to increase the Investment Commitment and/or the Employment Commitment above the highest Investment Commitment and highest Employment Commitment received during the first round of bidding.

10.3 Contents of the Second Bid:

- (a) The following information and documentation must be placed in a sealed envelope with the words **“Second Bid for Tender No. KTA 020 Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C.”** printed on the outside of the envelope:

- (i) a copy of the Eligibility Registration Form;
- (ii) the First Bid Number;

the amount of the Second Bid (aa) Purchase Price (bb) Investment Commitment and (cc) Employment Commitment. The amounts of the Purchase Price, the Investment Commitment, and the Employment Commitment should be printed in numbers and in letters. **Annex B to these Rules of Tender provides a worksheet to calculate the total amount of money to be paid by a Qualifying Bidder to the Agency if the Qualifying Bidder’s Total Bid Score is deemed to be the Highest Bid Score and the Qualifying Bidder is declared the Provisional Winning Bidder. Qualifying Bidders must complete this worksheet and include the completed worksheet in the sealed envelope marked “Second Bid for Tender No. KTA 020 Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C”**

- (iv) a Business Plan for monitoring by the Agency including information on a commitment as to how many employees will be employed at the beginning of each quarter. The Employment Commitment will commence at the beginning of the second quarter after the date of entry into force of the Sale Agreements and shall continue for the 2-year period commencing on such date of entry into force.
- (b) Upon the receipt of a Second Bid by the Agency, the Second Bid number will be written upon the sealed envelope marked **“Second Bid for Tender No. KTA 020 Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C .”**, referred to at section 10.3(a), and recorded on the Second Bid Receipt.

10.4 Second Bid Submission:

- (a) All Second Bids must be submitted to the Agency by Qualifying Bidders, during the Second Bid Submission Period, at either the Agency’s Pristina office or at the Agency’s Mitrovica office. The Agency shall not receive any Second Bids that

are presented other than during the Second Bid Submission Period or that are delivered to any other location.

- (b) A Second Bid Receipt will be issued to the person submitting the Second Bid on behalf of a Qualifying Bidder. The person submitting the Second Bid shall not identify the Qualifying Bidder on whose behalf they are submitting the Second Bid. The determination of the panel of the Agency in respect of the time of submission of a Second Bid shall be final and may not be appealed to a court or other organ.
- (c) In the event that a Qualifying Bidder does not submit a Second Bid, during the Second Bid Submission Period, then such a Qualifying Bidder's First Bid shall automatically be considered to be that Qualifying Bidder's Second Bid and such a Qualifying Bidder's Total Bid Score shall be calculated accordingly. In addition that Qualifying Bidder shall be obligated to honour its First Bid.
- (d) None of the amounts set out by a Qualifying Bidder in its Second Bid, in respect of the Purchase Price, the Investment Commitment or the Employment Commitment, may be lower than in its First Bid.

11. Ranking of Second Bids and Provisional Winning Bidder Selection

- 11.1 All Second Bids, submitted in accordance with section 10.4(a), shall be opened in public within three hours of the end of the Second Bid Submission Period. Following the opening of all the Second Bids each of the Second Bids received will be checked by Agency staff to ensure that they are in accordance with section 10.3. Thereafter the Total Bid Scores for each of the Second Bids received will be determined using the formulae set out in Annex C. The Total Bid Score for each Second Bid and the Highest Bid Purchase Price shall be declared publicly. At that time the highest Investment Commitment and the highest Employment Commitment shall also be identified and announced.
- 11.2 Subject to any other requirements set out in these Rules of Tender, the sale of the Subsidiary will be progressed with the Highest Bidder on the following terms:
 - (a) within 3 Business Days of the Second Bid Submission Period the Agency shall notify the Highest Bidder that it is the Provisional Winning Bidder;
 - (b) within 20 Business Days of notification by the Agency to the Highest Bidder that it is the Provisional Winning Bidder, the Highest Bidder shall pay the Initial Payment into the Designated Account;
 - (c) if, for whatever reason, the Highest Bidder does not pay the Initial Payment into the Designated Account, within 20 Business Days of notification by the Agency

to the Highest Bidder that it is the Provisional Winning Bidder, then the Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit;

- (d) the Agency shall arrange to carry out the Background Checks in respect of the Highest Bidder and the Agency shall notify the Highest Bidder of the findings of the Background Checks;
- (e) In the event that the Background Checks provide the Agency with an adverse finding in respect of the Highest Bidder, then the Agency shall notify the Highest Bidder and act in accordance with section 7.3 and the Agency shall proceed to contact the Second Highest Bidder in accordance with section 11.3.
- (f) In the event of there being no adverse finding from the Background Checks in respect of the Highest Bidder, then the Agency shall notify the Highest Bidder and the Highest Bidder shall pay the 75% (seventy five percent) balance of the Highest Bid Score Purchase Price into the Designated Account within 10 (ten) Business Days of the Agency notifying the Highest Bidder of the results of the Background Checks;
- (g) if, for whatever reason, the Highest Bidder does not pay the 75% (seventy five percent) balance of the Highest Bid Score Purchase Price into the Designated Account within 10 (ten) Business Days of the Agency notifying the Highest Bidder of the results of the Background Checks, then the Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit.

11.3 In the event that the sale of the Subsidiary is not to be completed with the Highest Winning Bidder, then the Agency will contact the Second Highest Bidder, in writing, to enquire if the Second Highest Bidder wishes to complete the purchase of the Subsidiary at the Second Highest Bidder Purchase Terms. The Second Highest Bidder shall notify the Agency, in writing, within 3 Business Days of the Agency communicating its enquiry to Second Highest Bidder, whether the Second Highest Bidder wishes to complete the purchase of the Subsidiary at the Second Highest Bidder Purchase Terms. If the Agency receives no such notification, in writing, from the Second Highest Bidder then the Agency shall be entitled to treat the failure of the Second Highest Bidder to reply as a rejection of the Agency's invitation to complete the purchase of the Subsidiary at the Second Highest Bidder Purchase Terms. Where the Second Highest Bidder does not wish to complete the purchase of the Subsidiary at the Second Highest Bidder Purchase Terms the Agency shall proceed to contact the Third Highest Bidder in accordance with section 11.5.

11.4 Subject to section 11.3 and any other requirements set out in these Rules of Tender, the sale of the Subsidiary will be progressed with the Second Highest Bidder on the following terms:

- (a) within 1 Business Day of the Agency receiving notification, in writing, from the Second Highest Bidder that the Second Highest Bidder wishes to complete the purchase of the Subsidiary at the Second Highest Bidder Purchase Terms, the Agency shall notify the Second Highest Bidder that it is the Provisional Winning Bidder;
- (b) in the event that the Bid Deposit had already been repaid to the Second Highest Bidder, in accordance with section 8.5, then, within 2 Business Days of notification by the Agency to the Second Highest Bidder that it is the Provisional Winning Bidder, the Second Highest Bidder shall transfer the Bid Deposit to a bank account designated for that purpose by the Agency;
- (c) within 10 Business Days of notification by the Agency to the Second Highest Bidder that it is the Provisional Winning Bidder, the Second Highest Bidder shall pay the Second Highest Bidder Initial Payment into the Designated Account;
- (d) if, for whatever reason, the Second Highest Bidder does not pay the Second Highest Bidder Initial Payment into the Designated Account, within 10 Business Days of notification by the Agency to the Second Highest Bidder that it is the Provisional Winning Bidder, then the Second Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit;
- (e) the Agency shall arrange to carry out the Background Checks in respect of the Second Highest Bidder and the Agency shall notify the Second Highest Bidder of the findings of the Background Checks;
- (f) In the event that the Background Checks provide the Agency with an adverse finding in respect of the Second Highest Bidder, then the Agency shall notify the Second Highest Bidder and act in accordance with section 7.3 and the Agency shall proceed to contact the Third Highest Bidder in accordance with section 11.5.
- (g) In the event of there being no adverse finding from the Background Checks in respect of the Second Highest Bidder, then the Agency shall notify the Second Highest Bidder and the Second Highest Bidder shall pay the 75% (seventy five percent) balance of the Highest Bid Purchase Price into the Designated Account within 10 (ten) Business Days of the Agency notifying the Second Highest Bidder of the results of the Background Checks;
- (h) if, for whatever reason, the Second Highest Bidder does not pay the 75% (seventy five percent) balance of the Highest Bid Purchase Price into the Designated Account within 10 (ten) Business Days of the Agency notifying the Second Highest Bidder of the results of the Background Checks, then the Second Highest Bidder shall forfeit its right to complete the purchase of the Subsidiary and its Bid Deposit.

- 11.5 In the event that the sale of the Subsidiary is not to be completed with the Highest Bidder or the Second Highest Winning Bidder, then the Agency will contact the Third Highest Bidder, in writing, to enquire if the Third Highest Bidder wishes to complete the purchase of the Subsidiary at the Third Highest Bidder Purchase Terms. The Third Highest Bidder shall notify the Agency, in writing, within 3 Business Days of the Agency communicating its enquiry to Third Highest Bidder, whether the Third Highest Bidder wishes to complete the purchase of the Subsidiary at the Third Highest Bidder Purchase Terms. If the Agency receives no such notification, in writing, from the Third Highest Bidder then the Agency shall be entitled to treat the failure of the Third Highest Bidder to reply as a rejection of the Agency's invitation to complete the purchase of the Subsidiary at the Third Highest Bidder Purchase Terms. Where the Third Highest Bidder does not wish to complete the purchase of the Subsidiary at the Third Highest Bidder Purchase Terms then section 11.7 shall apply.
- 11.6 Subject to section 11.5 and any other requirements set out in these Rules of Tender, the sale of the Subsidiary will be progressed with the Third Highest Bidder in a manner similar to that set out in section 11.4. In such cases the terms Second Highest Bidder, Second Highest Bidder Purchase Terms and Second Highest Bidder Initial Payment will be replaced in section 11.4 by the terms Third Highest Bidder, Third Highest Bidder Purchase Terms and Third Highest Bidder Initial Payment respectively.
- 11.7 Without limiting the generality of section 15.1 and without prejudice to any of other causes of postponement or cancellation of the Tender set out in these Rules of Tender, in the event that a sale of the Subsidiary to the Highest Bidder, the Second Highest Bidder or the Third Highest Bidder is not achievable, in accordance with the requirements of this section 11, then the Agency shall be entitled to postpone or cancel the Tender as it sees fit.
- 11.8 Notwithstanding anything in sections 11.2 and 11.4 respectively, no Provisional Winning Bidder shall forfeit their Bid Deposit for failing to progress the purchase of the Subsidiary or for failing to make the payments required under sections 11.2 or 11.4 respectively within the time limits set down in those sections, if the Provisional Winning Bidder can provide objective independent evidence, to the satisfaction of the Agency, that such failures are as a result of intimidation, duress or threats.
- 11.9 In the event that two or more Second Bids are submitted by Qualifying Bidders, contain identical Total Bid Scores then the ranking of the Second Bids will be determined as follows:
- (a) if one of the Second Bids has participation by an employee or employees of the SOE, then such Second Bid shall have priority; or
 - (b) if none of the Second Bids or more than one of the identical Bids has participation by an employee or employees of the SOE, then priority shall be given to the earliest submitted Second Bid among the Second Bids; and

the Agency's determination(s) as to whether a Second Bid has participation by an employee or employees of the SOE and/or the timing of the receipt of a Second Bid shall be final and may not be appealed to a court or other organ.

- 11.10 The funds used by a Provisional Winning Bidder to pay the Highest Bid Score Purchase Price shall not be paid in cash and shall not come from any FATF blacklisted jurisdiction.

12. Modification, Withdrawal Late Submission of Bids

Bidders may not modify any aspect of a Bid (except with the Agency's written permission) or withdraw a Bid after a Bid has been submitted to the Agency. No Bids will be accepted after the end of either the First Bid Submission Period or the Second Bid Submission Period, whichever is relevant.

13. Negotiation of the Sale Agreements

- 13.1 The Agency and the Provisional Winning Bidder shall each use all reasonable endeavours to execute the Sale Agreements, within 60 Business Days from the date of notification by the Agency to the Provisional Winning Bidder that it is the Provisional Winning Bidder.
- 13.2 The Agency may in its sole discretion, on notice to the Provisional Winning Bidder, extend the period of time referred to in section 13.1, if the Agency believes that additional time is reasonably necessary for the purposes of negotiating the terms of the Sale Agreements or as a result of some other circumstances resulting in delay, such as (but not limited to) the Background Checks.
- 13.3 The Provisional Winning Bidder shall use its best efforts to conclude the Sale Agreements and any related documents with the Agency.
- 13.4 Negotiations between the Agency and the Provisional Winning Bidder pertaining to the Sale Agreements shall be kept to a minimum and the Provisional Winning Bidder may not require the alteration of the Highest Bid Score or the Highest Bid Purchase Price, the Tendered Items nor require the material alteration of any representations and warranties or any other material terms of the Sale Agreements or related documents.
- 13.5 If the negotiations between the Agency and the Provisional Winning Bidder, pertaining to the Sale Agreements, are (in the reasonable opinion of the Agency) unsuccessful within the period of time referred to in section 13.1 (or any extension of that time period) then the Agency shall be:
- (a) entitled to determine that it is not possible to complete the sale of the Subsidiary to the Provisional Winning Bidder in question on terms agreeable between that Provisional Winning Bidder and the Agency; and

- (b) the Agency will notify the Provisional Winning Bidder that the negotiation process has been terminated and that and all sums paid by the Provisional Winning Bidder, exclusive of the Bid Submission Fee, will be returned to the Provisional Winning Bidder **provided** that in the event that the Agency determines that the Provisional Winning Bidder has not used its best efforts to conclude the Sale Agreements and any related documents, in accordance with section 13.3, then the Provisional Winning Bidders shall forfeit the Bid Deposit; and
- (c) the Agency may, at its sole discretion, contact the next Qualifying Bidder entitled to be notified that it is the Provisional Winning Bidder, in writing, to enquire if that Qualifying Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Score. In such circumstances the relevant provisions of section 11 will determine the manner of progressing the sale of the Subsidiary.

14. Execution of the Sale Agreements

- 14.1 The Sale Agreements and any related documentation shall be signed by an authorised representative of the Agency and an authorised representative of the Provisional Winning Bidder respectively. The Agency may require the authorised representative of the Provisional Winning Bidder to provide the Agency with evidence of the authority of the authorised representative of the Provisional Winning Bidder to sign the Sale Agreements and related documentation on behalf of the Provisional Winning Bidder.
- 14.2 For the avoidance of doubt, the Share Sale Agreement and any related documents shall not be signed between the Agency (on behalf of the SOE) and the Provisional Winning Bidder until the total amount of the Highest Bid Purchase Price plus the Initial Charter Capital has been paid to the Agency, to the satisfaction of the Agency.

15. Postponement or Cancellation of Tenders

- 15.1 The Board may postpone or cancel the Tender at any time and for any reason in its sole discretion.
- 15.2 Without limiting the generality of section 15.1 and without prejudice to any of other causes of postponement or cancellation of the Tender set out in these Rules of Tender, the Board may take a decision to direct the Agency to postpone or cancel the Tender, in the following circumstances:
 - (a) in the event that no Bids are received that satisfy the criteria and conditions set out in these Rules of Tender;
 - (b) if fewer than three Potential Bidders are registered as Eligible Bidders pursuant to section 6 of these Rules of Tender;

- (c) if fewer than three Bids are submitted by Eligible Bidders during the First Bid Submission Period;
- (d) if, in the Board's judgment, the Highest Bid Score or the Highest Bid Purchase Price bear no rational relation to the perceived value of the Tendered Items and the Subsidiary. In such a case, the Board has the additional discretion to postpone the determination of the Provisional Winning Bidder until a later date;
- (e) if the Agency receives indications of or suspects any collusion amongst Bidders, the use of coercion or threats by a Bidder or Bidders to dissuade the participation in any aspect of the Tender by other Bidders or to affect the contents of another Bidder's Bid, or any illegal or improper activity performed in connection with the Tender by any person.

15.3 Where the Tender is cancelled, for whatever reason:

- (a) the Agency shall notify all Eligible Bidders or Qualifying Bidders (as the case may be), in writing, of the cancellation;
- (b) the Agency shall not be held responsible for any costs or liabilities incurred by any Bidder or third parties;
- (c) all Bid Deposits received and any other funds received by the Agency (except for the Bid Submission Fees) shall be returned by the Agency within 15 Business Days of the date of cancellation.

16. Agency's Reservation of Rights

16.1 *Amendments to Time Limits*

The Agency may at the Agency's absolute and sole discretion extend or amend any time limit referred to in these Rules of Tender, where the Agency believes that additional time is reasonably necessary for the purposes of successfully completing the sale of the Subsidiary or as a result of some other circumstances resulting in delay.

16.2 *Amendments to Tender Requirements*

The Agency reserves the right to amend, modify, or terminate any of the procedures set out in these Rules of Tender at any time during the Tender, without prior notice and at no cost or liability to the Agency. Amendments to these Rules of Tender shall be issued in writing by the Agency and shall be made public and a copy of the amended Rules of Tender shall be sent to each Eligible Bidder.

16.3 *Rejection of Winning Bidder*

The Agency may reject a Provisional Winning Bidder's Bid if the Agency becomes aware that information contained in the Provisional Winning Bidder's application for registration as an Eligible Bidder or any of the information in Provisional Winning Bidder's Bid is false. In such a case the Agency will not be required to progress the sale of the Subsidiary with the Provisional Winning Bidder and the Agency will cease the negotiation of the Sale Agreements with the Provisional Winning Bidder. Additionally, the Provisional Winning Bidder will forfeit its Bid Deposit and the Agency shall then be entitled to contact the next Qualifying Bidder entitled to be notified that it is the Provisional Winning Bidder, in writing, to enquire if that Qualifying Bidder wishes to complete the purchase of the Subsidiary at the Highest Bid Score. In such circumstances the relevant provisions of section 11 will determine the manner of progressing the sale of the Subsidiary.

16.4 *Contractual Relationship*

- (a) The Rules of Tender are not intended to constitute a memorandum of agreement between the Agency and Bidders. Accordingly, no contract shall be deemed to exist between the Agency and a Bidder due only to the participation of such a Bidder in any aspect of the Tender.
- (b) Until the entry into force of an executed Share Sale Agreement, there shall be no contract in effect between the Agency and the Provisional Winning Bidder and neither the Agency nor the SOE shall be bound in any way to the Provisional Winning Bidder. Further, the terms of the Information Memorandum or other Tender Documents shall not be construed as an offer.

16.5 *Disclaimer*

To the extent permitted by Applicable Law, the Agency and its representatives expressly disclaim:

- (a) any and all liability for representations, warranties or statements contained in any written material (including without limitation the Information Memorandum and the contents of any data room) furnished or in any information orally transmitted to a Bidder; and
- (b) any representations or warranties implied by any law.

16.6 *Language*

These Rules of Tender have been prepared in the English, Albanian and Serbian languages. The versions in Albanian and Serbian shall be for the convenience of parties only and in the event of any discrepancy between the language versions, the English language version shall prevail.

16.7 *Voidability of Sale Agreement*

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 a Provisional Winning Bidder to acquire the Subsidiary derived directly or indirectly from illegal activity; or (b) the Provisional Winning Bidder was involved in collusion or used threat and intimidation during the Tender or any other violation of the Rules of Tender, then the Share Sale Agreement shall be voidable by the Agency.

17. Dispute Resolution

- 17.1 Subject to section 17.2 below, the decisions of the Agency arising under these Rules of Tender or the Tender generally shall be final and shall not be appealed to any court or other organ. Bidders shall not be entitled to file a claim in any court within or outside Kosovo, either to reverse a decision of the Agency or for compensation for costs or liabilities arising as a result of a decision of the Agency, so far as allowed by Applicable Law.
- 17.2 Notwithstanding the preceding clause, the parties acknowledge and agree that the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters shall have exclusive and final jurisdiction over the Agency.

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ANNEX A

“TENDER SCHEDULE”

Summary Tender Timetable

<i>Date</i>	<i>From</i>	<i>To</i>
Publication of Tender Notice	3 ^{1st} October 2006	
	31 st October 2006	24 th January 2007
Pre qualification Deadline	17th January 2007	
Due Diligence Visits		
First Bid Submission Date	24th January 2007	
Informing Eligible Bidders on results of the Total Bid Scores from the First Bids	24th January 2007	
Second Bid Submission Date	31 st January 2007	
Informing Qualifying Bidders on results of the Total Bid Scores from the Second Bids	31 st January 2007	
Final negotiations with Provisional Winning Bidder		
Transfer of the Tendered Items to Subsidiary/Signing of Sale Agreements		

The Agency reserves the right to alter this schedule.

ANNEX B

**“Worksheet for calculating the total amount of money
that a Provisional Winning Bidder will need to pay to the Agency”**

Full name of the Eligible / Qualifying Bidder:

Bidder Eligibility Registration Number:

Name of the Subsidiary:

Tender no:

STEP 1: Purchase Price. Enter the Purchase Price you intend to pay for the Subsidiary in figures on line 1. and in words () 1. _____

STEP 2: Initial Charter Capital. This amount on line 2 is the amount of initial charter capital of the Subsidiary for which the Agency must be reimbursed and in words () 2. €1,250.00

STEP 3: Add the amounts on Lines 1 and 2 and enter the result on line 3 and in words () 3. _____

THE AMOUNT ON LINE 3 IS THE TOTAL AMOUNT OF MONEY THAT YOU WILL NEED TO PAY TO THE AGENCY SHOULD YOU BE CHOSEN AS THE PROVISIONAL WINNING BIDDER.

STEP 4: Investment Commitment. The amount that the Eligible/Qualifying Bidder is committing to investing in Capital Investments over the first two years from completion of the Sale Agreements as per Annex C 4. _____

STEP 5: Employment Commitment. The number of Employees that will be guaranteed for 2 years from entry into force of the Sale Agreements as per Annex C. 6. _____

.....

Signature

For and on behalf of the Eligible/Qualifying Bidder

Name:

Date:

ANNEX C

“SPECIAL SPIN-OFF BID CONDITIONS”

A. Requirements:

The following obligations and enforcement mechanisms shall be incorporated into the executed Commitment Agreement:

- Each Eligible Bidder/Qualifying Bidder must submit a Bid, which includes (i) a Purchase Price, (ii) an Employment Commitment, and (iii) an Investment Commitment.
- The Employment Commitment must be presented as the total number of employees that the Eligible Bidder/Qualifying Bidder is prepared to employ in the business of the Subsidiary.

Eligible Bidder/Qualifying Bidder should note, when making a Bid, that 50% of the Employment Commitment must be reached with 6 months of the date of the Sale Agreement and the Commitment Agreement and that 100% of the Employment Commitment must be reached within 12 months of the date of the Sale Agreements. After 100% of the Employment Commitment has been reached it must be maintained for at least 1-year thereafter. For the purposes of these Rules of Tender “**Employee**” means a worker employed by the Subsidiary for the full normal weekly working hours excepting days taken for holidays or illness. Employees that normally work for fewer hours than for full normal weekly working hours, count as half an Employee.

- The Investment Commitment must be stated in euro (€) and will refer to Capital Investment in the Subsidiary in Kosovo. The Investment Commitment is a commitment to ensure that the Investment Commitment, by or on behalf of the Subsidiary, shall occur within 2 years of the entry into force of the Sale Agreements, as per the Capital Investment Plan & Employment schedule template below and Annex F of these Rules of Tender (“**Annex F**”).

For the purpose of these Rules of Tender and the Commitment Agreement “**Capital Investments**” means is as defined in these Rules of Tender in section 1.1.

- A call option for the entire issued share capital of the Subsidiary shall be incorporated into the Commitment Agreement. The call option shall be exercisable by or at the direction of the SRSB (or in the event that the office of the SRSB ceases to be or is replaced, then by an arbitral tribunal appointed in accordance with the relevant terms of the Commitment Agreement), in the event that the purchaser of the Subsidiary fails to fulfill its obligations under the Commitment Agreement.

- Details pertaining to these obligations and enforcement mechanisms shall be set out in the Commitment Agreement. A description of the type of Contract Control and Monitoring mechanism is appended in Annex F.

Calculating Total Bid Scores for the First Bids

Weightings will be applied to the First Bid offerings as follows:

50% Purchase Price

25% Employment Commitment

25% Investment Commitment

Calculating the Purchase Price score:

Each Eligible Bidder's offered Purchase Price shall be divided by the highest Purchase Price offered during the first round of bidding. This quotient shall then be multiplied by 50% (fifty per cent.) to determine the Purchase Price score for each Eligible Bidder.

Calculating the Employment Commitment score:

Each Eligible Bidder's offered Employment Commitment shall be divided by the highest Employment Commitment offered during the first round of bidding. This quotient shall then be multiplied by 25% (twenty-five per cent) to determine the Employment Commitment score for each Eligible Bidder.

Calculating the Investment Commitment score:

Each Bidder's offered Investment Commitment shall be divided by the highest Investment Commitment offered during the first round of bidding. This quotient shall then be multiplied by 25% (twenty-five per cent) to determine the Investment Commitment score for each Eligible Bidder.

Calculating Total Bid Scores:

The three scores (Purchase Price score, Employment Commitment score and Investment Commitment score) for each Eligible Bidder shall be added together to create a final score for each Eligible Bidder.

Example First Round Bidding with 2 bidders:

Highest bid components in First Round:

Employment Commitment	120
Investment Commitment	€2,000,000
Purchase Price	€1,000,000

Bidder 1 assessment

	Weighting %	What Bidder 1 Actually Bid	divide by Highest bid component	Score
Employment Commitment	25%	60	120	12.50
Investment Commitment	25%	€1,000,000	2,000,000	12.50
Purchase Price	50%	€1,000,000	1,000,000	50.00
Total				75

Bidder 2 assessment

	Weighting %	What Bidder 2 Actually Bid	divide by Highest bid component	Score
Employment Commitment	25%	120	120	25.00
Investment Commitment	25%	€2,000,000	2,000,000	25.00
Purchase Price	50%	€600,000	1,000,000	30.00
Total				80

Calculating Total Bid Scores for the Second Bids

In its Second Bid, a Qualifying Bidder shall be given the opportunity to increase the amounts set out in their First Bid in respect of (i) the Purchase Price, (ii) the Investment Commitment and (iii) the Employment Commitment.

Increase of the Purchase Price:

Purchase Prices may be increased in the Second Bids, from the amount set out in the First Bids, without limit. Each Qualifying Bidder's Purchase Price offered in the second round of bidding shall be divided by the highest Purchase Price offered in the first round of bidding and Purchase Price scores for each Qualifying Bidder shall subsequently be calculated in the same manner as during the first round of bidding.

Increase of the Employment Commitment and the Investment Commitment:

Qualifying Bidders may not increase their Employment Commitments and Investment Commitments above the highest Employment Commitment and Investment Commitment offered during the first round of bidding.

During the second round of bidding, each Qualifying Bidder's offered Employment Commitment and Investment Commitment shall be divided by the highest Employment Commitment and Investment Commitment from the first round, respectively, and scores for each portion of each Qualifying Bidder's second round bids will subsequently be calculated in the same manner as during the first round of bidding.

Example Second Round bid scoring:

Second Round Bidder:

	Weighting %	What Bidder Actually Bid in Second Round	divide by Highest bid component	Score
Employment Commitment	25%	120	120	25.00
Investment Commitment	25%	€2,000,000	2,000,000	25.00
Purchase Price	50%	€1,200,000	1,000,000	60.00
Total				110

CAPITAL INVESTMENT MONITORING TABLE

A	B	C	D	E	F	G	H	I	J
Nr.	Date of Invoice	Invoice Number	Supplier	Description of Items	Source Price Invoice (€)	Customs Duties (Euro)	Transport (€)	Other Variable Costs (€)	Total Price (Euro)

Instructions how to fill table:

- Numbering starting from 1 to N, where N is last invoice of investment on the contractual investment commitment during that contractual year. For each investment position according to investment commitment has to be separate list.
- Date of the invoice.
- Invoice number.
- Who is the supplier of the goods / services.
- Description of each item written on the invoice.
- Price of items written on respective invoice (€);
- Custom duties for respective item (€), if applicable.
- Transport if applicable (€).
- Other Costs if applicable (€), for example: installing of equipment, loading, downloading, assembling the equipment, etc.
- Total sum. $J = F + G + H + I$

Schedule 5	Investment plan and Employment Schedule								
	<u>3rd</u> <u>Month</u>	<u>6th</u> <u>Month</u>	<u>9th</u> <u>Month</u>	<u>12th</u> <u>Month</u>	<u>15th</u> <u>Month</u>	<u>18th</u> <u>Month</u>	<u>21st</u> <u>Month</u>	<u>24th</u> <u>Month</u>	<u>Total</u>
Number of Employees									
Capital Investment	<u>3rd</u> <u>Month</u>	<u>6th</u> <u>Month</u>	<u>9th</u> <u>Month</u>	<u>12th</u> <u>Month</u>	<u>15th</u> <u>Month</u>	<u>18th</u> <u>Month</u>	<u>21st</u> <u>Month</u>	<u>24th</u> <u>Month</u>	<u>Total</u>
a) Description of Investment Position									
1. _____									
2. _____									
b) Description of Investment Position									
1. _____									
2. _____									
c) Description of Investment Position									
1. _____									
2. _____									
TOTAL									

Note: Description of Investments positions might change if necessary during Investment Period, however the lump sum in each of above periods is to be fulfilled as per Commitment Agreement.

ANNEX D

“BID SUBMISSION FORM”

THIS LETTER MUST BE INCLUDED IN A SEPARATE ENVELOPE FROM THE PURCHASE PRICE

To: Kosovo Trust Agency
Ilir Konushevcu No. 8
Pristina
Kosovo

Dear Sirs,

Full name of the Eligible Bidder:

Eligibility Registration Number:

Name of the Subsidiary:

Tender no:

The Eligible Bidder confirms that it is bidding for the Subsidiary. All capitalised terms used in this letter shall have the same defined meaning as in the Rules of Tender, unless otherwise defined.

Enclosed:

DOCUMENT	ENCLOSED – YES OR NO?
Copy of the Eligibility Registration Form	
Original bank letter from a reputable bank (and not being a bank registered in a country which is on the ‘blacklist’ of the Financial Action Task Force (FATF)) confirming that the Eligible Bidder will have access to sufficient funds during the entire Tender period to pay the total of its Purchase Price and the Initial Charter Capital. Such bank letter does not state the amount of the Eligible Bidder’s Purchase Price	
Proof that the Bid Submission Fee has been transferred to the Agency designated account	
Proof that the Bid Deposit has been transferred to the account designated by the Agency	
An original of a letter duly signed by or on behalf of the Eligible Bidder stating that the	

Eligible Bidder agrees to be bound by the Commitments and agrees to enter into the Commitment Agreement, as specified in Annex C	
--	--

English Version

The Eligible Bidder (named above), by submitting this Bid, acknowledges and confirms that:

- it is bound by the terms and conditions set out in the Rules of Tender
- it is not a Prohibited Bidder for the purposes of the Rules of Tender
- it has received and read the Information Memorandum and draft copies of the Sale Agreements
- it was informed about the Data Room containing important information and documentation, including a document called “Certain Legal and Other Risks”, in respect of the SOE, the Tendered Items, and the Subsidiary, which information might affect the Eligible Bidder’s decision to submit a Bid and/or its Purchase Price
- it was given the opportunity to visit the Data Room and either did visit the Data Room or knowingly took the risk not to visit the Data Room
- if it is notified by the Agency that it is the Provisional Winning Bidder the Sale Agreements used to complete the sale of the Subsidiary shall be substantially in the form and content of the draft Sale Agreements provided with the Tender Documents
- it will be bound by and ensure the implementation of the Commitments and it will sign the Commitment Agreement
- the Agency shall only complete the sale of the Subsidiary (i) at the Highest Bid Score with the Highest Bidder or (ii) on the Second Highest Bidder Purchase Terms with the Second Highest Bidder or (iii) on the Third Highest Bidder Purchase Terms with the Third Highest Bidder

Albanian Version

Ofertuesi (i emëruar më lartë) duke paraqitur këtë ofertë:

- Konfirmon se sipas Nenit 1.1 të Rregullave të Tenderit mbetet i kualifikueshëm për të ofertuar
- Pranon dhe pajtohet që të kufizohet me Rregullat e Tenderit
- Konfirmon se ka pranuar dhe lexuar Memorandumin Informues për Ndër.e re(-ja) dhe kontratën për shitje
- Pajtohet se ka qenë i informuar se ekziston një dhomë me të dhëna që përmban informata të rëndësishme të cilat mund të ndikojnë në vendimin e tij për të paraqitur ofertë /për ta paraqitur çmimin e ofertës, duke përfshirë edhe dokumentin e quajtur “ rreziqet e caktuara ligjore dhe rreziqet e tjera”
- Pajtohet se i është dhënë mundësia që ta vizitoj këtë dhomë me të dhëna dhe se ka vizituar dhomën me të dhëna apo me qëllim ka marrë rrezikun që mos ta vizitoj dhomën e të dhënave
- Pajtohet se nëse është ofertues fitues për ta lidhur kontratën për shitje kjo kryesisht do të ketë formën dhe përmbajtjen e modelit të Kontratës për Shitje që ofrohet me Dokumentet për Ofertim.

Serbian Version

Понуђивач (назначен горе) предајући понуду:

- потврђује да је и даље квалификован да преда понуду и учествује у тендеру сагласно члану 1.1 Правила тендера
- прихвата и сагласан је да ће бити обавезан Правилима тендера
- потврђује да је примио и прочитао Информативни меморандум за ново предузеће (нова предузећа) и уговор о продаји
- слаже се да је био обавештен да постоји Канцеларија са подацима у којој се налазе важне информације, а које би могле да утичу на његову одлуку да преда понуду / његову цену понуде, укључујући и документ са насловом "Одређени правни и други ризици"
- сагласан је да му је пружена могућност да посети ову Канцеларију са подацима и да је он или посетио ту канцеларију или је свесно преузео ризик да не посети Канцеларију са подацима
- слаже се да ће, уколико буде победник тендера, склопити уговор о продаји који ће бити углавном истог облика и садржаја као и модел уговора о продаји који му је дат са тендерском документацијом.

.....
Signature

For and on behalf of the Eligible Bidder

Name:

Date:

ANNEX E

“FORM OF BANK LETTER”

- THIS LETTER MUST BE INCLUDED IN A SEPARATE ENVELOPE FROM THE PURCHASE PRICE
- THIS LETTER MUST NOT STATE THE AMOUNT OF THE BIDDER'S PURCHASE PRICE

[TO BE TYPED ON BANK LETTERHEAD]

To: Kosovo Trust Agency
Ilir Konushevci No. 8
Pristina
Kosovo

From: [insert name of Bank]

Re: Bid by [insert name of the Eligible Bidder] for [Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C KTA 020]

I

We note that [insert name of Eligible Bidder] is a client of our bank. We have discussed [insert name of Eligible Bidder]'s intention to submit a bid to purchase the [insert name of the Subsidiary], pursuant to the Kosovo Trust Agency's bid tender number [insert Kosovo Trust Agency bid tender number].

After reviewing [insert name of Eligible Bidder]'s funds deposited in its bank accounts at our bank and his other sources of funds, we believe that he will have access to sufficient funds to pay (1) the Purchase Price and related costs (including, but not limited to €1,250, in respect of Initial Charter Capital) during the term of the tender, in accordance with the requirements and deadlines set out in the applicable Rules of Tender and (2) to satisfy the Investment Commitment and Employment Commitment, set out in Annex C of the Rules of Tender for the **Newco Mulliri Fushe Kosove-Podujeve-Lipjan L.L.C./KTA 020**

We confirm that we are a bank registered in [insert country] and which is not on the 'blacklist' of the Financial Action Task Force (FATF)).

Yours sincerely,

.....

Name of signatory:.....

Title of Signatory:

Name of bank:

Date:

ANNEX F

“COMMITMENT AGREEMENT MONITORING”

The Employment Commitment and the Investment Commitment made by the Provisional Winning Bidder will be monitored and enforced as follows:

Post-privatisation review meetings

Post-privatisation review meetings will be held 3, 6, 9, 12, 15, 18, 21 and 24 months after closure of the sale. In special circumstances, extraordinary site visits may be scheduled with 24 hour prior notice.

The object of the meetings is to verify compliance with the terms and conditions of the Commitment Agreement. In addition to a general review of the overall situation, the following items should be scrutinized more thoroughly:

- Employment levels – are they in line with the Employment Commitment?
- Actual amount of investments made to date – i.e. a) does the current level of Capital Investment follows the trend included in the Annex C, b) any deviation that needs Agency approval, and c) is the Investment Commitment, set out in the Commitment Agreement, attainable in the remainder of the time left to run?

Fines and Penalties

The following fines and/or penalties will be imposed on privatised enterprises for non-compliance with contractual terms and conditions:

- **Employment Commitment** - a fine in the amount of €3,000 per annum for each unfilled position during the contractual compliance period, and on a pro-rata basis for periods of less than one year. This fine will be applicable after one year of the sale closure;
- **Investment Commitment** – a fine of 20% of the amount of deficiency from the contractual amount of the investment plus interest calculated on the amount of the deficiency at a rate of 12% per annum until the deficiency continues to exist. This fine will be applicable after six months and will be reviewed every six months of the sale closure.

Enforcement of penalties

Should it come to light after privatisation that the Provisional Winning Bidder was not eligible to bid, or has not complied, after two warnings, with correcting deficiencies which have been uncovered and notified to them in writing on registered mail, the Agency will demand through the SRSG (or in the event that the office of the SRSG ceases to be or is replaced, then by an arbitral tribunal appointed in accordance with the relevant terms of the Commitment Agreement) the return of the shares bought by the investor using the call option referred to in Annex C, which will be included in the Commitment Agreement. **This would mean the total loss of the Purchase Price and the Capital Investment paid by the Provisional Winning Bidder.**