



## SAMPLE – CONTRACT FOR THE SALE AND TRANSFER OF PROPERTY

### CONTRACT FOR THE SALE AND TRANSFER OF PROPERTY

#### The Parties to this Contract are:

- I. The PRIVATISATION AGENCY OF KOSOVO (hereinafter referred to as “PAK”), an independent body established pursuant to Law No 03/L-067, **repealed** by Law no.04/L-034 (“Law on PAK”), amended and supplemented by Law no. 06/L-023 and Law 04/L-115, acting as trustee administrator on behalf of Socially-Owned Enterprises identified in Annex 1 hereto which is in liquidation **[insert the name of SOE]**; and
- II. The person or entity identified in Annex 1 hereto as the Buyer (the “Buyer”)

#### Background and Purpose

- A The PAK, pursuant to Articles 6, 8 & 9 of the Law on PAK has the authority to sell the Property of the SOE.
- B Through an open and public sealed bid tendering process, the Buyer was selected by the PAK as the winning bidder to purchase the property of the SOE.
- C The Buyer has agreed to purchase the property of the SOE in compliance with the terms and conditions of this Contract.

#### THE FOLLOWING CONTRACT IS EXECUTED:

##### 1 Definitions and interpretation

1.1 In this Contract (including Annexes attached hereto), apply the following definitions unless the context shall otherwise require or unless otherwise expressly provided:

“**PAK**” means Privatisation Agency of Kosovo (herein the “PAK”) which was established pursuant to Law No. 03/L-067, abrogated by Law no. 04/L-034 (“Law on PAK”), amended and supplemented by Law no. 06/L-023 and Law 04/L-115. PAK is legal successor of Kosovo Trust Agency which was established pursuant to UNMIK Regulation No. 2002/12 on Kosovo Trust Agency;

“**Lien**” shall have the meaning specified in the Land Regulation;

“**Purchase Price**” means € **insert the sale price in numbers (insert the sale price in words Euro)**, which is equal to bid price offered by the Buyer for the unit/asset tendered in compliance to tender process of Rules of Tender;

**“Bid Deposit”** means € insert the amount of deposit in numbers (insert the amount of deposit in words Euro), which is the bid deposit that the Buyer submitted with its bid as part of the tender process under the Rules of Tender;

**“Business Day”** means a day on which public institutions of Kosovo are generally open for business excluding days designated by law as public holidays;

**“Special Chamber”** means the Special Chamber within the Supreme Court of Kosovo Established in accordance with UNMIK Regulation No. 2002/13 of 13 June 2002, “on the Establishment of Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters”, supplanted by Law No. 06/L-086 on Special Chamber of Supreme Court of Kosovo on Privatisation Agency of Kosovo Related Matters, or any other legal successor of the Special Chamber;

**“PAK Law”** means the Law No. 04/L-034 approved by Kosovo Assembly on establishment of Privatisation Agency of Kosovo, amended and supplemented by Law no. 06/L-23, Law no. 05/L-080 and Law no. 04/L-115.

**“Applicable Law”** means Constitution of Republic of Kosovo, laws and sub-normative acts approved in compliance with the Constitution and legislation applicable on the date of entry into force of the Constitution for as long as it remains in compliance with the Constitution, until abrogated, supplanted or amended in compliance with the Constitution;

**“Law on Special Chamber”** means the law no. 06/L-086 (published on 27.06.2019 in O.G. no.12/2019 on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency of Kosovo related matters.

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

**“SOE”** means the Socially-owned Enterprise: insert name of SOE (with registration number in Commercial Court Fi.xxx/xx (also known as insert other known SOE names) (with registration number in Commercial Court Fi. xxx/xx), socially-owned enterprise established pursuant to laws of Federal Yugoslav Republic or any other applicable law;

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

**“Real Property”** means certain land plots and any structures located within the boundaries of such plots, for which the SOE holds a right of use, whether registered or not, or other rights of ownership, possession or use in accordance with the Applicable Law, particulars of which are set out in Schedule 2 hereto;

**“Lease”** shall have the meaning specified in the Land Regulation;

**“Rules of Tender”** means the Rules of Tender for sale of assets through a competitive sealed bidding process under which the Buyer submitted its bid for the Property and pursuant to which the Buyer was selected as the Winning Bidder.

**“Land Regulation”** means UNMIK Regulation No. 2003/13 On the Transformation of the Right of Use to Socially-Owned Immovable Property (amended with UNMIK Regulation 2004/45 and Administrative Direction No. 2005/12), with all later amendments.

1.2 The provisions of Schedules to this Contract shall form an integral part of this Contract.

## **2 Terms of Sale of Property**

2.1 The PAK, acting as trustee on behalf of the SOE, hereby transfers all of the SOE's rights and title to and interest in the Property from the SOE to the Buyer, subject to or with the benefit and burden of all easements, rights, Contract s, restrictions, licences, tenancies and other encumbrances whatsoever affecting the Property and existing as at the date of entry into force of this Contract, including but not limited to any Leases with respect to the Real Property set out in Schedule 2.

2.2 In the event that Leases are transferred pursuant to Schedule 2, then to the extent permitted by law, these leases are hereby assigned to the Buyer. The Buyer agrees that it shall fully indemnify and keep indemnified the PAK and the SOE from and against all actions, proceedings, costs, claims, damages and demands against the PAK or the SOE that arise as a consequence of any breach under the leases by the Buyer.

2.3 Completion of the transfer of all of the Enterprise's rights and title to and interest in the Property shall be deemed to have taken place immediately upon the entry into force of this Contract, unless otherwise specified in the Applicable Law.

2.4 The Buyer agrees that it is accepting the SOE's rights and title to and interest in the Property "as is", and in the condition in which it was in at the time of transfer, and covenants that it shall not assert any claim against the SOE or the PAK on account of any condition of, or other factor affecting, the Property, whether or not such condition or factor is open and obvious, difficult to discover upon a reasonable inspection or hidden and impossible to discover.

2.5 The Buyer agrees to buy the property (a) subject to any occupation of the property any right of ownership is unregistered at the SOE at the time of transfer, and (b) whether the structures are build in the Real Property or not, and/or registered in accordance with Applicable Law. Buyer declares and guaranties that he shall not make any claim against SOE or PAK related to the Immovable Property right, title and interests of SOE.

2.6 The transfer pursuant to Clause 2.1 shall include the transfer of all of the SOE's rights and title to and interest in structures on the Real Property, unless expressly excluded in Schedule 3 hereto, notwithstanding any discrepancy between structures actually existing and structures detailed in cadastral plot records shown in Schedule 2 hereto. The Buyer acknowledges and agrees that should any structure on the Real Property have been erected in a manner not consistent with the Applicable Law and procedures, that the Buyer will hold the PAK and the SOE harmless for such inconsistency.

2.7 The Buyer has paid the Purchase Price into the Bank Account and provided proof of the Bid Deposit to the PAK

## **3 Representations and Warranties**

The Buyer represents and warrants to the PAK and the SOE, from the date of entry into force of this Contract, that:

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- 3.1 (a) it has full power and authority to enter into this Contract and to carry out the transactions contemplated hereby, (b) its representative under this Contract is duly authorised to execute this Contract on behalf of the Buyer, and (c) if it is a duly incorporated legal entity and in good standing in the jurisdiction of its incorporation;
- 3.2 it is purchasing the Property for its own use and of its own will and not as an agent for a third party and during the tender for the Property, it has not formed any informal or formal Contract with any other bidder or with any undisclosed third party;
- 3.3 it has (a) received and reviewed any sale brochures or other documents prepared by the PAK which describe the Property and (b) it was advised by the PAK of the existence of any Electronic Dossier in relation to the Property and the SOE (if relevant) containing important information in relation to the Property and the SOE (if relevant) and it was given the opportunity to visit any data room and either did so visit any Electronic Dossier in relation to the Property and the SOE or chose not to visit the same. The Buyer represents and warrants that it has reviewed the document entitled "Certain Legal and Other Risks" in relation to the Property and the SOE, contained in the Electronic Dossier;
- 3.4 it has carried out such due diligence in relation to the Property, the SOE and the legal system in Kosovo as it believes to be appropriate for the purposes of the purchase contemplated by this Contract, including but not limited to checking public records, visiting and inspecting the Property and investigating issues such as construction and similar permits and any legal or illegal construction of structures on the Property;
- 3.5 It acknowledges that many laws applicable in Kosovo have only relatively recently been promulgated and therefore lend themselves to differing interpretations and are judicially untested and further that records in Kosovo are often incomplete or out of date;

### **4 Title**

- 4.1 The Buyer shall accept the SOE's right, title and interest in the Property on the factual condition at the moment of transfer of the property, and neither the PAK nor the SOE shall provide any representation or warranty as to the validity of such rights, title and interest.
- 4.2 As from the date of entry into force of this Contract, to the extent that the transfer or assignment of any of the Property has not been completed, the PAK shall be deemed to hold such Property on trust for the Buyer.

### **5 Other**

- 5.1 The SOE shall provide reasonable assistance with documents and information to the Buyer, at Buyer's expense, within the scope of SOE and PAK's limited administrative resources in order for implementation of this Contract (and the PAK shall make reasonable endeavours to ensure that the SOE is acting accordingly).
- 5.2 At Buyer's request, SOE shall provide the Buyer with information and documents in order for the Buyer to achieve the effective transfer of the rights, title and interests over the Property (and PAK will make reasonable endeavours to make sure that the SOE acts accordingly).
- 5.3 This Contract shall enter into force immediately upon being signed by the Parties.

- 5.4 Without prejudice to any other provision in this Contract, each Party shall bear its own taxes and the Buyer shall bear all responsibility for and the costs of carrying out any registration required by law of this transfer, including but not limited to the cadastre records and undertakes to notify the relevant authorities (including any tax authorities).

## 6 Dispute Resolution

- 6.1 The Buyer and the PAK (each, a “Party”, together the “Parties”) shall promptly notify the other in writing (including full details) of any disagreement arising under or relating to the rights and obligations of the Parties under this Contract or the breach, validity or existence thereof. Within ten (10) Business Days, the PAK shall appoint a reasonable time and place for a meeting to negotiate in good faith a resolution of any disagreement.
- 6.2 If such disagreements are not resolved within thirty (30) Business Days after their notification:
- 6.2.1 The Buyer may file suit with the Special Chamber of the Supreme Court, provided that the PAK has been properly notified in accordance with the Agency Law and Law on Special Chamber.
- 6.2.2 The PAK may either, in its capacity as a claimant or respondent to proceed with a suit in the Special Chamber.
- 6.3 Pending settlement of any disagreement, the Parties shall abide by their obligations under this Contract without prejudice to a final adjustment.

## 7 General

- 7.1 Entire Contract. This Contract and the applicable rules of tender together comprise the entire Contract between the Parties in relation to the matters referred to herein and supersedes any previous Contract or arrangement between the Parties or any of them in relation to the sale of the Property and the Parties acknowledge that no claim shall arise in respect of any Contract or arrangement so superseded.
- 7.2 Severability. If any of the provisions of this Contract is found by a court or other competent authority to be void and unenforceable, such provision shall be deemed to be deleted from this Contract and the remaining provisions of this Contract shall continue in full force and effect. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision for the provision so found to be void or unenforceable.
- 7.3 No Waiver. No delay or omission on the part of the PAK in exercising any right, power or privilege hereunder shall operate to impair such right, power or privilege or be construed as a waiver thereof and no single or partial exercise or non-exercise of any right, power or privilege shall in any circumstances preclude any further or other exercise thereof or the exercise of any other right, power or privilege.
- 7.4 No Liability. The Buyer hereby agrees to hold harmless the staff, officers, independent contractors and seconded staff associated with the PAK from any and all liability and claims whatsoever arising out of or related to any loss or damage that may be sustained by the

Buyer and its successors and assigns and any cause of action of the Buyer arising under this Contract shall be exclusively lodged against the PAK and/or the Enterprise.

- 7.5 Variance. Save as otherwise specifically provided herein, any variation of this Contract shall be binding only if it is recorded in a document signed by the Parties.
- 7.6 Costs. Each Party to this Contract shall pay its own costs, charges and expenses incurred in the preparation, completion and implementation of this Contract and the documents referred to herein.
- 7.7 Language and Copies. This Contract shall be executed in two (2) original copies in Albanian or Serbian language, depending on the case. Any other language versions of this Contract shall be offered as a courtesy and should any discrepancy arise between the language versions, the version in official languages in the Republic of Kosovo shall prevail.
- 7.8 Governing Law. This Contract shall be governed by and construed in accordance with the Applicable Law.
- 7.9 Notices. The address (email address and facsimile number) for service of notices to the PAK under this Contract shall be as set out below, and the address (email address and facsimile number) for service of notices to the Buyer shall be as set out in Schedule 1 hereto, provided always that either Party may, by written notice to the other, substitute another email address or facsimile number for the service of notices hereunder:

***Privatisation Agency of Kosovo***

Postal Address: No. 55 "Dritan Hoxha" Street, Lakrishtë  
10000 Prishtina, Republic of Kosovo

Facsimile number: +381 38 248 076

Email address: [info@pak-ks.org](mailto:info@pak-ks.org) or [sales@pak-ks.org](mailto:sales@pak-ks.org)

Notices may be given by being delivered by hand to the notice address of the addressee.

**8 Void ability of Sale**

Notwithstanding section 11.5 of Law on Special Chamber or other provisions in applicable law, should it be determined that (a) the funds used by the Buyer to acquire the Property were derived directly or indirectly from illegal activity; or (b) the Buyer was involved in collusion during the bidding process or (c) any other violation of the Rules of Tender, then this Contract shall be voidable by the PAK and any bid deposit shall be forfeited.

The properly authorised representatives of the PAK and the Buyer have executed this Contract in Kosovo.

DRAFT CONTRACT FOR THE SALE AND TRANSFER OF PROPERTY

**PAK**

.....

By:

Title: PAK Managing Director

Date: .....

**Buyer**

.....

By:

Title: Buyer

Date: .....

**Annex 1**

**Declaration under Section 32 of the Law on the Prevention of Money Laundering and Combating Terrorist Financing, under no. 05/L-096**

**Enterprise:** means Socially-owned Enterprise: [insert the name of SOE] (with the Commercial Court registration number Fi.xxx/xx (also previously known as [insert other known SOE names] (with registration number in the Commercial Court Fi. xxx/xx), Socially Owned Enterprise established under the laws of the Federal Republic of Yugoslavia or any other applicable law;

**Buyer:** means xxxxx xx xxx, person [insert natural or legal person] with the Republic of Kosovo identification card and personal number xxxxxxxxxx and with his address xxxxxxxx, Republic of Kosovo. Contact number: + xxxxx xxx xxx xxx;

**Notice of Public Sale details**

Sale number/SOE Regional Code	xxxxx
Item number	xxxxx
Description of Property and Location	This contract includes agricultural land/cadastral plots at the total surface of xxxx m <sup>2</sup> (xxha xxare xx8m <sup>2</sup> ), according to Certificate number of the Case xxxxxxxx dated xxxxxxxx, Cadastral Zone xxxxx, MA xxxxx

**Purchase Price:** € [insert bid price in numbers] ([insert sale price in words]).

**Payment method:** With bank transfer through bank account

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

**Bank Name:** Central Bank of Kosovo

**Account Name:** xxxxxxxxxxxx

**Account Number:** xxxxxxxxxxxx

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

**Bank Name:** xxxxxxxxxxxxxxxxxxxx

**Account Name:** xxxxxxxxxxxx

**Account Number:** xxxxxxxxxxxx

**Leases being transferred:** [insert accordingly]



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For PAK: \_\_\_\_\_

For Buyer: \_\_\_\_\_

By:

By: **XXXXXXXXXX**

Title: PAK Managing Director

Title: Buyer

**PROPERTY TRANSFERS**

**Annex 2 – Cadastral plot records**

- a. Enterprise land plots held by the Enterprise through registered rights of use to socially-owned land, or through any other form of right of use, ownership or possession, which are being transferred to the Buyer:

Cadastral Zone	Certificate number with Case number	Number of plots	Total surface area m <sup>2</sup>
xxxxxx, MA xxxx	xxxxx dated xxxxxxx	P-xxxxxxx	xxxxxxx
		P-xxxxxx	xxxxxxx
		P-xxxxxx	xxxxxxx
		P-xxxxxx	xxxxxxx
		P-xxxxxx	xxxxxxx
		P-xxxxxx	xxxxxxx
		P-xxxxxx	xxxxxxx
<b>Total surface area</b>			xxxxxxx

Attached to the annex 2 (a) is the copy of: (1) Certificates under the Case number xxxxxx dated xxxxxx (2) Copies of plan date xxxxxx and (3) Orthophoto.

Orthophoto is provided only for illustration and identification purposes, and neither PAK nor SOE represent or warrant accuracy of roads description in orthophoto.

**Important note:** *The buyer is aware that the property is registered in the name of the predecessor of SOE (XXXXXXXXXX). According to UNMIK Administrative Direction no. 2005/12 on implementing UNMIK Regulation 2003/13, as amended, on the Transformation of the Right to Use Real Property into socially owned property, Section 3, inter alia, states that “the lease is established in accordance with the provisions of the Regulation for the use of the land even if the right to use the mentioned property is registered in the name of the legal predecessor of the SOE or in the name of any other entity.”*

**Notice:** The buyer is informed that the cadastral plots do not constitute a unique entirety, all cadastral plots have access to public roads, only cadastral plots xxxxx do not have access to public roads but that is not a problem as it is located on the border with the plot xxxxx from which has access to the road. The PAK assumes no responsibility for providing access to the road and it is up to the Buyer to resolve this matter.

**The buyer admits and confirms to be responsible and keep PAK and SOE unharmed from and against any actions, acts, cost, and claims against PAK, SOE and LA with regard to rights and obligations that may arise as a result of aforementioned situation.**

**The buyer was advised to conduct on its own the verification of the cadastral records in regard to the interest of the SOE in this property and of the situation in the field, therefore the buyer admits and confirms to be responsible and keep PAK and SOE unharmed from and against any actions,**

**acts, cost, and claims against PAK, SOE and LA with regard to rights and obligations that may arise as a result of aforementioned situation, after the Contract becomes applicable**

Regarding the land for sale, there may be cases when the SOE has made land swapping with private persons during the years 1990-99 and that the cadastral records related to these swapping have not been updated, there may also be unregistered valid court decisions in the Court

No liabilities shall be transferred to the Buyer, however the Buyer should have into account tax on property transfer can be applied.

It is noted that according to UNMIK Regulation no. 2003/13, the property of SOE is transferred to Leasehold. This transfer of Leasehold to the purchasing party may be applied for the remainder of the period of 99 (ninety-nine) years from the date of entry into force of UNMIK Regulation No. 2006/12. 2003/13, dated 09 May 2003 and expires on 09 May 2102. The leasehold rights established under UNMIK Regulation No. 2006/13. 2003/13 can be transferred / sold to third parties and charged / mortgaged, according to the conditions set out in this Regulation.

**PROPERTY TRANSFERS**

**Annex 2 – Cadastral plot record(s)**

- b. SOEs land plots held by the SOE through an unregistered right of use to socially-owned land or through some other form of user right, ownership or possession, which are being transferred to the Buyer:

Cadastral Zone	Certificate	Number of plots	Total surface area m <sup>2</sup>

Buildings:

Type of building	Year of Construction	Construction Material	Surface area m <sup>2</sup>

It is noted that although the Enterprise may be in the ownership, possession or control of the preceding cadastral plots or may hold rights of use to such cadastral plots, and/or of any building, or structure on or within the boundaries of these plots, this may not be accurately shown in the relevant cadastral records. Therefore, upon the entry into force of this Contract, Leasehold for these cadastral plots, and/or any building, or structure on or within the boundaries of these plots **may not be established** pursuant to the Land Regulation because the rights of use to these cadastral plots are not registered in the name of the SOE at the time of the entry into force of this Contract.

**PROPERTY TRANSFERS**

**Annex 3 – Structures that are NOT transferred along with the Property**

**PROPERTY TRANSFERS**

**Annex 4 – Movable Property transferred to the Buyer**

**PROPERTY TRANSFERS**

**Annex 5 – “The Right of passage”**

An orientating example on how it is marked if there is a right to passage. There are marked and unmarked **roads and/or paths (“Paths”)** that pass **through and around** the Immovable property which is transferred and where, according to the law, the right of passage may exist in favour of third parties. The Buyer is recommended to do research and verify the number, size and spreading of roads, and also to agree and undertake to neither close nor obstruct roads, but to let them open and passable for third parties, unless the respective authorities grant authorization or permission to close the roads.

Several Roads/Roads are further described and shaded above the orthophoto attached to this contract. Orthophoto is provided only for illustration and identification purposes, and neither PAK nor SOE represent or warrant accuracy of roads description in orthophoto.

**PROPERTY TRANSFERS**

**Annex 5A – “Tax liabilities”**

An orientating illustration on how it is marked if there is a tax burden. Based on information given by TAK Officers, SOE is charged with Tax Burden by Tax Administration of Kosovo (TAK), but the tax burden in question is not transferred to Buyer through this contract. These obligations will remain as obligations of Socially-owned Enterprise, which will be reviewed in liquidation procedure in accordance with legal provisions in force.

The buyer admits and confirms to be responsible and keep PAK and SOE unharmed from and against any actions, acts, cost, and claims against PAK, SOE and LA with regard to rights and obligations that may arise as a result of aforementioned situation, after the Contract becomes applicable.