



AGJENCIA KOSOVARE E PRIVATIZIMIT  
KOSOVSKA AGENCIJA ZA PRIVATIZACIJU  
PRIVATISATION AGENCY OF KOSOVO

Privatization Agency of Kosovo, in order to comply with its legal mandate for privatization of Socially Owned Enterprises and their assets, set out in article 1 and 2 of the Agency Law, and based on article 6.4 of Operational Policies of the Agency, approves:

## **Rules of Tender for NewCo “Hotel Onix Banja e Pejes and SPA” L.L.C.**

### **Introduction**

These rules of tender set out the procedures for the sale of “new companies” and “tendered items”, as defined by these rules of tender, including conditions and criteria for submitting a bid by bidders, conditions and criteria for classification and selection of bids by the Agency and conditions and criteria for signing sale contracts with provisional winning bidders

### **Article 1**

#### **Definitions**

Unless the context otherwise requires the following definitions shall apply throughout the rules of tender:

“**Agency**” means the Privatization Agency of Kosovo (hereinafter referred to as “Agency”) which was established according to the Law No. 03/L-067, on the Privatization Agency of Kosovo, dated 21 May 2008, amended by the Law 04/L-034, The Agency is legal predecessor of the Kosovo Trust Agency, which was established in accordance to the UNMIK Regulation 2002/12.

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

“**Tendered items**” means moveable and/or immovable assets, and current liabilities of the SOE, details of which are set out in the Liquidation Asset Sale Information Memorandum that are to be tendered for sale in accordance with the rules of tender.

**“Board”** means the Board of Directors of the Agency.

**“Eligibility Registration Certificate”** means the certificate issued by the Agency to an eligible bidder, in accordance with article 7.9 of the Rules of Tender, evidencing that the eligible bidder has successfully been registered as an eligible bidder and is registered on the eligible bidders’ book.

**“Bid Price”** means the amount stated in Euro (€) by an eligible bidder for the shares of the Subsidiary and the Tendered Items.

**“Date of receiving the notice”** means the date of undertaken actions by appointed personnel of the Agency, with the purpose to notify/contact the party through the letter, telephone, fax or cablegram/mail.

**“Bid deposit”** means the amount of 500,000 Euro (five hundred euro) determined by the Agency, deposited by the eligible bidders, in accordance with article 8.2 of the Rules of Tender.

**“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;
- (4) The cost of the supplies of goods and services (but not including salaries, pensions or other payments to or on behalf of employees of the SOE in their capacity as employees) accruing during the normal course of business that:
  - a) accrued during the three month period ending on the date of entry into force of the relevant declaration of transfer;
  - b) which remain unpaid on such date and are attributable to the business of the SOE;
- (5) 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.

**“Business Day”** means days on which public institutions of the Republic of Kosova are open for business, excluding Saturdays, Sundays and public holidays as set out by the law in force.

**“Tender Documents”** means tender documents that the Agency distributes to potential bidders, such as Tender Notice, Information Memorandum, Rules of Tender, Confidentiality agreement to be signed by bidders and the Agency, described in article 6.3 of the Rules of Tender.

**“Electronic File”** means the electronic file established by the Agency wherein some information and documents are made available regarding the SOE and tendered items to be inspected by the bidders.

**“Special Chamber”** means the Special Chamber of the Supreme Court of Kosovo established in accordance with UNMIK Regulation No. 2002/13, dated 13 June 2002, “On the Establishment of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters”, replaced by the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo, on matters related to Privatization Agency of Kosovo.

**“Director”** means a member of the Board of Directors of the Agency.

**“Director of the Executive Secretariat”** means the Director of the Executive Secretariat of the Agency.

**“Bid Submission Form”** means the document, in the form set out in Annex C, to be submitted by each Eligible Bidder in accordance with section 9.6, (a)(i) of the Rules of Tender

**“Bid Opening Committee”** means the committee established by the Board, whose authorization is set out in article 10 of the Rules of Tender.

**“Bid Admission Committee”** means the committee established by the Board, whose authorizations are set out by article 9.5, 9.7 and 9.8 of the Rules of Tender.

**“Evaluation committee”**, is the committee appointed by the Agency, for reviewing potential bidders’ claims for eligibility as eligible bidders, whose authorizations are set out in article 7.6 of the Rules of Tender.

**“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 Price.

**“Corporation”** means a limited liability company or a joint stock company registered in Kosovo and recognized as such by the Law on Business Organizations, no. 02/L-123.

**“Creditor”** means a person or entity with a valid claim as a creditor against an Enterprise and / or to an Asset.

**“Affiliated Company”** is any corporation or business entity which:

- (1) (a) Bidder directly or indirectly possesses and Controls or (b) is in the ownership or in Bidder’s control. For the purpose of this definition, the meaning of the word “possessed” should mean ownership of over 50% of share capital of corporation kind or ownership of over 50% of interest of that sort of entity; **or**

- (2) has cooperation relations with the Bidder established through a written instrument which is legally binding as (i) agreement for joint participation, (ii) joint enterprise or (iii) has a contract for managerial services. Duties of parties under this sort of written instrument must clearly be (a) related to Required activities for the business of post privatisation of subsidiary; (b) establish material inclusion scale for each party in accordance to industrial standard normative of Activities required for the business; (c) emphasize issued material pledges by each party in support to Foreseen business activities of the subsidiary; and (d) emphasize engagements, liabilities and responsibilities of each party in support to above mentioned activities under (a), (b) and (c).

**“Eligible Bidders Register”** means the confidential register of eligible bidders, which is compiled and maintained by the Agency, in accordance with article 7.8 of the Rules of Tender.

**“Applicable Law”** means the Constitution of the Republic of Kosova, laws and sub legal acts adopted in compliance with the Constitution, and the legislation that was in power on the date of entry into force of the Constitution, as long as it is in compliance with the Constitution, until it is not invalidated, replaced or amended, in compliance with the Constitution.

**“Information Memorandum”** means the document prepared by the Agency which contains different information on the SOE and tendered items, details of which are set out in article 6.4 of the Rules of Tender

**“Management”** means the Managing Director and two Deputy Managing Directors of the Agency, both collectively and individually.

**“Enterprise”** means an enterprise as defined in article 5 of the Law on the Agency, over which the Agency exercises its authority.

**“Socially-owned Enterprise”** means a legal entity (other than a publicly-owned Enterprise) that: a) on or after 1 January 1989, (i) fell within paragraph 1 or 2 of Article 2 of the Law on Enterprises, or (ii) fell within paragraph 3 of Article 2 of the Law on Enterprises and a majority of whose assets were in social ownership or a majority of whose capital was social capital; and b) was registered or was required to have been registered in Kosovo under the then applicable law.

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

**“Payment Notice”** means the Agency’s notice addressed to the Winning Bidder for: a) initial payment of 25% which shall be paid within 20 (twenty) business days from the date of receiving notice, and b) payment of 75% remaining in a deadline of: (i) 20 (twenty) business days from the date of receiving notice if the highest bid price is less than €1.000.000 (one million euro) or (ii) 30 (thirty) business days from the date of receiving the notice, if the highest bid price is €1.000.000 (one million euro) or higher.

**“SOE”** means Socially-Owned Enterprise: SOE Institution for Physical Medicine and Rehabilitation Spa, (registration number at the Commercial Court Fi 292/86) (also previously known as Institution for Physical Medicine and Rehabilitation Spa, established pursuant to laws of Federal Republic of Yugoslavia or any other applicable law.

**“Eligibility Registration Number”** means the number with which the Agency registers the eligible bidder in the Eligibility Bidders Registry that is issued by the Agency to an Eligible Bidder by means of an Eligibility Registration Certificate, as set out in article 7.9 of the Rules of Tender.

**“Contractual Obligation”** implies the buyer is obliged to undertake all necessary actions (required investments) which shall impact the well-being and further development as well as enhance offering services within enterprise domain (activity) with regard to maintaining the continuity of current business activity for at least 3 (three) years

**“Bid”** means expression of one person or entity’s will, which is presented before the Agency by means of a designated form (bid submission form, as set out in article 9.6, item a, sub item (i) of the Rules of Tender), and accompanied by evidences as set out in article 9.6 of the Rules of Tender (including but not limited to bid price) which is submitted in accordance to article 9 of Rules of Tender whose purpose is to participate in the bid to buy the subsidiary or the tendered items

**“Highest Bid Price”** means the bid offering the highest price for the purchase of the subsidiary.

**“Bidder”** means any Eligible Bidder or Provisional Winning Bidder, excluding a Prohibited Bidder.

**“Eligible Bidder”** means a bidder who has been registered as an Eligible Bidder, in accordance with article 7 of the Rules of Tender.

**“Provisional Winning Bidder”** means any of the highest bidders, the second highest bidder the third highest bidder notified by the Agency in writing of being declared the Provisional Winning Bidder

**“Highest Bidder”** means the Eligible Bidder who during the tendering process of the subsidiary, submits the Highest Bid Price

**“Second Highest Bidder”** means the Eligible Bidder who is ranked as the second bidder in the tendering process by the bid price to purchase the subsidiary or the tendered items

**“Third Highest Bidder”** means the Eligible Bidder who is ranked as the third bidder in the tendering process by the bid price to purchase the subsidiary or the tendered items

**“Potential Bidder”** means any natural or legal person, business organization or corporation competing before the Agency to be registered as an Eligible Bidder, in accordance with the Rules of Tender

**“Prohibited Bidder”** means any natural or legal person, business organization or corporation, as set out in article 4.1 of the Rules of Tender that is disqualified from bidding in accordance with article 7 of the Rules of Tender and is accordingly prohibited from submitting a Bid

**“Tender Schedule”** means the document stipulating important time periods and dates in respect of the tender process (which is attached to the Rules of Tender as Annex A).

**“Initial Payment”** means the amount equal to 25% (twenty-five percent) of the total of highest bid price MINUS the bid deposit.

**“Asset”** means an asset, interests or property, as defined in article 5 of the Law on the Agency, over which the Agency exercises its administrative authority

**“Financial Statements”** means a structured representation of financial information, which ordinarily includes an income statement, balance sheet and 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 should include either 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.

**“Bid Submission Period”** means the date 20<sup>th</sup> of July, 2012, and time interval, determined by the Agency, which usually is from 10:00 until 12:00, Kosovo time, during which Bids must be submitted in the Agency and/or at the location designated by the Agency, details of which are also set out in the Tender Notice

**“Person”** means a natural person, legal person, business organization or corporation even if according to the law it does not have legal authority

**“Agency’s Personnel”** means professional and technical staff of the Agency as set out in article 12.1 of the Agency Law

**“Control Person”** means any legal or natural person on whose orders, instructions and control a legal person or entity is accustomed to act regardless if the control person is in the position of the managing director, chief executive officer, a chairman of the board of directors, a major shareholder or any other position whereby it can exercise control over the enterprise and staff

**“Representative”** means any person legally authorised to act on behalf of a bidder throughout the tender, including signing of the Share Sale Agreement and any documents related thereto

**“International Civilian Representative”** means the mandated responsible authority according to the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and Constitution of Republic of Kosovo

**“Semester reporting period”** implies each reporting period for 6 calendar months. First reporting period commences upon entry into force of the sale and purchase agreement and concludes after 6 calendar months, until final decision of the Board of Directors, or legal successor of the Agency, for release from contractual obligations or imposed penalties for non-fulfillment of contractual obligations.

**“Report on the fulfilment of contractual obligations”** implies the buyer’s reporting regarding the continuation of required activity. The report must contain financial and operational information derived from activities performed within the subsidiary, and it also has to rely on verified documentation confirming that the bidder or affiliated company has fulfilled the contractual obligations.

**“Rules of Tender”** means these Rules of Tender for the privatization of New Co “Hotel Onix Banja e Pejes & Spa” L.L.C..

**“Regulation on Transformation of Immovable Property”** means UNMIK Regulation No.2003/13, dated 9 May 2003, “On the Transformation of the Rights of Use to Socially owned Immovable Property”.

**“Executive Secretariat”** means the executive secretariat of the Board as established by Article 11.5 of Law on the Privatization Agency of Kosovo

**“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.

**“Bid Submission Fee”** means the non refundable bid submission fee in the amount of €2,000 (two thousand Euro) paid by an eligible bidder to the Agency in accordance with article 9.1 of the Rules of Tender

**“Tender”** means the entire process whereby the Agency arranges the sale of the Tendered Items and the Subsidiary, including classification and identification of the Highest Bid Price and the completion of the sale of the Subsidiary to the provisional winning bidder.

**“Transformation”** means, any of the following with respect to a legal person: a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal person, bankruptcy, liquidation, insolvency, organization into a distinct form or other entity or any other event or process by which any of the following is altered with respect to that entity: its legal identity, form or nature, or the form or nature of its ownership or capital, or its seat, and where any such event or process or any part thereof took place at any time between 22 March 1989 and 13 June 2002.

**“Required Business Activity”** implies medical treatment, physical therapy, including rehabilitation program with thermal natural spring water, including but not limited to: Hydro therapy, Kinesitherapy, Electro therapy, Parafango therapy, Flora and Fauna therapy, Photo therapy, Thermo therapy, which business activity must be continued by the Buyer for the next three years, after the date of entry into force of sale agreement.

**“Background Checks”** means verification of information/documentation carried by the Agency, for the purpose of the Agency confirming that the Provisional Winning Bidder is not a Prohibited Bidder and any other checks which may be determined by the Agency.

**“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 to the Provisional Winning Bidder

## **Article 2**

### **Legal validity and interpretation of the Rules of Tender**

**2.1.** The Rules of Tender are binding for the Agency and for any other person who participates or is included in the liquidation procedures, according to the Rules of Tender. For a bid to be considered, it should be in accordance with the Rules of Tender. Upon participation at any stage of

the tender or upon submitting a bid, the bidder agrees and undertakes measures to undergo conditions and procedure set out by the Rules of Tender

- 2.2.** The Rules of Tender are interpreted reflecting the Agency Law and applicable Operational Policies. In case a provision of the Rules of Tender is in contradiction to the Agency Law or Operational Policies, then the Agency Law prevails, respectively the Operational Policies
- 2.3.** 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 ;
- 2.4.** Any reference to the singular includes reference to the plural, and vice versa, except if from the context it may not be interpreted so.
- 2.5.** Headings are inserted for convenience only and do not affect the structure or interpretation of these Rules of Tender.

## **Article 3**

### **General aspects of liquidation process**

#### ***3.1. General overview of Agency's role***

Privatisation Agency of Kosovo ("Agency") is an independent public institution of the Republic of Kosovo exercising its functions and responsibilities with full autonomy in compliance to the Law on Agency, Operational Policies of the Agency, these Rules of Tender and other applicable legal and sub normative acts in the Republic of Kosovo. The Agency has the mandate to administer Enterprises and assets as stipulated by the Law on Agency including the right to sell, transform and/or their liquidation. The Agency enjoys full juridical personality and may sue or be sued in a court procedure any other similar procedure.

#### ***3.2. Sale structure and bid statement***

Tendered item shall be tendered for sale through international public auction in compliance to procedures set out in Rules of Tender. There shall be one bidding round and these rules stipulate procedures that govern the tender including method whereby potential bidder may be registered as eligible bidder, information and documents to be included in the bid, highest bid identification and method to proceed with tendered item to the potential winning bidder.

In order to consider a bid, the bidder must be in accordance to Rules of Tender. Bidders' participation at any moment of the tender or through submitting the bid, the bidder complies and undertakes in compliance with these rules of tender.

Upon submitting a bid, the bidder must emphasize what tendered item he is competing and must submit the bid price.

#### ***3.3. Sale is performed in accordance to the highest bid price***

The Agency shall sell tendered items only with highest bid price. Highest bidder shall have the right to buy tendered items only by highest bid price. If for any reason the sale does not proceed with the



highest bidder, the second highest bidder by complying to these rules of tender shall have the opportunity, but is not obliged to purchase tendered item with highest bid price.. If for any reason the sale does not proceed with the second highest bidder, the third highest bidder by complying to these rules of tender shall have the opportunity, but is not obliged to purchase tendered item with highest bid price

### **3.4 Tender schedule**

The Agency shall designate the tender schedule (which is attached to the Rules of Tender, Annex A). Bidder must consult the tender schedule and obtain information regarding terms and dates set by it and comply with them during the tender process.

## **Article 4**

### **Prohibited bidders**

#### **4.1. For the purpose of this tender, the following bidders shall be prohibited from bidding:**

- (a) Public or socially-owned enterprises
- (b) Government and governmental institutions of Republic of Kosovo, independent public agencies and institutions and persons or other entities that are under ownership or under their control.
- (c) Government, governmental institutions, agencies and other public institutions of any country as well as other persons or entities that are in their ownership or their control.
- (ç) Natural and legal persons, business organizations or corporations that possess legal personality that:
  - (i) have been charged with criminal acts for which law determines maximum sentence with imprisonment, over one year and/or
  - (ii) have been convicted for criminal acts with imprisonment over one year.
- (d) Natural or legal persons that have occupied socially-owned immovability against whom the Agency or SOE has initiated court proceedings for release of property and/or compensation of eventual damages.
- (e) Natural or legal persons that: (i) did not respect terms of contract with the Agency or any enterprise administered by the Agency (existence and nature of that disregard shall be determined by the Agency in its sole discretion , (ii) have outstanding debt or penalty towards the Agency or any enterprise administered by the Agency, , (iii ) natural or legal persons who did not settle the penalty determined by the Agency or that are subject to any claim or dispute (regardless whether such matter is submitted before the court or elsewhere);
- (f) natural or legal persons which based on reasonable Agency's opinion:

- (i) are included in any collusion or any other illegal or irregular activity and subsequently the Agency has cancelled any privatisation or liquidation tender;
  - (ii) in any other way have violated tender regulations for any privatisation or liquidation tender organized by the Agency; or
  - (iii) have withdrawn from their position of provisional winning bidder in a privatisation or liquidation tender more than (1) once, by failing to deposit the price of their winning bid within deadline requested by the Agency or through their refusal to sign sale documents, during any privatisation tender organized by the Agency, after privatisation “Wave 7” or during any liquidation tender organized by the Agency;
- (g) Natural persons acting in the capacity of an Agent for any person or subject stated in article 4.1 from item (a) to (g) or any Agent who did not reveal persons representing as required by these rules of tender;
  - (h) Legal subjects whereby beneficial owners or their controlling persons belong to categories stipulated in 4.1 from item (a) to (h) above;
  - (i) Legal subjects whereby owners, beneficial persons or their controlling persons have been or are owners, beneficiaries or controlling persons to any other legal subject, which belongs to any of the categories stipulated in article 4.1, item (a) to (g).
- 4.2.** Any bid submitted by a prohibited bidder shall be disqualified regardless of the fact such bid is in full compliance to terms and conditions set out in Rules of Tender.

## **Article 5**

### **Due diligence**

- 5.1.** Every potential bidder is responsible to carry out due diligence in regard to SOE or tendered items in order to obtain necessary information.
- 5.2.** Agency established electronic files about the SOE or tendered items. The Agency shall grant potential bidders access to information and documents in the electronic file,
- 5.3.** The Agency shall solely be responsible to coordinate bidder’s access to the electronic files. Potential bidders may gain access to the electronic files only during days and times specified in the tender schedule. If any person acts or conducts in a manner that would doubt his sincerity as stakeholder, the Agency may deny him the access to electronic files.
- 5.4.** Acting pursuant to requirements of potential bidders, the Agency shall make reasonable endeavours, within boundaries of its administrative resources that prior to submitting bids, enable them to visit the location of the SOE and tendered items.
- 5.5.** The Agency shall solely be responsible to coordinate visits of potential bidders to the site and spaces of the SOE and tendered items. Potential bidders may visit the location and spaces of the

SOE and tendered items only during days and times specifies in the tender schedule. If any person acts or conducts in a manner that would doubt his sincerity as stakeholder, the Agency may deny him the access to the location and spaces of the SOE and tendered items.

- 5.6.** Potential bidders shall not contact the SOE directly. Presenting issues and setting meetings shall be done only through the Agency.
- 5.7.** Upon submitting the bid, potential bidder must confirm and affirm before the Agency in written, the opportunity and conditions were made possible by the Agency to perform due diligence and independent appraisal regarding SOE, tendered items and all the information and documents located in the electronic files.
- 5.8.** Failure to perform due diligence and independent appraisal regarding SOE, tendered items as well as regarding any and all the information and documents located in the electronic file, does not release the potential bidder of his obligations bestowed upon him by the sale contract and other respective documents. The Agency or SOE shall not assume responsibility for the appraisal and conclusions made by any bidder after independent due diligence, after his appraisal of the SOE and tendered items and after due diligence and assessment of the information and documentation presented in electronic files.
- 5.9.** Any bid depending on further due diligence, other investigation or on another bidder's bid shall be deemed incomplete and unacceptable to the Agency.
- 5.10.** As a result of circumstances in Kosovo is well-known and confirmed by all respective parties that a part of information and documentation regarding the SOE and tendered items may have been lost, destroyed or misplaced by the location and spaces of the SOE and may be considered unavailable. For this reason, potential bidders are reminded that any information document analysis may be incomplete and must be accompanied by a thorough assessment of the SOE and tendered items. The Agency or the SOE do not assume responsibility or obligation regarding any deficiency in the information and documents available in connection to the SOE or tendered items.
- 5.11.** The Agency is not required to translate any of the information or document related to the SOE, the subsidiary and tendered items. Potential bidder is responsible for every interpretation or translation of information or documents during due diligence. Persons providing interpretation and translation services to potential bidders must comply with the obligation for maintaining business confidentiality stipulated by these rules of tender and the Agency requires those persons to sign the confidentiality agreement.
- 5.12.** Potential bidders must sign the confidentiality agreement included in the tender documents and return it to the Agency prior to allowing access to the bidder to information and documentation in the electronic file or visit the location and spaces of the SOE and tendered items in order to perform due diligence. Likewise, potential bidders are required to comply with electronic file access regulation prior to having been allowed access.

## **Article 6**

### **Obtaining tender documents**

- 6.1.** Potential bidders are allowed to obtain copies of tender documents.
- 6.2.** Tender notice instructs potential bidders to contact certain office within the Agency to obtain respective tender documents in due time.
- 6.3.** Tender documents include: tender notice, Rules of Tender, Information Memorandum ; confidentiality agreement signed by potential bidder and the Agency and other documents the Agency deems as necessary.
- 6.4.** Information Memorandum is a document prepared by the Agency containing different information related to the SOE including: a brief background of the SOE; business activity summary; key assets; a background of tendered items, a brief summary of current liabilities of the SOE that are to be transferred to the subsidiary, a brief summary of contracts of the SOE transferrable to the subsidiary, and other information deemed significant by the Agency's personnel.
- 6.5.** Information Memorandum has an informative nature and as such is not an offer.
- 6.6.** The Agency shall endeavour to secure tender documents for potential bidders within a reasonable time from admission of the request for tender documents. When tender documents are delivered to potential bidders via electronic mail or regular mail, those are free of charge. Potential bidders wishing to obtain tender documents in any other method shall bear the delivery costs of such other method.

## **Article 7**

### **Eligibility registration procedure**

- 7.1.** Potential bidder must submit to the Agency the request for eligibility registration at least prior to the date stipulated in Annex A as the pre-qualification deadline..
- 7.2.** Any potential bidder must offer to the Agency documented proof, as specified in forms attached to Annex E, to the extent that the Agency, at its discretion, shall deem acceptable, that the potential bidder satisfies the following criteria:
  - (a) That it or an Affiliated Company must have proven track record in development, management and operations of hotels and/or SPA Centers with a minimum annual turnover of 3 (three) million EUR for at least each of the 3 consecutive years **and** a minimum of 20% of total revenues should come from the SPA activities for at least 3 consecutive years,and

- (b) Key personnel: Senior Management Expert with at least 10 years of experience in management/operations of at least two similar projects (hotel/spa), and key medical expert with at least 10 years of experience in rehabilitation/therapy treatments.

In case the Potential Bidder has an Affiliated Company, as defined in Article 1 of these Rules of Tender, on definition on Affiliated Companies, the potential Bidder must provide the Agency with a copy of a written instrument which is legally binding regulating the relation of the potential Bidder with such affiliated company, and that document must include information provided with sub/articles (a)-(d) of Article 1 of the definition on Affiliated Companies.

**7.2.1** In addition to the required information to be submitted by the potential bidder, the potential bidder must also submit to the Agency the following information and evidence:

- (a) name of potential bidder, the address and other contact information and the name and contact details of the representative acting as contact person with the Agency,

- (b) the following information related to potential bidder:

- (i) in case the potential bidder is a **natural person**, he must submit a copy of ID or his passport;

- (ii) if a potential bidder is a **legal subject**, a copy of business registration certificate and identity of beneficial owners and controlling persons. Identity certificate of beneficial owners and controlling persons is not required from legal subjects located in well-known international exchange lists with regard such lists are available;

- (iii) if a potential bidder is a **partnership**, a copy of partnership founding documents and the identity of its partners and beneficial owners and controlling persons; and

- (iv) in case a potential bidder is a **consortium** consisting of natural persons, partnerships and companies, a copy of founding documents for that consortium along with copies of ID, passports and information on business registration of consortium members including information on beneficial owners and controlling persons of consortium members;

- (c) A written statement whereby bidder confirms he is not a prohibited bidder (as stipulated in article 4 of Rules of Tender)

- (ç) Information and evidence confirming potential bidder is not prohibited bidder (as stipulated in article 4 of Rules of Tender)

**7.3.** All the information and evidences submitted by the potential bidder while applying for eligibility registration must be in writing.

**7.4.** Information and documents submitted by the potential bidder while applying for eligibility registration must be in one of official languages in Kosovo (Albanian or Serbian) or in English (not

including passports and/or ID stipulated in article 7.2, item (i) which may be submitted in the original language based on bidder's choosing).

- 7.5.** At any given moment the Agency, including contract signing phase for the subsidiary or the tendered items may request from the bidder to submit information or additional evidence deemed relevant for the status of eligible bidder.
- 7.6.** Eligibility registration request and attached evidence are reviewed by the assessment committee.
- (a) Assessment committee shall admit a eligible potential bidder only if ascertained that he does not fall in the category of prohibited bidders (as stipulated in article 4 of Rules of Tender) and satisfied criteria set out in article 7.2 of Rules of Tender.
- (b) Assessment committed shall reject an eligibility registration request of a potential bidder is ascertained potential bidder falls in the category of prohibited bidders (as set out in article 4 of Rules of Tender) and in case such request is lacking respective evidence and despite to advising the submitter by the Agency personnel to complete the file.
- 7.7.** The Agency shall use reasonable efforts to ensure that its staff is maintaining utmost confidentiality of all the information submitted by the potential bidder in the application and evidence attached thereto in order to be registered as eligible bidder and shall not reveal them to third parties except: (a) if required by applicable law or any injunction issued by the court of competent jurisdiction or (b) required by the law enforcement agencies in Kosovo and outside or (c) to any other bodies authorized by the law for background investigations of the Potential Bidders or (d) if a Potential Bidder has otherwise agreed in writing.
- 7.8.** The Agency drafts and maintains the Eligible Bidders Register.
- 7.9.** After registering the potential bidder in the eligible bidders register, the Agency shall issue the certificate of eligibility which contains the eligibility registration number.
- 7.10.** Eligible bidder may use the certificate of eligibility and the eligibility registration number **only** for this tender.
- 7.11.** Considering the specifics of this tender, in case that the potential bidder has pre-qualified in any other previous tenders, **such pre-qualification is not valid.**
- 7.12.** Assessment committee holds the right to cancel the registration of eligible bidder and erase such bidder from the eligible bidders register at any moment if disqualification causes are revealed set out in article 4.1,of Rules of Tender. Provisions of article 7.11 and 7.13 of Rules of Tender related to decision-making and appeal procedure are executed when cancelling the registration of eligible bidder
- 7.13** Claim may be filed challenging disqualification decision before the Management of Agency within seven days upon receiving the decision. The Management shall urgently decide regarding the claim. The Management decision can be challenged at the Special Chamber.

- 7.14.** Disqualified bidder does not have the right to re-apply as eligible bidder except if he presents evidence showing disqualification causes ceased.

## **Article 8**

### **Bid submission fee and bid deposit**

- 8.1.** In order to compensate administrative and communication expenses related to reviewing and processing bids by the Agency, each eligible bidder must pay the bid submission fee in the amount of 1,000 € (one thousand euro) for regular Spin-Off and 2,000 € (two thousand euro) for conditional Spin-off. Eligible bidder along with his bid must submit evidence of payment. Bid submission fee is paid via bank transfer in the bank account designated by the Agency for that purpose.
- 8.2.** In order to ensure the good will of bidders, each eligible bidder must pay the bid deposit, the amount of which is assigned by the Board, on individual basis for each subsidiary. Bid deposit is paid via bank transfer in the bank account designated by the Agency for that purpose. Eligible bidder along with his bid must submit evidence of payment. The Agency credits the bid deposit paid by the provisional winning bidder from the total amount of highest bid paid to the Agency for conclusion of purchase of subsidiary.
- 8.3.** The Agency shall endeavour to return the bid deposit to non-winning bidders within **10 (ten)** working days after completion of bid submission period.
- 8.4.** In case the Agency has confiscated the bid deposit from eligible bidder due to reasons set out in Rules of Tender, such deposit shall not be returned to the eligible bidder.

## **Article 9**

### **Content and bid submission**

- 9.1.** There shall be only one bidding round during the tender, unless otherwise decided by the Board.
- 9.2.** Every eligible bidder has the right to submit a bid. A person submitting a bid should not identify the eligible bidder on whose behalf he is submitting the bid.
- 9.3.** Bids must be submitted in one of the official languages in Kosovo (Albanian or Serbian) or in English.
- 9.4.** All bids must be submitted in offices of Agency in Prishtina and/or in a location designated by the Agency through tender notice. Bids must be submitted physically at the Agency's committee for bid admission.
- 9.5.** Bids must be submitted to the bid admission committee during the bid submission period. Bid admission committee shall not accept bids after the bid submission period is over or bids submitted at some other location than the one stipulated in article 9.4 of the Rules of Tender.

- 9.6.** The bid must have the following documents and evidence attached:
- (a) Following information and documents must be in a sealed envelope with “Additional bid information” imprinted on the exterior side of the envelope:
    - (i) Original of the bid submission form, completed and signed by or on behalf of the eligible bidder;
    - (ii) a copy of eligibility registration certificate;
    - (iii) proof of transfer of bid submission fee to the account designated to that purpose by the Agency;
    - (iv) proof of transfer of bid deposit to the account designated to that purpose by the Agency.
    - (v) Original of a signed letter by or on behalf of the eligible bidder stating that the eligible bidder agrees to adhere to the conditions, as stipulated in Annex D and Annex F.
  - (b) bid price must be placed on a separate envelope with “Bid price” imprinted on the exterior part. Annex B to these rules of tender contains a table to calculate total amount of money to be paid to the Agency by the eligible bidder if this bid price of the eligible bidder is deemed highest bid price and the eligible bidder is declared provisional winning bidder. Eligible bidder must complete this table and submit it in a sealed envelope with “Bid Price” imprinted.
  - (c) Sealed envelopes stipulated in item (a) and item (b) of this article must be placed together in a third sealed envelope with “**Bid for tender no. [●]**” imprinted. Exterior part of this envelope must not reveal any information or any other mark that could help identify the eligible bidder.
- 9.7.** Bid admission committee, immediately after receiving the bid, shall write the number on the third sealed envelope stipulated in article 9.6, item (c) and the same number shall register in the receipt issued in compliance to article 9.8 of Rules of Tender.
- 9.8.** Bid admission committee shall, immediately after registering the number in the receipt, deliver the receipt to the person submitting the bid with the date, hour and minute of bid admission by the Agency. The receipt must be signed by the bid admission committee.
- 9.9.** The Bidders are obliged to provide all information and documentation requested by the Agency with the purpose of developing a wellbeing privatisation process and fulfilling the conditions of the Rules of Tender and compliance with applicable law and international best practice.

## **Article 10**

### **Bid opening**

- 10.1.** Bids shall be opened by the bid opening committee publicly within three (3) hours after conclusion of bid submission period.
- 10.2.** Bid opening committee shall identify and publicly announce all submitted bids to purchase the subsidiary or the tendered items.



**10.3.** Bid opening committee shall identify and publicly announce highest bid to purchase the subsidiary or the tendered items.

**10.4.** The agency shall sell the subsidiary with the highest bid price.

## **Article 11**

### **Provisional winner background check**

**11.1** Upon submitting the bid, each eligible bidder admits and confirms that if declared provisional winning bidder, then:

- (a) Within two (2) business days of notification in writing that it is declared the Provisional Winning Bidder (as defined in Article 12.1 (a) of the Rules of Tender, the Provisional Winning Bidder shall submit a request in writing to the Kosovo Police, to provide its background information ; and
- (b) Within the deadline defined in Article 12.1 (a) of the Rules of Tender, the Provisional Winning Bidder shall submit to the Agency official documentatation received from Kosovo Police related to the case/cases recorded in official information of Kosovo Police.
- (c) The Agency reserves the rights to check authenticity of official documentation received by the Provisional Winning Bidder from competent bodies.

**11.2.** In the event that after the Background Checks carried out by the Agency result with evidences which find the Provisional Winning Bidder as Prohibited Bidder, then the Agency, respectively the relevant Unit shall:

- (a) Inform the Evaluation Committee with Background Check results that may disqualify the Provisional Winning Bidder and terminate sales procedure of the Subsidiary or Tendered Item in respect of the Provisional Winning Bidder. On disqualification of the Provisional Winning Bidder shall be applied privisions of Article 7.12 of the Rules of Tender, which refer to Registration of an Eligible Bidder.
- (b) return initial payment to provisional winning bidder;
- (c) shall not be held responsible for any subsequent loss or damage caused to provisional winning bidder in question.

**11.3.** Whereas the Agency shall endeavour within its powers to enable rapid background check, such activity is not in Agency's control and consequently the Agency shall not be held responsible for any delay in conclusion of sale of tendered items or any subsequent loss incurred to the provisional winning bidder related to duration of conclusion of background check.

## Article 12

### Announcement of the provisional winning bidder and Payment of purchase price

- 12.1 Subject to any other requirements set out in these Rules of Tender, the Subsidiary shall be sold to the highest bidder on the following terms:
- (a) **Within 3 Business Days** of the Bid Submission Period, the Agency shall notify the Highest Bidder that his bid has been ranked as the highest, whereas the notification on decision declaring the Provisional Winning Bidder or rejection of the sale is announced after the Board approves or rejects the sale and the deposit shall not be refunded unless such decision has been brought.
  - (b) Based on Board's decision, the Agency shall notify that:
    - (i) If the sale is approved, the same is the Provisional Winning Bidder and within 20 business days shall pay the Initial Payment into the Designated Account, or
    - (ii) If the sale is rejected, the bid deposit will be returned to the Highest Bidder in compliance with the Article 8.3 of this Rules of Tender.
- 12.2. If background check does not reveal any evidence that would disqualify provisional winning bidder, the Agency shall communicate the result to him with the invitation to pay 75% (seventy-five per cent) of the highest price in the designated account according to following conditions:
- a) **20 (twenty)** working days from the date of notification, if the highest bid price is lower than 1.000.000 € (one million euro), or
  - b) **30 (thirty)** working days from the day of notification, if the highest bid price is 1.000.000 € (one million euro) or higher.
- 12.3. The Provisional Winning Bidder shall be forfeited the right to complete the purchase of the tendered items as well as the bid deposit by the Agency due to:
- (a) Failing to complete the purchase of Initial Payment into the Designated Account, within the set out deadline
  - (b) Failing to complete the payment of 75% (seventy five percent) of the Highest Bidder into the Designated Account within the deadline set out in Article 12.2 (a) and (b), and
  - (c) Failing to complete the purchase of tendered items in compliance with Article 7.12, (a) and (b) of the Rules of Tender, which refers to the revoke of Registration of an Eligible Bidder,
- 12.4 Exclusively, eligible bidders shall have their bid deposit returned if ascertained the existence of threat, coercion or any other criminal act against him or his asset, against his family in order to force him to withdraw from the bid, only if an act of accusation is filed and confirmed or a proposal for act of accusation is filed against a person suspected of having been engaged in a criminal act or similar criminal acts.

- 12.5 Means utilized by the provisional winning bidder to pay the highest bid price is not done in cash and must not have the origin of any jurisdiction on the black FATF list.
- 12.6 In the event that the Agency disqualifies the Provisional Winning Bidder (as defined in the Rules of Tender), the Agency shall notify the Second Highest Bidder to complete the purchase of the subsidiary at the Highest Bid Price.
- 12.7 The Second Highest Bidder within three (3) business days shall:
- (a) Notify the Agency in writing that wants to proceed with the purchase of the subsidiary at the highest bid price, and
  - (b) Transfer the Bid Deposit to a bank account designated for that purpose by the Agency, in case the bid deposit has been repaid to the Second Highest Bidder in accordance with Article 8.3 of the Rules of Tender.
- 12.8 If the Second Highest Bidder does not undertake actions under Article 12.7 (a) and (b) then the Agency reserves the right to consider it as refusal to notification to complete the purchase of the subsidiary.
- 12.9 If the Second Highest Bidder does not want to proceed with the completion of purchase of the subsidiary at the highest bid price, then the Agency shall proceed with the third highest bidder with the offer to purchase the subsidiary with the highest bid price.
- 12.10. Rules of Tender that apply to the First Highest Bidder shall also be applied identically for the Second Highest Bidder. The Rules of Tender applied to the first and the second highest Bidder shall be applied identically for the Third Highest Bidder.
- 12.11 Without limiting the generality of section 17.1 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 to the Highest Bidder, the Second Highest Bidder or the Third Highest Bidder of the Tendered Items is not achievable, in accordance with Rules of Tender, then the Agency shall be entitled to postpone or cancel the Tender as it sees fit

## **Article 13**

### **Classification of bids with same price**

If there are two or more bids submitted by eligible bidders with same prices then priority is awarded to the bid that was submitted first.

## **Article 14**

### **Modification and bid withdrawal**

- 14.1.** After submitting the bid in the Agency or in the designated place by the Agency, the bidder can not modify in any aspect his bid.
- 14.2** Bidder can not withdraw his bid after its submission to the Agency or in a place designated by the Agency. In case the bidder withdraws his bid after its submission, his bid deposit shall be confiscated, except the cases when the bidder withdraws its bid as set down under Article 12.4 of the Rules of Tender.

## **Article 15**

### **Sales contract negotiations**

- 15.1.** The Agency and provisional winning bidder shall make reasonable endeavours to sign sales contract within 90 (ninety) working days from the official notice to the winning bidder on his selection by the Agency.
- 15.2.** The Agency may, at its discretion by notifying the provisional winning bidder, extend the term stipulated in article 15.1 in case it believes it is reasonably necessary to review any aspect of sale contract or due to other circumstances resulting in delay as for example background check for provisional winner.
- 15.3.** Provisional winning bidder should endeavour to undertake necessary actions to close tender process including actions related to sale contract closure.
- 15.4.** Negotiations between the Agency and provisional winning bidder related to sale contract shall be avoided and provisional winning bidder must not require modification of highest bidding price, tendered items, terms and content of contract or any such action.
- 15.5.** If the negotiations between the Agency and provisional winning bidder related to sale contract are unsuccessful (pursuant to reasonable opinion of the Agency), within the timeframe stipulated in article 15.1 or after any extension of such deadline, the Agency shall:
- (a) have the right to determine the inability to accomplish the sale of tendered items to provisional winning bidder;
  - (b) the Agency shall notify the provisional winning bidder regarding termination of negotiation process and all the amounts paid by the provisional winning bidder, excluding bid submission fee shall be returned to the provisional winning bidder. If the Agency deems the provisional winning bidder did not endeavour to undertake necessary actions to close the tender as stipulated in article 15.3 of Rules of Tender, then bid deposit shall be confiscated from the provisional winning bidder; and

- (c) The agency may, at its discretion , contact next eligible bidder and invite him to purchase tendered items with highest bidding price. In such occasions, provisions of article 12 of Rules of Tender shall be applied accordingly that are related to second and third highest bidders.

## **Article 16**

### **Signing sales contract**

- 16.1.** Sales contract and any other related document shall be signed by one authorized representative of the Agency and one authorized representative of the provisional winning bidder.
- 16.2.** Sales contract and other related documents shall be signed by parties, only after having paid the total amount of highest bidding price and after concluding payments and eventual liabilities related to tender process.

## **Article 17**

### **Postponement and tender cancellation**

- 17.1.** The Board, at its discretion , may postpone and cancel the tender at any moment for any reason.
- 17.2.** Not limiting the generality of article 17.1 and without any prejudice to any other reason for postponement or cancellation of tender set out in Rules of Tender, the Board may decide to postpone or cancel the tender in the following circumstances:
  - (a) if during bid submission period no bids have been submitted that satisfy the criteria and terms stipulated by Rules of Tender
  - (b) if during bid submission period less than three bids have been submitted
  - (c) if, in accordance to Board opinion, highest bid price does not correspond rationally to the perceived value of tendered items. In this case the Board may postpone declaring the provisional winner until later date.
  - (ç) if the Agency received indications or has doubts regarding any collusion between bidders or any other illegal or irregular activity caused in relation to tender process.
- 17.3.** In cases when tender was cancelled due to any reason then:
  - (a) The Agency notifies in written three bidders with highest bid price regarding such cancellation;
  - (b) All admitted bid deposits and any means received by the Agency, besides bid submission fee, shall be returned by the Agency within 15 working days upon cancelling the tender with regard to bid

deposits that shall not be returned by the Agency to any bidder whose bid deposit has been confiscated as stipulated in Rules of Tender.

- (c) The Agency shall not be held responsible for any cost or liability arising to any bidder or any third party;

## **Article 18**

### **Rights reserved by the Agency**

#### **18.1.        Amendments to time limits**

Agency Management may at its discretion extend limits set out in Rules of Tender upon its belief that more time is needed in order to successfully conclude the sale of tendered items or as result of new objective circumstances.

#### **18.2.        Amendments to tender requirements**

The Agency reserves the right to make amendments, modifications or terminate any procedure set out in these rules of tender, at any moment during tender, without prior notice and without any cost or responsibility to the Agency. Amendments in these rules of tender shall be made in written and made public and a copy of amended rules of tender shall be delivered to each eligible bidder.

#### **18.3.        Rejection of the winning bidder**

If the Agency reveals that information provided in the application by the provisional winning bidder for registration as eligible bidder or any other information of the provisional winning bidder is false, the Agency may reject a bid of provisional winning bidder and terminate tender procedure related to him. Bid deposit shall be confiscated from the provisional winning bidders. In such occasions, the Agency may contact the next eligible bidder and invite him to declare himself whether he wishes to purchase tendered items with the highest bid price. In that case provisions of article 12 of Rules of Tender shall be applied accordingly that is related to the second and third bidder.

#### **18.4.        Contractual relationship**

- (a) The purpose of the Rules of Tender is not to constitute an agreement between the Agency and bidders. Consequently, it shall not be deemed any contract exists between the Agency and a bidder only due to participation of such bidder in any aspect in the tender. There shall not exist any legal-binding relationship between the Agency and the provisional winning bidder until sales contract comes into force, therefore the Agency or SOE shall not have any binding relationship to the provisional winning bidder. The Agency has the discretion to approve Provisional Winning Bidder's eventual request to provide security / posting security guards to secure and protect Tendered Items. Agency's approval does not constitute an contractual relationship between the Agency and Provisional Winning Bidder, and therefore, the Agency shall not be held responsible for any costs or liabilities with regard to this matter.

(b) Share Sale contract for the subsidiary is deemed to enter into force upon signature by both parties, by the Agency and authorized representative of the buyer. Upon signing the sales contract by the abovementioned parties, the bidder shall be considered buyer of the subsidiary or the tendered items.

**18.5.            *Language***

Rules of Tender are approved in Albanian, Serbian and English.

**18.6.            *Occasions for cancelling the sales contract***

The Agency may cancel sales contract as in following:

- a) If ascertained that means utilized by the provisional winning bidder to purchase tendered items are generated directly or indirectly from an illegal activity;
- b) If ascertained that during tender process, the buyer has been included in collusion; or,
- c) If ascertained that basic provisions of Rules of Tender have been avoided or violated.

**ANNEX A**

**“TENDER SCHEDULE”**

**Summary of tender schedule**

<i>Date</i>	<i>From</i>	<i>Until</i>	<i>Duration</i>
<b>Publication of tender notice</b>	20 April 2012		
<b>Due diligence visits</b>			
<b>Pre-qualification deadline</b>	18 June 2012		
<b>Pre-qualification evaluation</b>	21 June 2012		
<b>Site visits and Q&amp;A session with the pre-qualified bidders</b>	27 June 2012		
<b>Bid submission</b>	20 July 2012		10:00-12:00
<b>Confirmation/Assessment of bids and identification of highest bid price</b>	20 July 2012		3-4 hours
<b>Informing eligible bidder on tender results</b>			
<b>Sales Contract Negotiation with the provisional winning bidder</b>			90 days
<b>Transfer of shares, signing of the sale contract</b>			



**ANNEX B – BID PRICE STATEMENT**

**“Bid Price payable to the Agency by the Provisional Winning Bidder”**

Full name of Eligible Bidder: .....

Number of Eligibility Registration:.....

Name of NewCo (subsidiary):.....

**BID PRICE – INSERT BID PRICE IN FIGURES INTENDED TO PAY FOR THE SUBSIDIARY**

Hundreds of Millions	Tens of millions	Millions	Hundreds of Thousands	Ten s of thousands	Thousands	Hundreds	Tens	Units

**IN WRITTEN**

\_\_\_\_\_

**NOTE:**

- IN CASE OF ANY DISCREPANCY IN THE TABLE BETWEEN THE AMOUNTS IN WRITTN TO THE AMOUNT IN FIGURES, THE AMOUNT IN WRITTEN SHALL PREVAIL AND SHALL BE TREATED AS BID PRICE.

- IN CASE THE AMOUNT PRESENTED IN WRITTEN IS UNREADABLE OR UNCLEAR, WHEREAS THE AMOUNT IN FIGURES IS READABLE AND CLEAR, THE AMOUNT IN FIGURES SHALL BE TREATED AS BID PRICE.

- IN CASE THE AMOUTN PRESENTED IN FIGURES AND THE AMOUNT IN WRITTED ARE UNREADABLE AND/OR ILLEGIBLE, THE BID SHALL BE DISQUALIFIED.

**- IN CASE THE BIDDER DOES NOT PRESENT THE BID PRICE, IN WRITTEN AND IN FIGURES, HIS BID SHALL BE DISQUALIFIED.**

.....  
Signature for and on behalf of Eligible Bidder

This signature confirms that eligible bidder accepts abovementioned notes and agrees to oblige to the statement herein.

Name & Surname: .....

Date: .....

## ANNEX C

### “BID SUBMISSION FORM”

**THIS PAPER MUST BE PLACED IN AN ENVELOPE OTHER THAN BID PRICE (IN COMPLIANCE TO ARTICLE 8.3 (a) (i) OF THESE RULES OF TENDER)**

**To:** Privatisation Agency of Kosovo  
Ilir Konushevci No. 8  
Prishtina  
Republic of Kosovo

Dear Sirs,

**Full name of eligible bidder:** .....  
**Number of Eligibility Registration:** .....  
**Name of NewCo (Subsidiary):** .....

All the terms in this form beginning in capital letter shall have the same meaning as defined in these rules of tender except unless otherwise defined. Eligible bidder confirms his bid for the subsidiary.

**Attached hereto:**

DOCUMENT	ATTACHED – YES OR NO?
Copy of Form for registration of liquidation eligibility;	
Proof of transfer of Bid Submission Fee to the account designated by the Agency.	
Proof of transfer of Bid Deposit to the account designated by the Agency.	
The original letter duly signed by or on behalf of the bidder declares that the bidder agrees to assume contractual obligations summarized in Annex D and F.	

The Eligible Bidder (named above), by submitting this bid acknowledges and confirms the following:

- it is bound by the terms and conditions set out in the Rules of Tender.
- Bidder agrees to assume obligations summarized in Annex D and F of these Rules of Tender and in the Sale Contract.
- it is not a Prohibited bidder for the purposes of these Rules of Tender
- It has accepted and read the Information Memorandum for the subsidiary .
- It been informed of the existence of electronic files containing information and significant documentation including the document called “Certain document and other risks” in relation

to Socially-Owned Enterprise and Tendered Items which may affect his decision to submit the bid and/or bid price.

- It was given the opportunity and conditions were enabled by the Agency for him to visit the electronic file.
- The Agency shall complete the sale of the Subsidiary only with the highest bid price.

.....

**Signature**

**For and on behalf of the eligible bidder**

**Name: .....**

**Date: .....**

## **ANNEX D**

### **TERMS OF SPIN OFF BID**

#### **A. Obligations**

Obligations below and mechanisms for fulfilling these obligations, will be included in the Rules of Tender herein and Sale Contract:

- The Winning Bidder or the future owner of NewCo “Hotel Onix Banja e Pejes & SPA” L.L.C. is obliged to undertake all necessary actions (required investments) which shall impact the well-being and further development as well as enhance offering services within enterprise domain (activity) with regard to maintaining the continuity of current business activity for at least 3 (three) years

In case of any default by the Winning Bidder/Buyer to these obligations set out in Rules of Tender herein and Sale Contract, Agency’s Board of Directors or its legal predecessor, may execute contractual penalties which shall include 30% of the sale price of NewCo “Hotel Onix Banja e Pejes & SPA” L.L.C, at any given time during the foreseen period for the fulfillment of the contractual obligations.

Details regarding the rights and obligations between parties shall also be presented in the Sale Contract.

## **ANNEX F**

### **MONITORING FULFILLMENT OF CONTRACTUAL OBLIGATIONS**

Winning Bidder or Buyers accepts the responsibility to continue and maintain current business activity for at least 3 years. Fulfillment of these obligations shall be monitored by the Agency or its legal predecessor, as in following:

- Buyer is obliged to report in written to PAK or its legal predecessor, for the continuance and maintenance of same business activity, according to six (6) months reporting period from the day of signing the Sale Contract, until the decision of the Board of Directors of the Agency or its legal predecessor, for the release from contractual obligations or execution of penalties in case of non fulfillment of contractual obligations

During the monitoring period, PAK or its legal predecessor, in special circumstances, has the right to meetings and irregular visits to privatized enterprise, with prior notice of 24 hours. The purpose of the meetings and visits is verification of fulfillment of obligations and contractual terms.

Situation verification in general by PAK or its legal predecessor, does not exclude the possibility of verification of the situation by other public bodies of Republic of Kosovo.

In case of any default by the Winning Bidder / Buyer to these obligations set out in Rules of Tender herein and Sale Contract, Agency's Board of Directors or its legal predecessor, may execute contractual penalties which shall include 30% of the sale price of the Subsidiary.

Annex E

**Form P1**  
**Pre-qualification declaration**

[Using the form below, offer information that confirms the fulfillment of the required criteria to participate in this tender. **This form has to be filled by each participant and submitted to PAK, supported with relevant evidence of experience or certificates, accordingly]**

Deklaration of fulfillment of required pre-qualification conditions	
<b>1. Management of X Hotels and/or SPA</b>	
1.A. Name, place	Dates of operations
1.B. Name, place	Dates of operations:
1.C. Name, place	Dates of operations:
<b>2. Minimum annual turnover of 3 (three) million EUR and a minimum of 20% of total revenues should come from the required business activities (as specified in these RoT) for at least each of the 3 consecutive years</b>	
2.A. Audited Financial statements as specified in RoT	Period:
<b>3. Senior Management Expert with at least 10 years of experience in management/operations of at least two similar projects (hotel/spa)</b>	
3.A. Name and position:	Dates of engagement:
3.B. Name and position:	Dates of engagement:
<b>Key medical expert with at least 10 years of experience in rehabilitation/therapy treatments</b>	
3.A. Name, position and qualification:	Dates of engagement:
3.B. Name, position and qualification:	Dates of engagement:

***Note: Valid documents used as proof can be, but not limited to: diplomas, certificates, CV, references, contracts, brochures, catalogs and other marketing materials, annual reports and other reports generated for institutions reporting needs, that prove the required experience and that meet the pre-qualification conditions required by these Rules of Tender.***

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