

REQUEST FOR PROPOSAL: VOL II  
PROFORMA LEASE DEED  
BARUIPUR THEME TOWNSHIP, WEST BENGAL  
JANUARY, 2017

**WEST BENGAL HOUSING INFRASTRUCTURE  
DEVELOPMENT CORPORATION LIMITED** "HIDCO  
BHABAN", Premises No: 35 - 1111, Major Arterial Road, 3rd Rotary, New Town,  
Kolkata-700156

**Request for Proposal No. /H16IDCO/Plng/656(A)/2015 Dated 02-01-2017**

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## **APPENDIX: PROFORMA LEASE DEED**

**THIS DEED OF LEASE** made this [•] day of [•], Two Thousand and Sixteen

**BETWEEN**

**GOVERNOR OF WEST BENGAL**, represented by [•], [•], Urban Development Department, having its office at [•], hereinafter referred as the “**LESSOR**” (which expression shall unless excluded by or repugnant to the subject or context be deemed to include its successors, successors-in-interest and assigns) of the **FIRST PART**

**AND**

[•], a Company incorporated under the Companies Act, 1956/2013 having its registered office at [•], hereinafter referred to as the “**LESSEE**” (which expression shall unless it be repugnant to the context or meaning thereof mean and include its successor or successors-in-office and/or permitted assigns) of the **SECOND PART**:

**AND**

[•], a company incorporated under the Companies Act, 1956/ 2013, having its registered office at [•], hereinafter referred to as the “**SELECTED BIDDER**” or “**CONFIRMING PARTY**” (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include its successors and/or permitted assigns) of the **THIRD PART**

**OR**

*(where the Selected Bidder is a consortium)*

[•] a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at [•] (hereinafter referred to as the “**Lead Member**” which expression shall, unless repugnant to the context include its successors and permitted assigns) **AND** [•] a company

incorporated under the Companies Act, 1956/ 2013 and having its registered office at [•] (hereinafter referred to as the “**1<sup>st</sup> Consortium Member**” which expression shall, unless repugnant to the context include its successors and permitted assigns) **AND** [•] a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at [•] (hereinafter referred to as the “**2<sup>nd</sup> Consortium Member**” which expression shall, unless repugnant to the context include its successors and permitted assigns), hereinafter collectively referred to as the “**SELECTED BIDDER**” or “**CONFIRMING PARTY**” of the **THIRD PART**.

**WHEREAS:**

- A. The Lessor is seized and possessed of and/or otherwise well and sufficiently entitled to **ALL THAT** piece and parcel of land containing an area of [•] acre more or less, situate at [•], fully described in the schedule being **SCHEDULE - A hereunder** written and hereinafter referred to as the “**said Project Area**”.
- B. Bids were invited by the Government of West Bengal acting through West Bengal Housing Infrastructure Development Corporation Limited (hereinafter referred as ‘**WBHIDCO**’), a Government Company within the meaning of Section 617 of the Companies Act, 1956, for development of Uttam Township at Baruipur [[•] Mouza] in the [•] Planning Area on lease of the said Project Area vide Request for Proposal vide RfP No. [•] dated [•]. The Theme for the Township has been fixed “Wellness and Health City” with a focus on provision for senior citizens.
- C. The scope of work for the Project as enumerated in the RFP broadly include:
  - a. Development of the Uttam Township as a Theme Township in compliance with the Township Policy/ Rules of Government of West Bengal, applicable development rules and guidelines, conceptual master plan and other terms and conditions of the bid as laid down in the RFP dated 05.10.2016.
  - b. Preparation of Master Plan, Detailed Project Report (the “DPR”) consisting of detailed architectural drawings, sanctionable building plan and other related documents, namely procedure and methodology for construction, quality assurance plan and engineering & construction time schedule. The DPR should conform to minimum developmental requirements as provided in the RFP. The DPR should be prepared according to extant building rules (read with land use plan, if any). It is made clear that notwithstanding anything contained in this document, the provisions of extant building rules and regulations will prevail. The DPR should contain the requirements for the EWS units, Non Residential

Thematic Development Zone and the Commercial Development Area of the Project.

- c. Obtaining approval of the DPR from WBHIDCO/Lessor and/Independent Engineer/ third parties engaged by WBHIDCO/Lessor for this purpose.
- d. Obtaining all statutory approvals and sanctions from the appropriate authorities. All costs and fees payable for such approvals and sanction shall be paid and borne by the Selected Bidder.
- e. Construction of the EWS and Non Residential Thematic Development Economic Zone as per the approved DPR and as per the Project Milestones and in conformity to the Township Policy with requisite Urban Infrastructure Amenities and Infrastructure Facilities within a period of 8 years from the signing of the Lease Agreement..
- f. Construction of the other portion of the project provided however at no point of time the minimum norms as per the Township Policy shall be violated.
- g. Post completion of construction of the residential/ commercial development area, till formation of any apartment owners association, residents welfare association, cooperative society or management company by the unit holders for the purpose of operation and maintenance of the common infrastructure of the residential/ commercial development area and taking over such responsibility by such association, society or company, the Selected Bidder shall also be responsible for the operation and maintenance of the Residential/Commercial Development Area on its own and without any financial liability to the Lessor.
- h. Operation & maintenance of the common infrastructure of the project including road, water, sewerage, drainage etc till the transfer of the same to the Agency/ ULB notified by the Lessor provided that such transfer shall not be notified till the completion of the Minimum Development Obligation as per the approved DPR and the Township Policy.
- i. The following specific stipulations will be followed by the Selected Bidder:
  - o 25 % of the total residential units in the township shall be EWS units
  - o 6% of the land of township has to be reserved for EWS
  - o The maximum consideration of a EWS Dwelling Units shall not exceed Rs 3 lacs. The selection of beneficiaries shall be carried out by the Lessor as per the policies of the State. However the proceeds of the same shall accrue to the Lessee.
  - o 25% of the Project Area (i.e. "Project Area" as defined under Rule 2 (h) of the West Bengal Town and Country (Development of Township Projects) Rules 2008) shall be

developed as “Basic Urban Infrastructure facilities” as defined under 2(e) of the West Bengal Town and Country (Development of Township Projects) Rules 2008), for non - residential purposes and for job oriented economic activities;’ out of which, an area equivalent to not less than 25% of the net project area shall pertain to the Theme of the Township

- All other town planning norms and other terms & conditions required for carrying out township project under the West Bengal Town & Country Planning (Development of Township Project) Rules 2008 read with subsequent amendments to be followed.
- D. The Selected Bidder participated in the said bidding process and e-auction and the Financial Quote of the Selected Bidder being the highest bid so received for lease of the said premises from the qualified bidders, the said bid was accepted subject to the Selected Bidder complying with terms and conditions contained in the document of Request for Proposal.
- E. In terms of the bid, the Selected Bidder was issued a Letter of Intent (hereinafter referred to as “LoI”) dated [•] *inter alia* for payment of 10% of the Financial Bid and applicable Service Tax within 30 days from the date of issuance of the LoI and payment of 90% of the Financial Bid plus applicable Service Tax within 360 days/720 days (*as applicable*) of the date of the LoI alongwith Delayed Payment Charges..
- F. The Selected Bidder has since promoted and incorporated the Lessee being [•], as a limited liability company under the Companies Act, 2013 and has requested the Lessor to accept the Lessee which shall undertake and perform the obligation of the Selected Bidder and exercise the right of the Selected Bidder including the various obligations referred to in the LoI and exercise the right to obtain Lease in its favour from the Lessor upon payment of the entire Financial Bid, being the premium reserved for grant of lease.
- G. By its letter dated [•], the Lessee has also joined in the said request of the Selected Bidder to the Lessor to accept it as an entity which shall undertake and perform the obligation and exercise the rights of the Selected Bidder including the various obligations referred to in the LoI and exercise the right to obtain Lease in its favour from the Lessor upon payment of the

entire Financial Bid, being the premium reserved for grant of lease. The Lessee has further represented that it has been promoted by the Selected Bidder for the purpose hereof.

- H. The Selected Bidder / Lessee has since prepared a Master Plan and Detailed Project Report (the "DPR") consisting of detailed architectural drawings, sanctionable building plan and other related documents, namely procedure and methodology for construction, quality assurance plan and engineering & construction time schedule.
- I. The Selected Bidder and the Lessee has warrant and represent as follows :
  - a. The DPR conform to minimum developmental requirements as provided in the RFP.
  - b. The DPR has been prepared according to extant building rules (read with land use plan, if any).
  - c. The DPR contains the requirements for both the EWS units, Non Residential Thematic Development Zone as well as development of the balance area of the Project in conformity with the requirement of the RFP.
  - d. Phases in which development has to be made has been clearly stated in the DPR prepared by the Lessee as approved by the Lessor.
  - e. It has clearly defined the Residential, Basic Urban Infra Amenities, Basic Urban Infra Facilities, Non Residential Thematic Economic Zone and other allied facilities to be developed in each phases.
- J. The Lessor has on [•] approved the DPR prepared by the Selected Bidder /Lessee and the said DPR is being made part of this Lease Deed and detailed DPR is more particularly described in the Schedule C herein.
- K. The Lessor is authorised to accept the premium reserved for grant of lease on its behalf. The Selected Bidder and/or Lessee has since paid to the Lessor the entire premium reserved for grant of lease and has now become entitled to a lease of the said Project Area from the Lessor.
- L. The Selected Bidder has joined in as a confirming party in this Lease Deed to confirm that being the Selected Bidder and a shareholder of the Lessee, it shall conform to the terms and conditions of the RFP and this Lease Deed, as may be applicable to it. The Selected Bidder

shall be jointly and severally liable for the execution of the Project in accordance with the terms of this Lease Deed.

M The Lessor has now agreed to grant to the Lessee a lease of the said Project Area for a period of 99 (ninety nine) years from the date of signing of the Lease Agreement on the terms and conditions as hereinafter contained.

**NOW THIS DEED OF LEASE WITNESSETH** as follows:

I. In consideration of a premium of Rs. [•] /- (Rupees [•] only) paid by the Lessee to the Lessor at or before the execution of these presents (the receipt whereof the Lessor doth hereby admit and acknowledge) and in further consideration of the rent hereby reserved and of the terms, conditions and covenants hereinafter contained and on the part of the Lessee to be paid, observed, performed and fulfilled, the Lessor doth hereby demise unto the Lessee **ALL THAT** piece and parcel of land containing by measurement an area of [•] acre more or less, situate at [•], fully described in the schedule being **SCHEDULE - A** hereunder written and delineated in the map or plan hereto annexed and thereon bordered red and hereinafter referred to as the "**said Project Area**" (which expression shall, wherever the context so requires or permits, also mean and include the buildings to be constructed thereon) **TO HAVE AND TO HOLD** the same unto the Lessee for a period of 99 (ninety nine) years commencing from the date of signing of this Lease Deed [•] (hereinafter referred to as the "**date of commencement of lease**" and/or "**effective date**") **YIELDING AND PAYING THEREFOR** unto the Lessor during the said term an annual lease rent calculated at the rate of Re. 1/- (Rupee One only) per acre per annum from the date of commencement of lease (hereinafter referred to as the "**rent**") without any deduction or abatement whatsoever on or before the 7th day of the April every year of the demise for which the same is paid.

**IA. With this Lease Deed the** Lessor has agreed to hand over vacant and peaceful possession of the said Project Area to the Lessee on completion of the registration of the Lease Deed-

IB. The Lessee shall be handed over the possession of the Project Land for the Township on a As-Is-Where-Is Basis, 'Caveat Emptor' and 'No Complaint' basis only

**II. AND THE LESSEE DOTH HEREBY COVENANT WITH THE LESSOR as follows:**

2.1 To regularly and punctually pay the rent herein reserved to the Lessor on the days and in the manner herein mentioned without any deduction or abatement whatsoever.

2.2 To pay and discharge all existing and future municipal /panchayat rates, taxes, revenues, assessments, impositions and outgoings (including interest and penalties in case of delayed payment) whatsoever which now are or during the said term shall be imposed or charged upon the demise of the said Project Area and which may be payable by the owner or occupier thereof whether in respect of the demise hereby created, the land comprised in the said Project Area or the building(s) to be erected thereon.

2.3 To develop the Township Project in line with the requirement of the RFP by starting construction of the building(s) and amenities on the said Project Area including the EWS Dwelling Units, other Residential Units, Basic Urban Infrastructure Amenities, Basic Urban Infra Facilities, Non Residential Thematic Economic Zone and other allied facilities as may be allowed by the municipal and appropriate authorities and in terms of the RFP within [•] ([•]) years from the date of LoI subject to it complying the terms and conditions of the West Bengal Town & Country (Planning & Development) Act 1979 including amendments thereof, Township Policy of West Bengal, all applicable rules & regulation in force, Lease Deed, DPR and in accordance with the plans sanctioned and specifications to be approved by the appropriate authority / body and according to the rules and regulations framed for the use of the said Project Area and to complete construction thereof to the satisfaction of the Lessor within a period of 8 (eight) years from the date of signing of the Lease Agreement PROVIDED HOWEVER that the Lessor may extend the timeline by another 2 years in case of exceptional circumstances. FURTHER PROVIDED HOWEVER that upon failure of the Lessee to comply with such covenant to commence and complete construction of the



building(s) within the time originally fixed or as may be extended by the Lessor, the lease shall be liable to be terminated by the Lessor and the Lessor entitled to re-enter into or upon the said Project Area and obtain possession thereof.

2.4 To comply with and follow all applicable laws, rules and regulations for construction and use, enjoyment and possession of the demised premises and the building(s) to be erected thereon [including but not limited to the Land Use Development and Control Plan (LUDCP) / the Building Rules of the concerned Corporation / Municipality / Panchayat any other Local Authority] and to be solely answerable and responsible for all breaches and/or defaults in compliance thereof and to keep the Lessor saved harmless and indemnified for all losses claims and demands which the Lessor may suffer or be put to by reason of any breach or alleged breach of this covenant.

2.5 To obtain at its own cost all permissions and licences approvals from Governmental Authorities and other Statutory bodies which may be necessary to make construct, erect, hold, use and/or enjoy the development on the demised premises and operate and maintain the Project in accordance with the terms of the Lease Deed and Applicable Laws within 6 months from the date of issuance of LoI unless otherwise extended by the Lessor in exceptional circumstances and observe and perform all laws, rules and regulations which may be required to be observed and performed by it, at its own costs and responsibility, keeping the Lessor saved harmless and indemnified in this regard. The Lessor may, on no recourse basis, render all assistance in obtaining such approvals and sanctions. Failure of obtaining all permissions and licences approvals from Governmental Authorities and other Statutory bodies which may be necessary to make construct, erect, hold, use and/or enjoy the development within the stipulated time period may result in cancellation of LoI and forfeiture of Bid Security/ Performance Security.

2.6 To keep the demised premises and the building(s) thereon in a neat and clean manner and hygienic condition free from all sorts of nuisance and not to allow accumulation of any water, waste, dirt or garbage in any part thereof which is or can be a risk to the health of the occupants of the demised premises and the building(s) thereon or of the nearby properties at any time.

2.7 To maintain and keep all structures to be erected on the said Project Area in good and habitable condition.

2.8 To make all arrangements for security, fire fighting and fire safety and all necessary civic facilities and amenities as may be required for preservation and protection of the said Project Area at its own cost and to the satisfaction of the Lessor and to carry out regular maintenance and replacement of electrical wirings, installations and appliances thereat.

2.9 To allow the Lessor, its agents and servants with 24 hours' previous notice in writing (except for emergencies when no such notice would be required) to enter into and upon the said Project Area and all structures thereon and view the state and condition thereof and to give or leave notice of any defect in such condition which the Lessee shall be liable to make good within 15 days after such notice has been given or left.

2.10 To make regular payments for consumption of electricity, water and other services and/or utilities supplied to or obtained for the said Project Area and to keep the Lessor saved harmless and indemnified in this regard. In the event there are any amounts outstanding with respect to water and electricity or any other utilities or facilities or services consumed or availed for the said Project Area on the expiry or sooner determination of this Lease Deed, the Lessee shall be liable to make payments for the same to the concerned authority notwithstanding the expiry or determination of this lease.

2.11 To execute to the satisfaction of the Lessor all works and observe and perform all such rules and conditions which shall appear to the Lessor or to the appropriate authorities of the State to be necessary or desirable in order to keep the said Project Area in good sanitary order and condition.

2.12 To take steps to ensure that no third party may encroach into or upon any portion of the said Project Area or the building(s) to be erected thereon.

2.13 To pay the applicable development fee to the Lessor or such other Governmental Authority as may be prescribed under Applicable Law.

2.14 To allow any person authorised by the Lessor to inspect, repair and clean sewer lines and/or manholes or to do any other works in connection therewith, within the said Project Area without any obstruction or hindrance by the Lessee or by any of its men and agents.

2.15 To develop the township in compliance with the DPR approved by the Lessor and ensure phase wise development in a manner such that the development of each phase shall conform to the minimum provisions of the township policy/ rules, applicable development control regulation, land use, development control plans as may be applicable, rules & regulation of the concern Municipality and the DPR approved by the Lessor.

2.16. To undertake marketing activities, at its own costs and expenses of the Built-up Project Area to intending end-users and make its best endeavours in this regard.

2.17. To purchase and maintain, at its cost and expense, such insurance as are necessary, including but not limited to the following:

- Builder's all risk insurance;
- Loss, damage or destruction of the development facilities and services, at replacement value;
- Comprehensive third party liability insurance including injury or death to personnel of the Lessor and others who may enter the Site;
- Workmen's compensation insurance;
- Storage cum erection insurance; and
- Any other insurance that may be necessary to protect the Lessee, its employees and its assets against loss, damage or destruction at replacement value including all Force Majeure events (as defined in the Lease Deed those are insurable).

The Lessee shall, from time to time, provide to the Lessor, copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Lessee in accordance with this Agreement.

The Lessee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid and furnish copies of the same to the Lessor. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 days' clear notice of cancellation is provided to the Lessor in writing. If at any time the Lessee fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the

Lessor, may at its option, purchase and maintain such insurance and all sums incurred by the Lessor, therefore, shall be reimbursed by the Lessee forthwith on demand, failure of which shall amount to event of default on the part of the Lessee.

2.18. To develop and/or procure all internal infrastructure linkages required for the Project including but not limited to road, electricity supply, water supply, waste water and solid waste disposal and storm water drainage. The Lessor will facilitate for the provisions with respective Government department and agencies at no cost to itself and it shall be the responsibility of the Lessee to fulfill any monetary or other compliances as may be required by such Government Department and Agencies.

2.19. To bear all expenses and cost of the Project including but not limited to preparation of Master Plan, DPR, obtaining approvals for the Project, construction, supervision and transfer to end users.

2.20. To regularly and punctually make payment of the fees and/or charges of the Professional Team and Building Contractor, as may be necessary and/or required for the purpose of the development of the Project Area.

2.21. To clear, upon the completion of the development of each phase of the Project, such area of the Project Land of debris and remove unused materials, machinery and equipment that are not required and clear such area of the Project Land, if all temporary structures, site offices, labour campus, utility lines and other temporary constructions erected and constructed for the development of the Project and which are not required for any purpose.

2.22. To operate and maintain, at its own cost and expenses, the common infrastructure and facilities in any commercial/residential complex in any part of the said Project Area post completion of construction thereof, till formation of any apartment owners association, residents welfare association, cooperative society or management company by the unit holders for the purpose of operation and maintenance of the common infrastructure and facilities of the residential complex and taking over such responsibility by such association, society or company.

2.23. To operate & maintain of the common infrastructure of the project including road, water, sewerage, drainage etc till the transfer of the same to the Authority/ Agency/ ULB notified

by the Lessor provided that such transfer shall not be notified till the completion of the Minimum Development Obligation, Basic Urban Infrastructure Amenities as per the approved DPR.

2.24. To develop and set up the Core Infrastructure and other development for different phases of the Project as per the DPR containing minimum requirement as provided in clause C of the recital.

2.25. To comply, in addition to the above provisions, with the restrictions and guidelines more fully stated in schedule being **SCHEDULE – B** hereunder and the development shall be in compliance with the DPR more particularly described in **SCHEDULE – C** hereunder.

2.26. Not to use or allow the said Project Area or any part thereof or any construction thereon for any illegal or immoral purposes or for any noisy or offensive trade or business.

2.27. Not to amalgamate the said Project Area or any part thereof with any other plot or plots of land without the prior written permission of the Lessor.

2.28. Not to remove any earth from the said Project Area for any purpose other than for the purpose for which the land is demised, which earth should be used for re-filing of trenches excavated for construction and not to cause any damage or depreciation to the said Project Area.

2.29. Not to bring in or store or allow to be brought in or stored in the said Project Area or any part thereof any hazardous inflammable combustible or explosive substance or any hide, skin or other articles likely to injure or damage the said Project Area and/or the structures to be constructed thereon and not do or allow to be done on the said Project Area anything that may deteriorate the value of the said Project Area or injure the same in any way, except in accordance with law.

2.30. Not to allow the said Project Area or any construction thereon to be used in a manner which is not in conformity to the RFP

2.31. Not to assign and/or transfer its right or interest in the demised premises or any part thereof (except by way of sub-lease, sub-letting or any other mode or manner not amounting to a complete assignment of Lessee's right title and interest in the said Project Area as described hereinafter in clause 3.2) without previous approval in writing of the Lessor. A transfer or assignment which is restricted hereby shall also include transfer or assignment by way of

amalgamation, reconstruction or any other mode or manner by which the leasehold interest of the Lessee is transferred to any other person, without the approval in writing of the Lessor with necessary concurrence of the Government of West Bengal first had obtained Provided However That the Lessee shall have the right to mortgage or charge its leasehold interest in favour of Scheduled Banks/ Financial Institutions. Once such financial facilities are sanctioned, a copy of the Loan Agreement(s) is to be provided by the Lessee to the Lessor and WBHIDCO. In case of default in making due payment of the financial facilities by the Lessee in terms of such Loan Agreement(s), such Scheduled Banks/ Financial Institutions shall have the right to substitute the Lessee and appoint a new Lessee at the place and stead of the defaulter Lessee, as per the terms prescribed by the Lessor and/ or WBHIDCO provided however that such substitute agency shall also fulfill the technical and financial qualification prescribe herein and substitution shall be carried out with the consent of the Lessor and on completion of such documents as may be prescribed by the Lessor

2.32. Not to encroach or allow or suffer any encroachment to be made upon the adjoining roads or any portions of lands surrounding the said Project Area or upon any other adjoining land whatsoever.

2.33. Not at any time during the term of this lease, to open or work or dig any quarries for clay, gravel or sand, in upon or under the said Project Area and the Lessee agrees that the Lessor reserves the right to all minerals in the said Project Area together with such rights of way and any other reasonable facilities as be requisite for mining, gathering and carrying away such minerals.

2.34. Not to make the Lessor liable nor any liability be contracted in the name of the Lessor for any obligation of the Lessee in connection with the Project. .

2.35. Not to keep or leave at any time during the term of this lease the demised premises and/or any building(s) erected thereon unused, unattended or locked for a period of more than 10 (ten) months.

2.36. Not to claim any damage or compensation for delay in providing any infrastructural facility such as sewerage connection, water supply, electricity connection for the said Project Area or for any other similar cause or nature.

2.37 Not to do or cause to be done in or upon the said Project Area or any part thereof or in the building(s) that may be erected thereon, any act or thing which shall or may be or become a nuisance, damage, annoyance, inconvenience or danger to the demised premises or to the owners or occupiers of any adjoining or neighbouring land or premises.

2.38. Not to undertake any other business during the Lease Period except for development of the Project or in connection therewith.

2.39. Not to expose the Lessor its officers and/or directors/employees to any liability incurred pursuant to the obligations of the Lessee as set out in this clause which will include but not be limited to costs, charges, claims, actions, suits, damages or any other loss or any proceedings and shall keep the Lessor, its officers and directors/employees always indemnified from all the aforesaid liabilities.

2.40. The engagement of any third party including the Independent Engineer by the Lessee to assist the Lessee in connection with the performance of the Lessee's duties under this Agreement shall in no way limit, or relieve the Lessee of, the Lessee's obligations under this Agreement.

2.41. At the expiry of the term hereby granted or sooner determination thereof, the Lessee shall make over vacant and peaceful possession of the said Project Area to the Lessor together with all buildings and constructions erected thereon, free from all encumbrances, charges, mortgages and without payment of any cost or compensation for the buildings/structures existing at the time of expiry of lease or sooner determination thereof.

**IIA. AND THE SELECTED BIDDER DOETH HEREBY COVENANT WITIH THE LESSOR** as follows :

2A.1. To confirm the terms and conditions of the RFP and this Lease Deed.

2A.2. To be jointly and severally liable for the execution of the Project in accordance with the terms and conditions of the RFP and this Lease Deed.

2A.3. Not to undertake or permit any change in Ownership of the Lessee, except with the prior written approval of the Lessor PROVIDED HOWEVER as long as the Selected Bidder holds and continues to hold the minimum equity in the Lessee as provided hereunder, no prior written approval is required to be obtained from the Lessor :

2A.3.1. In case of single entity, the Selected Bidder shall legally and beneficially holds 100% equity in the Lessee till the signing of the Lease Deed, 51% upto completion of the Minimum Development Obligation and 26% upto the completion of the Project.

2A.3.2. In case of Consortium, the Selected Consortium shall legally and beneficially holds 100% equity in the Lessee with Lead Member equity holding not less than 51% till the signing of the Lease Deed, 51% with minimum equity holding of the Lead Member at 26% upto completion of the Minimum Development Obligation and 26% with minimum equity holding of the Lead Member at 10% upto the completion of the Project. Further dilution of the equity structure of the Lessee be subject to the approval of the Lessor.

**III. THE LESSOR HEREBY COVENANTS WITH THE LESSEE** as follows:

3.1 The Lessee, paying the annual lease rent, the said rates and taxes, and other amounts hereby reserved and observing and performing the terms conditions and covenants herein contained and on its part to be paid performed and observed, shall hold and enjoy the said Project Area during the term hereby created without any interruption, hindrance, disturbance or obstruction by the Lessor or any person claiming through under or in trust for the Lessor.

3.2 That the Lessee shall be entitled to sub-let, sub-lease or otherwise deal with or dispose of various plots, constructed spaces in the building(s) to be erected on the said Project Area not amounting to any assignment of entirety of Lessee's interest in the said Project Area on terms and conditions not contrary to or inconsistent with the terms of these presents, without need of any approval of the Lessor PROVIDED HOWEVER that the Lessee shall always keep the Lessor saved harmless and indemnified from and against any losses claims or demands which the Lessor may suffer or be put to by reason of any such sub-letting or use and PROVIDED HOWEVER that such sub-letting or transfer shall be on the following conditions :-



- (i) The End Users be made aware of and the following clauses be made an express part of such Agreements / Deeds of Sub-Lease with the End Users –
- a) All amounts payable by an End User are meant for the Lessee alone and the Lessor takes no responsibility in that regard.
  - b) The Lessor shall not be liable to in any way to the End User for entering into such Agreement, for payment of money to the Lessee or on any other head or account whatsoever.
  - c) Lessor expressly disclaims all responsibility towards such End User and/or the Units in respect of which such Agreement is made with the End User and the End User releases Lessor from all liability in this connection whatsoever.
  - d) The Lessee shall not be entitled to create possessory right or give possession of common infrastructure facilities or any part thereof to End Users.
- (ii) The terms and conditions of the Sub-Lease shall include the following:
- a) The Sub-Lease shall be subject to the terms and conditions stipulated herein as well as in the RFP, which shall accordingly *mutatis mutandis* apply to all such sub-lessees. The Sub-Lease shall specifically stipulate that all right title and interest over the said Project Area and the constructed spaces after expiry or sooner determination of the Lease shall vest in the Lessor without any claim or demand for compensation or otherwise by the Lessee or the End Users.
  - b) Any violation of the terms and conditions of the Lease by the End Users or the Lessee will entitle termination of the respective Sub-Lease.
  - c) The End User agrees and undertakes that the Sub-Lease shall be co-terminus with the Lease.
  - d) The End User and Developer shall indemnify Lessor/Authority in respect of any claim made against Lessor/Authority by any statutory / other authority or any other party with regard to violation of the Lease.

3.3 The Lessee shall be entitled to create a Security Interest in respect of its rights under the Lease Deed including, its right to receive money from the intending end-users or other persons or any part thereof in favour of Scheduled Banks / Financial Institutions without however in any

manner creating or foisting any liability on the Lessor. The Lessee can mortgage the leasehold interest only (and not the demised land itself) on the demised land, whether in full or in part. Apart from confirming to such lending institutions that the Lessee would have such right to create a security interest in respect of its rights hereunder including the Lease Deed(s), the Lessor would have no financial obligation towards the Scheduled Banks/ Financial Institutions. The Lessee shall always keep the Lessor saved harmless and indemnified from and against any losses claims or demands which the Lessor may suffer or be put to by reason of any such sub-letting or use. Once such financial facilities are sanctioned, a copy of the Loan Agreement(s) is to be provided by the Lessee to the Lessor. In case of default in making due payment of the financial facilities by the Lessee in terms of such Loan Agreement(s), such Scheduled Banks/ Financial Institutions shall have the right to substitute the Lessee and appoint a new lessee in the place and stead of the defaulter Lessee, on the terms prescribed by the Lessor and provided however that such substitute lessee shall also be liable to fulfill the technical and financial qualifications prescribe in the RPF and substitution shall be carried out with the consent of the Lessor and compliance of necessary documents.

3.4. The Lessor shall make its best endeavour to provide all necessary assistance and facilitation to the Lessee in getting all Approvals and meet other requirements in order to ensure smooth completion of the Project. The Lessor shall nominate a Nodal Officer to facilitate project implementation including co-ordination with various authorities for processing and granting the necessary Approvals.

3.5. The Lessor shall make its best endeavour to extend all necessary assistance to the Lessee, including liaisoning with the West Bengal Pollution Control Board (the **WBPCB**) to expedite the WBPCB's appraisal of the Project reports and documents and grant of various environmental approvals.

#### **IV. THE LESSOR AND THE LESSEE HEREBY AGREE AND COVENANT WITH EACH OTHER**

as follows:

4.1 That any demand for payment or notice requiring to be made upon or given to the Lessee shall be sufficiently made or given if sent by the Lessor to the Lessee at the address of the said Project Area or sent by registered post / speed post addressed to the Lessee at the said Project Area or to its last known address and that, the notice requiring to be given to the Lessor shall be sufficiently given if delivered at or sent by registered post / speed post addressed to the office of the Lessor. All changes of address of the Lessee shall be communicated by the Lessee to the Lessor in writing within a reasonable period of its change.

4.2 That any relaxation and indulgence granted by the Lessor to the Lessee shall not in any way prejudice the rights of the Lessor under this Deed of Lease.

4.3 That the failure of the Lessor to enforce in any one or more instances, performance of any of the terms covenants and conditions of these presents shall not be construed as a waiver or relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term condition and covenant and such failure shall not in any way affect the validity of this Deed of Lease or the rights and obligations of the parties hereto. The Lessee agrees that a waiver of any term or provision hereof may only be made by a written instrument of modification of lease executed by both parties hereto.

4.4 That any statutory powers as may have been or will be conferred upon the Lessor shall automatically apply to the said Project Area and provisions in that respect shall be deemed to have been incorporated in these presents by way of reference and the Lessee is deemed to have constructive notice thereof.

4.5 That the terms and conditions of the lease shall be subject to changes of policy of the Lessor from time to time and the Lessee shall abide by the same.

4.6 The Lessor shall be entitled to monitor the development of said Project Area at the execution phases to determine whether the Project is being implemented in accordance with the provisions of this Agreement, the Project Implementation Schedule / Project Milestone as provided in the DPR and Good Industry Practice. The Lessor shall engage an/has engaged an Independent Engineer for day to day monitoring of the Project in the manner as provided in the RFP, at the cost of the Lessee for monitoring & certifying for progress of the work, compliance with the stipulated

guidelines and to confirm the development as per plan within stipulated timeframe. The role of the Independent Engineer would be to oversee the implementation of the Project by the Lessee, to determine whether Development Milestones has been met, and whether deviations, if any, are material from the agreed Development Milestones and the approved plans, designs and drawings have been made. The view of the Independent Engineer shall be ascertained before according Building Plan approval for future phases. The cost of the Independent Engineer shall be borne by the Lessor.

4.7. The Lessee shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder.

**(a) Period Reports**

The Lessee shall keep the Lessor adequately informed as to the level of development of Project and for this purpose the Lessee shall furnish to the Lessor reports setting forth in reasonable detail the progress achieved in the execution of the development of the Project. These reports should be submitted within the 10<sup>th</sup> day of each calendar month, starting from the date of the Lease Agreement. These reports shall contain the summary of progress of development of Project and indicate the actual and scheduled completion of the Project. Submission of the Report indicating the actual completion of the Project beyond the scheduled completion shall not in any way signify the Lessor's consent to delay or extension of time for completion.

**(b) Other Project Information**

The Lessee will provide any and all information to the Lessor promptly after becoming aware of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the development of the said Project Area.

**(c) Inspection**

The Lessor / the Independent Engineer shall at all reasonable times have access to the Site to inspect and examine the works, materials, equipment and workmanship for compliance thereof with the provisions of this Agreement, including the Good Industry Practice and to

check the progress of the works etc. and the Lessee shall provide necessary cooperation and assistance to them in this behalf. The Independent Engineer shall be required to inspect and submit monthly reports to the Lessor directly.

Provided that any failure on the part of the Lessor / Independent Engineer to inspect or after inspection to point out deficiencies in any work, material, equipment and workmanship shall not, in relation to such work material, equipments or workmanship (i) amount to any consent or approval of the Lessor nor shall the same be deemed to be a waiver of any of the rights of the Lessor under this Agreement; and (ii) release or discharge the Lessee from its obligations or liabilities under this Agreement in respect of such work, etc.

4.8 For securing the due and punctual performance of its obligations relating to the Project as per the terms and conditions of this Lease Deed, the Selected Bidder/ Lessee has, on [•] (within 45 days of the date of issue of the LOI), deliver to the Lessor an unconditional and irrevocable bank guarantee, issued by a scheduled bank in India having a net worth of at least Rs 1000 crores, for Rs. [•], being a sum equivalent to 10% of the Financial Bid quoted by the Selected Bidder and accepted in favour of the WBHIDCO from a Scheduled Bank and payable and enforceable at Kolkata, in the format specified in the RFP document (the “**Performance Security**”) and the Lessee shall maintain the said Performance Security till [•] years from the date of completion of the Project.

4.9 If the Lessee being a company or corporate body shall go into liquidation or be wound up whether compulsorily or voluntarily (including for the purpose of amalgamation or re-construction) or suffer any execution proceedings to be levied or a receiver to be appointed in respect of any of their properties and effects or notwithstanding anything in these presents contained, if the Lessee is in breach of any of the terms, conditions and covenants contained in these presents and on its part to be paid observed or performed and the Lessor calling upon the Lessee to rectify the breach complained of and such breach not being cured or rectified to the Lessor’s satisfaction within a period of 6 (six) months from the date of service of such notice, then and in any of such cases, it shall be lawful for the Lessor or any person duly authorised by it without any further notice at any time thereafter to treat this

demise as determined and to re-enter into and upon the said Project Area or any part thereof and the same to have again re-possessed and enjoyed as in its former estate and without being liable to pay any cost or compensation for the said Project Area or the buildings or structures thereon which shall vest in the Lessor on such termination and notice of resumption, but without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach or non-performance or non-observance of any of the covenants and conditions by the Lessee herein contained. In such an event, the Lessor shall forfeit and appropriate the entire amount of Performance Security as mutually agreed genuine pre-estimated compensation and damages payable to the Lessor for, inter alia, time, cost and effort of the Lessor, without prejudice to any other right or remedy that may be available to the Lessor.

4.10 That if it is found that the lease of the said Project Area has been obtained by the Lessee by misrepresentation or fraud or one or more of the bid conditions have not been met by the Selected Bidder or the Selected Bidder has made material misrepresentation or has given any materially incorrect or false information, or failure to meet any of the Project Milestones, the Lease shall stand determined and the Lessor entitled to its rights contained in clause 4.9 above, without the Lessor being liable in any manner whatsoever to the Lessee.

4.11 The obligation of the parties is subject to Force Majeure conditions as set out hereunder:  
If at any time during the continuation of the Lease, the performance in whole or in part of any obligation of either party under the Lease shall be prevented or delayed by reason of any war, fires, floods, earth quake, riot, storm, strike, lockout, civil commotion, air raid or any other Act of God or restriction of any authority or Government or statutory body or Court (hereinafter referred to as "Events") neither party shall by reason of such event, be entitled to terminate the Lease nor shall either party have any claim for damages against the other in respect of such non-performance or delay in performance, and the performance under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist.

4.12 That in the event of the said Project Area or any part thereof or any structure thereon being materially damaged or destroyed by earthquake tempest or other act of God

or any irresistible force or fire not caused by any act or neglect on the part of the Lessee so as to render the demised premises or any part thereof substantially and permanently unfit for the purpose for which it has been let, this lease shall at the option of the Lessee be void.

4.13 Notwithstanding anything to the contrary contained in the RfP, the provision of the Lease Deed shall have overriding effect and shall prevail over the terms of the RfP to the extent of any repugnancy between them; provided, however, that any conditions or obligations imposed on the Selected Bidder /Lessee under the RfP shall continue to have effect in addition to its obligations under this Lease Deed.

4.14 That in case of any dispute in the interpretation of any of the clauses of the terms and condition contained in this Deed of Lease, the decision of the Lessor shall be final and binding. Disputes and differences arising out of or in connection with or relating to the interpretation or implementation or termination of this Deed of Lease, the lease to be granted in favour of the Lessee which cannot be settled by mutual negotiation within 60 (sixty) days, shall be referred to the sole arbitration of an Arbitrator to be appointed by the Principal Secretary of the Urban Development Department of the GoWB. Such arbitration shall be held according to the provisions of the Arbitration and Conciliation Act, 1996 and any modification or reenactment thereto. The venue of the arbitration proceedings shall be at Kolkata and language of the arbitration shall be English. The arbitration award shall be final and binding upon the parties and the parties agree to be bound thereby and to act accordingly. When any dispute has been referred to arbitration, except for the matters in dispute, the parties shall continue to exercise their remaining respective rights and fulfill their remaining respective obligations.

4.15 That both the Lessor and the Lessee expressly agree for registration of these presents. The cost of preparing, stamping and registering this Deed of Lease shall be borne by the Lessee.

4.16 Courts at Kolkata alone shall have exclusive jurisdiction to try and entertain all disputes arising out of this Deed of Lease and the transactions contemplated herein.

**SCHEDULE - A**

**(Description of the said Project Area)**

**ALL THAT** piece and parcel of land containing an area of [•] acres, more or less, situate, lying at and being premises No. [•], under [•] P.S. and delineated in the map or plan annexed hereto and bordered red thereon and butted and bounded as follows, this is to say:

On the **NORTH** :

On the **EAST** :

On the **SOUTH** :

On the **WEST** :



**SCHEDULE – B (RFP)**

**SCHEDULE - C**

**(Detailed Project Report as approved by the Lessor)**

**IN WITNESS WHEREOF** the parties to these presents have hereto set and subscribed their respective hands on the day, month and year first above written.

**SIGNED AND DELIVERED** for and on behalf of the **LESSOR** by Mr. [•], [•], duly authorized by the Lessor by resolution dated [•] of its Board in this regard at **Kolkata** in the presence of:

**SIGNED AND DELIVERED** for and on behalf of the **LESSEE** by Mr. [•], its [•], pursuant to a resolution of its Board of Directors passed at its meeting held on [•] at **Kolkata** in the presence of:

**SIGNED AND DELIVERED** for and on behalf  
of the **SELECTED BIDDER** by Mr. [•], [•],  
duly authorized by the Selected Bidder by  
resolution dated [•] of its Board in this  
regard at **Kolkata** in the presence of:

