INVITATION TO NEGOTIATE

“COMMERCIAL DEVELOPMENT OF A PROPERTY LOCATED IN WARSAW AT SZCZĘŚLIWICKA 62 STREET”

Warsaw, October 2015
Invitation to Negotiate

Terms defined and used in this Invitation to Negotiate shall have the following meaning:

1. **Investor, the**—the Potential Investor selected by way of negotiation for the execution of the Project;

2. **Costs of Consultancy**—costs of preparation and management of the Project incurred by Xcity Investment sp. z o.o. with regard to the selection of the Investor, in particular: costs of legal, financial and real estate market consultancy;

3. **Memorandum, the**—the Information Memorandum;

4. **Response to the Invitation, the**—a written response to the Invitation to Negotiate;

5. **Bids or a Bid**—binding offers submitted during the second stage of the proceeding by Potential Investors/a Potential Investor admitted to the second stage of the proceeding;

6. **Fee, the**—the fee paid by Potential Investors:
   - **Part 1 of the Fee**—the fee charged for the access to the Memorandum;
   - **Part 2 of the Fee**—the fee charged by the Inviting Party for carrying out the proceeding aimed at selecting the Investor for the execution of the Project required in the case the Potential Investor decides to submit a Response to the Invitation;

7. **Potential Investors or a Potential Investor**—legal entities, including consortia, which have submitted a Response to the Invitation;

8. **Project**—a joint investment executed by the Potential Investor, with the participation of PKP S.A. and the Inviting Party, constituting a development, including the development of a commercial area, of the Property with the area of 14,667.00 m², located in Warsaw near Szcześliwicka 62 street, comprising the plots of land No. 5/6 and 5/10 of 2-03-03 precinct;

9. **Company, the**—Xcity Investment sp. z o.o., with its seat in Warsaw at Al. Jerozolimskie 140, 02-305 Warsaw, entered in the register of entrepreneurs kept by the District Court for the capital city of Warsaw in Warsaw, 12th Commercial Division of the National Court Register under the number KRS 0000526237,
The Inviting Party, the—acting on behalf of PKP S.A.;

11. Invitation to Negotiate, the—this Invitation to Negotiate.

The Inviting Party, acting on the basis of a power of attorney of 02.04.2015 granted by PKP S.A., hereby invites all interested entities to negotiate in order to select the Investor for the execution of the Project.

Only Potential Investors that pay Part 1 of the Fee for the access to the Memorandum, submit a relevant confidentiality statement, pay Part 2 of the Fee, submit a written Response to the Invitation, and show the relevant experience shall be allowed to negotiate.

The proceeding regarding the selection of the Investor is divided into two stages. During the first stage of the proceeding the Inviting Party shall evaluate Responses to the Invitation submitted by Potential Investors, in particular the experience and financial condition of Potential Investors with regard to the execution of the Project, as well as evaluate the concept of development of the property included in the Project, which they submitted. During the first stage of the proceeding the Inviting Party may conduct initial negotiations. As a result of the aforementioned evaluation, the Inviting Party may select no more than five Potential Investors with which it shall negotiate during the second stage. At the second stage, after the submission of binding Bids by Potential Investors and after the possible execution of additional negotiations with Potential Investors, the Inviting Party shall select the Investor which has submitted a Bid with shows the best relationship based on assessment criteria determined by the Inviting Party. The assessment criteria shall not be disclosed to Potential Investors.

The subject of negotiations shall be, in particular, the following:
the legal form of cooperation between PKP S.A., the **Company** and the **Potential Investor**;
- the scope of rights and obligations of PKP S.A., the **Company** and the **Potential Investor**;
- the manner and time for the execution of the **Project**;
- the amount of investment expenditures incurred with regard to the **Project**;
- conditions and the manner of financing for the **Project**;
- the way of determination, term for the execution and the division of income and profit from the **Project** between PKP S.A., the **Company** and the **Potential Investor**;
- securing the financing for the **Project**;
- the possible specification of details with regard to the existing requirements for environmental protection, cultural heritage protection and other obligations binding for PKP S.A., the **Company** and the **Potential Investor**, resulting from contracts and generally binding legal regulations,
- the proposed manner of land development—an architectural and urban concept,
- the legal form based on which PKP S.A. shall make the Property available for construction purposes connected with the execution of the **Project**.

The **Inviting Party** shall not reimburse costs incurred by the entities interested in participation in this proceeding. All costs connected with own participation in the proceeding, including, in particular, these connected with the preparation of the **Response to the Invitation**, the **Bid** or the participation in negotiations shall be borne by the **Potential Investor**. The **Investor** selected as a result of the proceeding shall be required to reimburse **Costs of Consultancy** to the **Company**, in accordance with the breakdown of costs prepared by the **Inviting Party**. The **Inviting Party** hereby informs, that it may not allow a **Potential Investor** admitted to the second stage of the proceeding to participate in negotiations, unless the **Potential Investor** secures the reimbursement of **Costs of Consultancy** in the form of a bank guarantee granted by a bank with its seat on the territory of the Republic of Poland, in accordance with the draft determined by the **Inviting Party**, or a non-interest-bearing cash deposit paid to the **Company**’s bank account. The information regarding **Costs of Consultancy** shall be provided to **Potential Investors** qualified for the second stage of the proceeding.
In order to enable the verification whether Potential Investors meet requirements for the participation in this proceeding, while replying to the Invitation to Negotiate they shall submit a written Response to the Invitation with the following documents enclosed:

1. a concise presentation of the Potential Investor and its experience (approx. 10 pages of A4 format and, optionally, an additional, concise multimedia presentation), showing, in particular, commercial investments which are currently being executed or are in preparation;

2. an initial architectural and urban concept for the Project and a visualisation in an electronic version on a DVD and a hard copy in the form of a bound volume and stiff boards in A1 format enclosed in approx. 6 copies. Each concept should have a description and a breakdown of area enclosed;

3. an initial estimate of costs and expenses for the Project;

4. an initial business plan for the Project;

5. the manner and time (schedule) for the execution of the Project, the amount of expected profit from the execution of the Project and its division between PKP S.A., the Company and the Investor, including an annual cash flow forecast divided into individual stages;

6. the concept for legal and business partnership with PKP S.A. and the Company, considering important legal conditions for such cooperation, conditions and the manner of financing of the Project, etc.;

7. a presentation of PKP S.A.'s and Company's benefits from the participation in the execution of the Project and the use of facilities included in the Project;

8. statements listed below representing that:

   a) the Potential Investor has not been declared bankrupt, no bankruptcy nor liquidation proceedings have been initiated against it, there is no ban on conducting its business activity, its business activity is not subject to compulsory administration nor is it in the process of a composition proceeding with its creditors, nor any recovery proceeding;

   b) in the case of collective entities, in the understanding of the Act on the Liability of Collective Entities for Acts Prohibited under Penalty:
- there are no criminal nor penal-fiscal proceedings against it, nor is there any legally binding decision concerning its liability pursuant to the regulations on the liability of collective entities for acts prohibited under penalty;
- there has been no gross violation or a non-performance of contractual obligations on their part;
c) it is not in default with the payment of social insurance contributions and is paying taxes in compliance with the provisions of the law;
d) it possesses the experience as well as technical resources and personnel required for the execution of the Project;
e) in the case of persons authorised to represent collective entities (including all members of the management board, full partners, proxies and attorneys-in-fact appointed for this proceeding), including partners of personal companies:
   - there are no criminal nor penal-fiscal proceedings against them and they have not been convicted with a legally binding decision for corruption crimes, offences against economic turnover or other offences committed for financial gain, as well as fiscal offences or an offence of participation in an organised group or association established to commit a crime or a tax offence;
   - there has been no gross violation or a non-performance of contractual obligations on their part;
f) the Potential Investor is in the economic and financial position ensuring the completion of the Project;
g) the Potential Investor has properly executed at least one commercial development project with the value of at least PLN 10,000,000 net within the five years prior to the date of the Invitation to Negotiate, and if their business activity has been conducted for a shorter period, then within that period;
h) in case an Investor is selected by the Inviting Party, it shall reimburse the Company with Costs of Consultancy in accordance with the breakdown of costs prepared by the Inviting Party;
i) the Potential Investor hereby consents to a free of charge presentation of the architectural and urban concept of the **Project** to persons and institutions engaged in the process of the **Project's** execution;

9. in order to confirm statements mentioned in p. 8, the **Potential Investor** is obliged to provide the following documents:

a) an excerpt from the National Court Register or other document confirming its entry in the register or in the register of the Central Registration and Information on Economic Activity;

b) a certificate from the competent head of Tax Office and the competent unit of the Social Insurance Institution to confirm that the **Potential Investor** is not in default with the payment of taxes, charges and health or social insurance contributions, respectively, or certificates stating that, in compliance with the applicable regulations, it is either exempted from these payments, it is subject to a deferment of the payments, the overdue amounts have been divided into instalments, there is a full withdrawal of the execution of a competent body's decision or it is not a payer of social insurance contributions;

c) a certificate from the competent head of Tax Office confirming its registration as a VAT active or exempt payer in the case of a **Potential Investor** being a VAT tax payer, or a certificate confirming that it is not registered as a VAT payer;

d) a list of persons and entities who will participate in the Project's execution or will be cooperating with the **Potential Investor**. The list should include information on the professional qualifications of the aforementioned persons, their experience and education;

e) own financial statements for the last two fiscal years, together with an opinion of a statutory auditor, if the financial statement requires such audit in compliance with the regulations, or if the period of conducting business activity has been shorter, then for that period, together with the most recent F-01 financial statement, or in the case the **Potential Investor** is not obliged to keep accounts in accordance with the Accounting Act, copies of tax statements for the last two fiscal years;

f) a breakdown of investment-construction commercial projects executed (completed) over the last five years, or if the period of conducting business activity has been shorter, then for that period, with the value no less than PLN...
10,000,000 net, together with possible credentials (this breakdown may include projects completed by the **Potential Investor** as a part of a consortium or a capital group);

g) a power of attorney to represent the **Potential Investor** in the case the **Response to the Invitation** is signed by persons whose right to represent it does not result from their position in **Potential Investor's** administrative bodies;

h) a certificate of clean criminal record of the **Potential Investor** and persons authorised to represent the **Potential Investor** (including all members of the management board, full partners, proxies and possible attorneys-in-fact for this proceeding) and partners in personal companies;

i) any other documents, which may be considered important by the **Potential Investor**.

10. In the case of a **Potential Investor** with its seat outside of the Republic of Poland, instead of Polish documents listed above, it must present:

a) a document certifying that the **Potential Investor** is authorised to appear in legal transactions, in accordance with the legislation of the country in which it has its seat. The document should clearly determine the manner and persons authorised to represent the entity;

b) documents issued by competent bodies certifying that in the country in which the **Potential Investor** has its seat, it is not in default with the payment of taxes, charges and social insurance contributions, or that it is exempted or deferred from such payments, or overdue payments have been divided into instalments;

c) own financial statements for the last two fiscal years, together with an opinion of a certified auditor, if the financial statement requires such an audit to be conducted in compliance with legal regulations, or if the period of conducting business activity has been shorter, then for that period, together with a balance sheet, a profit and loss account and a cash flow statement drawn up at the end of the quarter preceding the date of submission of the **Response to the Invitation**;

d) a certificate of clean criminal record of the **Potential Investor** and persons authorised to represent the **Potential Investor** (including all Members of the Management Board, full partners, proxies and possible attorneys-in-fact for this proceeding) and partners in personal companies, issued by an administrative
body in the country of Potential Investor’s seat and, respectively, by bodies in the country pertinent to the citizenship of the person authorised to represent the Potential Investor or attorneys-in-fact for this proceeding;

e) should one, several or all documents referred to in items a–d above not be issued or drawn up in the country in which the Potential Investor has its seat, the Potential Investor may replace them with one or a number of documents containing relevant statements made by the Potential Investor before a relevant judicial, administrative, professional or economic body, or before a notary public in the country of Potential Investor’s seat.

All documents drawn up in a foreign language must be translated into Polish by a sworn translator, and their translations shall be submitted together with primary documents.

A number of entities may jointly participate in the procedure solely in the form of a Consortium. The above statement also concerns companies within capital groups. Any established Consortium must submit a copy of the Consortium contract certified for its compliance with the original to the Inviting Party.

The purchase of a Memorandum containing detailed information on the Project, the procedure and the structure of a response to the Invitation to Negotiate shall take place after the payment of Part 1 of the Fee in the amount of PLN 5,000.00 (in words. five thousand) net (+23% VAT), payable by wire transfer to the Company’s bank account No. 51 1140 1010 0000 5523 3400 1001 with the following title: “Oplata — komercyjne zagospodarowanie nieruchomości przy ul Szczęśliwickiej 62 w Warszawie” (“Fee—Commercial Development of the Property at Szczęśliwicka 62 in Warsaw”).

The contact person responsible for providing explanations concerning the rules of granting access to the Memorandum, receiving applications and granting access to the Memorandum is Michał Wrzosek, mobile +48 514 934 835, e-mail address: michal.wrzosek@xci.pl, Xcity Investment sp. z o.o., Al. Jerozolimskie 140, 02-305 Warsaw. The Memorandum will be issued upon a confirmation of its receipt after a prior arrangement by phone on work days: from 30 November 2015 until 30 September 2016, between 9 a.m.—4 p.m.
In order to receive the Memorandum the Potential Investor should have an authorised representative present a confirmation of payment for Part 1 of the Fee for the acquisition of the Memorandum, current documents (i.e. issued no earlier than 3 months prior to their presentation) enabling the identification of the Potential Investor (a current excerpt from the National Court Register or an excerpt from other register of entrepreneurs) and submit a confidentiality statement compliant with the contents of the electronic version of the document posted on the website: www.xci.pl.

In the case of a collection of the Memorandum by a person other than the one making the confidentiality statement, the Potential Investor should present a power of attorney for the person authorised to collect the Memorandum, signed by its authorised representatives.

Part 2 of the Fee amounts to PLN 15,000 (in words: fifteen thousand zloty) net (+23% VAT). Provisions regarding the payment of Part 2 of the Fee are listed in the Memorandum.

The person responsible for providing explanations regarding the Project is Michał Wrzosek, tel. +48 514 934 835, e-mail address: michal.wrzosek@xci.pl, who can be contacted on work days: from 29 October 2015 until 8 November 2016, between 9 a.m.–4 p.m.

Responses to the Invitation should be submitted in accordance with the information included in the Memorandum at the Company’s seat at ul. Al. Jerozolimskie 140 in Warsaw by 8 November 2016 by 2 p.m. Potential Investors shall be notified of the results of the proceeding by 7 February 2017.

The Inviting Party hereby reserves its right to:
- select one or several Potential Investors for negotiations;
- withdraw from negotiations with one, several or all Potential Investors at every stage of the proceeding without indicating the reasons;
- extend the deadline for the submission of Responses to the Invitation or Bids;
- demand additional information from **Potential Investors** who submit a **Response to the Invitation**;
- postpone the date for informing about the examination of **Responses to the Invitation** or **Bids**;
- change the procedure and schedule of negotiations;
- cancel the proceeding at every stage without indicating the reasons;
- refuse to enter into an investment contract in the case when PKP S.A. does not obtain approval from its corporate bodies, the Minister of Transport or other public administration body, if such approval is required by law.