THE WAQF PROPERTIES LEASE RULES, 2013

In exercise of the powers conferred by sub-section (1) of section 56 of the Waqf Act, 1995 (43 of 1995), as amended by the Wakf (Amendment) Act, 2013 (27 of 2013), the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement.**-(1) These rules may be called The Waqf Properties Lease Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to all the Waqf properties in the whole of India wherever the Waqf Act, 1995 applies except in the State of Jammu & Kashmir.

Provided that nothing in these rules shall apply to the properties of Dargah Khwaja Saheb, Ajmer.

2. **Definitions.**—In these rules, unless the context otherwise requires,-

a) “Act” means the Waqf Act, 1995 (43 of 1995) as amended by the Wakf (Amendment) Act, 2013 (27 of 2013);

b) “Agricultural Purpose” means for growing crops to generate income from the agricultural land.

c) “Board” means a Board of Waqf as defined under the Act.

d) “Building” means the building or buildings located on the Waqf Land.

e) “Commencement Date of the lease” means the date of execution of lease deed.

f) “Commercial activities” shall mean business, trade, enterprise or such other activity undertaken for the purpose of making profit.

h) “Event of Default” means an event referred to in Rule 9(2) of the Rules made hereunder.

i) ‘Form’ means a Form appended to these Rules.

j) “Health purpose” shall mean running Hospital, Dispensary, Mutab, Nursing home etc.

k) “Land” means the waqf land and anything attached to the land except building.

l) “Lease” “Lessor” and “Lessee” shall have the same meaning as defined under section - 105 of the Transfer of Property Act, 1882.
m) “Lease Period” means the period for which Lease is granted under these Rules but in no case exceeding thirty years.

n) “Lease Year” means each successive periods of calendar months during the Term ending after completion of one year of the Commencement Date; provided that if the Lessor deems it necessary for the Lessor’s accounting purposes, the Lessor may by written notice to the Lessee specify another day on which each subsequent lease year is to commence.

o) “Leased Premises” means the Waqf Property or the Building leased out by the lessor to lessee;

p) “Mutawalli” has the same meaning as defined under section 3(i) of the Act;

q) “Permitted Use” means the purpose for which the lease has been granted and as defined in the Lease deed.

r) “Rent” means the amounts payable by the Lessee to the Lessor including the charges for the fittings and fixtures attached to the land or the building or any additional rent.

s) “Termination Date” means expiry of the lease period as provided unless earlier terminated by the Mutawalli or the Board by issuing notice in accordance with section 106 of the Transfer of Property Act, 1882.

t) “Value Taxes” means all goods and services taxes, sale taxes, value-added taxes, and any other taxes imposed on the Lessor with respect to this Lease, the services provided hereunder or the Rent.

u) “Waqf” means any form of movable or immovable properties as defined under section 3(r) of the Act and includes the list of auqaf published under section-5 or registered under section-36 of the Act at the Office of the Board;

v) “Words and expressions” used hereinafter but not defined herein shall have the same meaning as assigned to them in the Act.

3. **Grant of Lease and General Covenants.**- (1) Neither the Mutawalli nor the Waqf Board shall have any right to lease out any Mosque, Dargah, Khanqah, graveyard or Imambara except when the Waqf land is situated outside the main premises of the Mosque, Dargah, Khanqah, Graveyard or Imambara, as the same may be given on lease. It is, however, clarified that in the State of Punjab, Haryana, Himachal Pradesh and Chandigarh where such graveyards have already been given on lease before the commencement of the Waqf (Amendment) Act, 2013, such lease shall not be disturbed till the lease period expires.

(2) The Mutawalli or the Board shall have a right to lease out the Waqf property to any person for a period less than a year on such terms and conditions as agreed upon by the parties. While executing the lease or fixing the rent of a Waqf property
for less than a year, it shall be incumbent upon the Mutawalli to invite applications from the persons desiring to take the property on lease by publishing a notice in the surrounding vicinity, distributing leaflets, pamphlets or beating of drums and pasting the said notice on any conspicuous place like Mosque or any other place. The Mutawalli shall have a right to lease to a person who offers to pay higher rent and execute the lease or Sarkhat in his favour.

(3) Except as mentioned in rule 3(2) above, every muttawali or the Board, as the case may be, shall invite bids in at least one leading national (Hindi, English, Urdu) or regional / local newspapers, and publish the following details of lease such as-

(i.) He or his relatives has no interest in the Waqf property as tenant or lessee.

(ii.) Exact area/description and location of the Waqf property.

(iii.) The purpose or object for which the property is required to be leased.

(iv.) The period for which the property is required to be leased.

(4) For leasing of Waqf properties situated in small towns and villages or properties whose rental income is not significant, it need not be advertised in newspapers. However, they shall be given wide publicity following the procedure laid down under rule 3(2).

(5) Before making lease of any waqf property, the Board shall publish the details of lease property as well as base or reserve price in at least one leading national (Hindi, Urdu or English) and one regional or local newspaper in the regional or local language as recognized by the State.

(6) The advertisement shall also mention the reserve price.

(7) All lease deed for a period exceeding 11 months up to thirty years shall be registered at the office of registrar / sub-registrar, such registration shall accomplished in conformity with section 107 of The Transfer of Property Act, 1882 and expenses towards it shall be borne by the lessee itself.

(8) The reserve price for leasing of the Waqf property shall be as determined by the Collector in the cities and towns on which the lessor proposes to lease out the Waqf property to the lessee. The reserve price for the Waqf Property located in places other than towns and cities shall be as determined by the revenue / local authorities. The advertisement shall also indicate the minimum rent of agriculture land upon which the lessor intends to lease out the agriculture land to the lessee. The minimum rent of agriculture Waqf property shall be average of half of the yield of the crop for the past three successive years as determined by the Revenue Authority.
The basis of calculating the minimum rentals per annum for a property shall be 5% of the market value of the property, as mentioned above under rule 3(8).

The lessee shall not build any structure on the Land or building without due approval of the Board or the Mutawalli and incase he does so, it shall be _suo motu_ included in the said Waqf.

The Mutawalli shall give the status of all lease agreements executed between the lessor and the lessee to the Board as early as possible but not later than three months from the date on which the agreement of the lease was executed.

Every waqf shall fill up Form No. 1 giving the details of immovable property/ properties forming part of the Waqf. The Form shall also indicate the properties to be leased out etc., the period of lease, rent, terms and conditions of lease etc. to the Waqf Board within three months from the date of notification of these Rules in the official Gazette.

No sub-lease shall be permitted.

A lease for any period from one year to 30 years of any immovable Waqf Property shall be granted only with the prior sanction of the Board. Further, no such sanction shall be given unless a majority of not less than 2/3rd Members of the Board present cast their vote in favour of such transactions.

The Lessee shall pay to the Lessor for the Leased Premises Rent in respect of each year of the Term or renewal terms as the case may be, payable in advance and without notice or demand in monthly or annual installments as agreed upon commencing on the Commencement Date;

In case either the Mutawalli or the Board has already leased out the land for a year or upto 3 years prior to the commencement of the Wakf (Amendment) Act, 2013, the Mutawalli or the Board shall not renew the lease after the expiry of the aforesaid period without following the procedure as prescribed under these rules.

The lease of a waqf property may be for any period from one year to 30 years for commercial activities, education or health purposes, as defined under the definition clause of commercial activity, education and health purposes.

The lease of any immovable Waqf property which is agricultural land shall not in any case be for a period exceeding three years.

The Lease agreement shall include on escalation of increase of lease rent by not less than 5% for every year on the existing rent.

Competitive bids shall be invited in all cases if the property is situated in cities and towns having a population of one lakh and above. The Waqf property shall be leased out to the highest bidder but in no case the bid shall be less than the base / reserve price mentioned in the advertisement.
(21) Payment of Rent: All amounts payable by the Lessee to the Lessor pursuant to this Lease shall be deemed to be Rent and shall be payable and recoverable as Rent in the manner provided and the Lessor shall have all rights against the Lessee for default in any such payment as in the case of arrears of rent. Rent shall be paid to the Lessor without deduction or set-off, at the address of the Lessor or to such other person or such other address as the Lessor may from time to time designate in writing. The Lessee’s obligation to pay Rent shall survive the expiration of earlier termination of this Lease.

(22) Security deposit shall be collected based on the period of lease. If the lease is for a period less than three years, three month rent shall be collected as security deposit, and if lease is for 5 years or more but less than 10 years, the security deposit shall be of 6 month’s rent. For any subsequent increase in the period of lease, one month rent for every year of lease shall be added.

(23) The security deposit received shall be kept in some Nationalized Bank. If the security deposit is required to be used for some developmental activities, permission of at least two-third Members of the Board shall be obtained keeping in view that this amount shall be refunded after deducting damages in case the lease is terminated/not renewed.

(24) Notwithstanding anything contained in the aforementioned rule, the Mutawalli or the Board shall while granting the sanction for lease or renewal thereof, review the terms and conditions on which the lease is proposed to be granted or renewed. However, in any case, the lease agreement shall not contain a clause for automatic renewal of the lease thereof.

(25) The Board shall immediately intimate the State Government regarding the lease exceeding three years of Waqf Property and there after it shall become effective on the expiry of a period of forty five days from the date on which such intimation was made to the State Government.

4. **Period & Purpose of lease.**

   (1) For small establishments like shops, residential buildings, etc., lease shall be granted for a period upto five years.

   (2) For running malls, cold storage, small industry etc., lease shall be granted for a period upto ten years.

   (3) For establishing and/or running of hotels, restaurants, Inns etc., the lease shall be granted for a period upto twenty Years.

   (4) For establishing and/or running educational institutions like schools, colleges, Universities, hospitals, dispensaries, Madarasas etc., the lease shall be granted for a period upto thirty years.

   (5) For agricultural purposes, the lease shall be granted on year to year basis or until the life of the crop, in case the crop has a life span of more than one year.
period. However, in no case the lease shall be granted for a period more than three years.

5. **Use and Occupation.**
   
   (1) **Use of Leased Premises:** The Lessee shall use the Leased premises only for the agreed purpose and shall not use or permit to be used the Leased Premises or any part thereof for any other purpose or business or by any persons other than the Lessee.

   (2) **Compliance with Laws:** The Lessee shall comply with present and future laws, regulations and orders relating to the occupation or use of the Leased Premises.

   (3) **No Land or building which is waqf shall be given on lease for the purposes which are against the Sharia or are not religious, pious as per the Islamic tenets, such as gambling, lottery, sale of liquor or the other intoxicants or opposed to public policy or contrary to the provisions of Section 23 of the Indian Contract Act, 1872.**

6. **Rights and Obligations of the lessor and lessee.**

   (1) The general rights and liabilities of the lessor and the lessee shall be in accordance with the provisions of Section 108 of the Transfer of Property Act.

   **Operation of Leased Premises:** The Lessee shall assume full responsibility for the operation and maintenance of the Leased Premises and for the repair or replacement of all fixtures located therein or thereon. The Lessor shall have no responsibility whatsoever, with respect to maintenance, repairs or replacement, provided that if the Lessee fails to do so, the Lessor may at its sole option upon 14 days prior written notice and without any obligation to the Lessee elect to perform such maintenance, repairs or replacement as the Lessor may reasonably deem necessary or desirable. The lessor or the lessee shall not cut or withhold any of the services unless it amounts to public nuisance or causes damage to the premises.

   (2) **Access by Lessor:** The Lessee shall permit the Lessor to enter the Leased Premises at any time outside normal hours in case of an emergency and otherwise, during normal hours, where such entry will not unreasonably disturb or interfere with the Lessee’s use of the Leased Premises.

   (3) **Lessee’s Obligations:** In connection with the Leased Premises, the Lessee shall be responsible for the following:

   (a) **Taxes** - to promptly pay and discharge all taxes, levies, duties, assessments, and license fees whatsoever whether municipal, school, provincial, parliamentary or otherwise. The Lessee shall upon the request of the Lessor promptly deliver to the Lessor for examination all receipts for payment of such taxes, levies, duties, assessments and license fees.
(b) Maintenance - to maintain the Leased Premises and all improvements therein in good order and condition and remove from the Leased Premises at its expense all debris and garbage;

(c) Repairs - to perform all repairs to and make all replacements of fixtures, facilities, equipments, machineries, leasehold improvements etc. in the Leased Premises as may be necessary; and

(d) All Other Expenses - to pay all other expenses incurred in connection with the maintenance and operation of the Leased Premises.

(4) Leasehold Improvements: The Lessee may install in the Leased Premises its usual fixtures and personal property in a proper manner; provided that no installation or repair shall interfere with or damage the mechanical or electrical systems or the structure of the Leased Premises. If the Lessee is not doing so, then in default hereunder, the fixtures and personal property installed in the Leased Premises by the Lessee shall be removed by the Lessee and the Lessee shall promptly repair at its own expense any damage to the Leased Premises resulting from the installation and removal with reasonable wear and tear excepted. The Lessee shall, if required by the Lessor, remove any Leasehold Improvements or fixtures from the Leased Premises upon the termination of this Lease.

(5) Alterations by Lessee: The Lessee may from time to time at its own expense make changes. If any such changes, additions or improvements require alterations to the exterior walls, roof, or other structural components of the Leased Premises, the Lessee shall be solely responsible for the cost of such modifications and the Lessor shall have the right to perform any such work at the expense of the Lessee provided that the cost of such work to the Lessee is reasonable in the circumstance.

(6) Liens: The Lessee shall pay promptly when due all costs for work done or caused to be done by the Lessee in the Leased Premises which could result in any lien or encumbrance on the Lessor’s interest in the property, shall keep the title to the property and every part thereof free and clear of any lien or encumbrance in respect of the work and shall indemnify and hold harmless the Lessor against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien or otherwise.

7. **Damage and Destruction.**-(1) During the period of lease, if the Leased Premises or any part thereof is damaged by fire, lightning, tempest, structural defects or acts of God or by any additional perils, the following provisions shall apply:

(a) If as a result of such damage the Leased Premises are rendered partially unfit for occupancy by the Lessee, the Rent shall abate in the proportion that the part of the Leased Premises rendered unfit for occupancy by the Lessee is of the whole of the Leased Premises.
b) Notwithstanding sub-rule (a) above, if in the opinion of the Lessor’s architect or engineer given within 60 business days of the happening of damage, the Leased Premises shall be incapable of being rebuilt, repaired, or restored with reasonable diligence within 180 days after the occurrence of the damage, then either the Lessor or the Lessee may, at its option, terminate this Lease by notice in writing to the other given within 15 days of the giving of the opinion of the Lessor’s architect or engineer. If notice is given by the Lessor or Lessee under this Rule, then this Lease shall terminate from the date of such damage and the Lessee shall immediately surrender the Leased Premises and all interest therein to the Lessor and the Rent shall be apportioned and shall be payable by the Lessee only to the date of the damage and the Lessor may thereafter re-enter and repossess the Leased Premises.

c) If the Leased Premises are capable with reasonable diligence of being rebuilt, repaired or restored within 180 days of the occurrence of such damage, then the Lessor shall proceed to rebuild, restore or repair the Leased Premises within 180 days plus any additional period due to delay caused by strikes, lock-outs, slow-downs, shortages of material or labor, acts of God, acts of war, inclement weather or other occurrences which are beyond the reasonable control of the Lessor, and the Rent shall abate in the manner provided for in sub-rule (a) above until the Leased Premises have been rebuilt, repaired or restored.

8. Indemnity.- (1) The Lessee shall indemnify and save harmless the Lessor from any and all liabilities, damages, costs, claims, suits or actions growing or arising out of any breach, violation or non-performance of any covenant, condition or agreement in this Lease set forth and contained on the part of the Lessee to be fulfilled, kept, observed and performed.

(2) The Lessee shall indemnify the Lessor against all costs and charges reasonably incurred in enforcing payment of Rent hereunder and in obtaining possession of the Leased Premises should the same be necessary.

(3) Limitation of Lessor’s Liability: The Lessor shall not be liable for any damage to the Leased Premises or any property located therein.

9. Default.- (1) The Lessee shall pay to the Lessor an amount at a rate equal to one percent per day of the monthly rent fixed for the default in payment of Rent from the due date until the same is fully paid and satisfied.

(2) Events of Default. Each of the following events shall constitute an event of default:

(a) all or any part of the Rent hereby reserved is not paid when it become due for such payment.

(b) the Lessee fails to observe, perform and keep each and every of the covenants, agreements and conditions herein contained to be observed,
performed and kept by the Lessee and persists in the failure after 10 days notice by the Lessor requiring the Lessee to remedy, correct, desist or comply (or if any breach would reasonably require more than 10 days to rectify, unless the Lessee commences rectification within the 10 day notice period and thereafter promptly and effectively and continuously proceeds with the rectification of the breach).

(3) The lease agreement shall include that nonpayment of lease rentals or lease considerations for three consecutive months or three month arrears shall automatically terminate the lease agreement, in accordance with section 106 of the Transfer of Property Act, 1882.

(4) The lessee shall be at liberty to terminate the lease and in such cases the lessor shall have no obligation to refund the security deposit which shall be deemed to be forfeited in favour of the Waqf.

(5) The rent tendered by the lessee on time but refused by the Lessor in accepting or giving receipt, may be deposited before the concerned Waqf Board. The rent shall be treated as validly deposited if deposited by the lessee within 15 days of such refusal by the Lessor.

(6) Remedies on Default: Upon the occurrence of one or more Events of Default, the Lessor may, at its option, it either by any other provision of this Lease Rules or by statute or the general law:

(a) be entitled to the full amount of the current month’s and the next three months’ installments of Rent which shall immediately become due and payable and the Lessor may immediately entitle for the same, together with any arrears then unpaid;

(b) without notice or any form of legal process, forthwith re-enter upon and take possession of the Leased Premises or any part thereof in the name of the whole and re-let the Leased Premises or any part thereof on behalf of the Lessee or otherwise as the Lessor sees fit and remove and sell the Lessee’s goods and fixtures therefrom, any rule of law or equity to the contrary notwithstanding;

(c) seize and sell such goods and equipment of the Lessee as are in the Leased Premises and may apply the proceeds thereof to all Rent to which the Lessor is then entitled under this Lease. Any such sale may be effected by public auction or otherwise, and either in bulk or by individual item, all as the Lessor in its sole discretion may decide;

(d) terminate the Lease as per the provision of Section 106 of The Transfer of Property Act, 1882 and termination shall be without prejudice to the Lessor’s right to damages; it being agreed that the Lessee shall pay to the Lessor as damages the loss of income of the Lessor to be derived from
the Leased Premises for the unexpired portion of the Term had it not been terminated, provided that the Lessor shall not be entitled in any event to receive any damages greater than those damages the Lessor would be entitled to receive at law; or

(7) The Tribunal shall determine any dispute, question or other matter relating to eviction of the lessee or determination of rights and liabilities of the lessor and the lessee.

10. **Assignment and Transfers.**- (1) The Lessee shall not assign, sublet, pledge or transfer this Lease or any interest therein or in any way part with possession of all or any part of the Leased Premises, or permit all or any part of the Leased Premises to be used or occupied by any other person.

11. **Surrender and Overholding.**- (1) Surrender: Upon the expiration or termination of the lease, the Lessee shall immediately quit and surrender possession of the Leased Premises and all leasehold improvements in substantially the condition in which the Lessee is required to maintain the Leased Premises excepting only reasonable wear and tear, and upon surrender, all right, title, and interest of the Lessee in the Leased Premises shall cease. The Lessor has the right to remove and sell or otherwise dispose of any leasehold improvements, equipment or any other property of the Lessee left on the Leased Premises by the Lessee after the termination of this Lease according to the provisions contained under section 55-A of the Waqf Act, 1995.

(2) Overholding: If the Lessee continues to occupy the Leased Premises after the expiration or termination of the lease without any further written agreement, the Lessee shall be treated as encroacher as defined under section 3 (ee) of the Waqf Act, 1995. The encroachment shall be removed according to section-54 of the Waqf Act, 1995.

12. **General.**- (1) Notice: Any notice required or contemplated by any provision of this Lease shall be given in writing by registered mail or delivered or sent by telecopy or similar form of immediate transmission and if to the Lessor, delivered to the address and if to the Lessee, personally or delivered to the Leased Premises (whether or not the Lessee has departed from, vacated or abandoned the same). Any notice shall be deemed to have been received five postal delivery days after the date of mailing or on the day following the date of delivery or sending.

(2) Relationship of Parties: Nothing contained in this Lease shall create any relationship between the parties hereto other than that of Lessor and Lessee.

(3) Amendment or Modification: No amendment, modification or supplement to this Lease shall be valid or binding unless it is made in writing and executed by the Lessor and the Lessee.
(4) Captions and Headings: The captions and headings contained in this Lease are for convenience of reference only and are not intended to limit, enlarge or otherwise affect the interpretation to which they apply.

(5) Interpretation: Wherever necessary or appropriate in this Lease, the plural shall be interpreted as singular, the masculine gender as feminine or neuter and vice versa and when there are two or more parties bound by the Lessee’s covenants herein contained their obligations shall be joint and several.

(6) Successors and Assigns: Subject to specific provisions contained in this Lease to the contrary, this Lease shall ensure to the benefit of and be binding upon the successors and assigns of the Lessor and the heirs, executors and administrators and the permitted successors and assigns of the Lessee.

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<td>Terms &amp; Conditions, if</td>
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11. Reference No.

It is hereby certified that the undersigned has no beneficial interest in the above waqf and the information furnished above are true to the best of my knowledge.

(Signature)

Name of the Mutawalli/Management Committee.

Place:

Date: