

**REQUEST FOR PROPOSAL (RFP)  
FOR  
SELECTION OF AGENCY  
FOR  
UNDERTAKING DESIGN, ENGINEERING,  
SUPERVISION OF CONSTRUCTION, ERECTION AND  
COMMISSIONING ACTIVITIES  
FOR  
RARE EARTH PERMANENT MAGNET (REPM) PLANT**

**Tender No: IRE/CO/PT/RFP/51/2018**



**Indian Rare Earths Limited**

**(A Govt. of India Undertaking – Dept. of Atomic Energy)**

**Plot No. 1207, Veer Savarkar Marg, Near Siddhi Vinayak Temple, Prabhadevi, Mumbai-400028. Website: <http://irel.co.in>**

## **DISCLAIMER**

The information contained in this Request for Proposal document (the “**RFP**” or “**Bidding Document**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of IREL or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided. The information provided is only for the information and reference of the Bidders.

This RFP is not an agreement and is neither an offer by IREL to the prospective Bidder(s) or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their bid for participation in this RFP (the “**Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by IREL in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for IREL, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. IREL accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

IREL, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with qualification of Bidders for participation in the Bidding Process. IREL also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. IREL may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that IREL is bound to select and short-list qualified Bids for Price Bid stage or to appoint the Selected Bidder for the Project, and IREL reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by IREL or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and IREL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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# 1 Introduction

## 1.1 Background

- 1.1.1 Indian Rare Earths Limited (the “**IREL**”), a Mini-Ratna Category-I company, is a public sector enterprise of the Government of India under the administrative control of the Department of Atomic Energy. The company is engaged in mining and separation of beach sand minerals and produces different rare earth compounds. The operating units of the company are located at Chavara, Kerala; Manavalakurichi, Tamil Nadu; Chatrapur, Odisha and Aluva, Kerala. The corporate office is located at Mumbai.
- 1.1.2 IREL intends to setup a plant for producing Rare Earth Permanent Magnet (REPM) (“**Project**”). As part of this endeavor, IREL has decided to appoint an Engineering Company for undertaking Design, Engineering, procurement assistance and Supervision of Construction, erection and commissioning activities for establishing the plant.

## 1.2 Brief description of Bidding Process

- 1.2.1 IREL invites application (the “**Pre-Qualification Application**”) for pre-qualification pursuant to Clause 2.3, 2.4 and 4.1 of this Bidding Document, and technical and financial bids (the “**Bid**”) for qualification and selection pursuant to Clause 3.3 and 3.4 of this Bidding Document from interested parties (the “**Bidders**”) for selection of a technically competent agency (the “**Agency**”) to undertake Design, Engineering, Procurement Assistance, and Supervision of Construction, erection and commissioning of REPM plant (collectively the “**Assignment**” or the “**Work**”).
- 1.2.2 IREL intends to select the Agency through an open competitive bidding process in accordance with the procedure set out herein.
- 1.2.3 IREL has adopted a -Two stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The first stage (the “**Pre-Qualification Stage**”) of the process will involve pre-qualification of interested Bidders in accordance with the Clause 2.3, 2.4 and 4.1 of this RFP. The Bidders will sign and submit the Secrecy Agreement attached at Appendix – 4 of this RFP at Pre-Qualification Stage. At the end of this stage, IREL will inform the Technically Eligible Bidders (the “**Technically Eligible Bidders**”) who are eligible for participation in the second stage of the Bidding Process (the “**Qualification Stage**”).
- 1.2.4 IREL will provide to the Technically Eligible Bidders the detailed project report, drawings, etc., (the “**Technical Information**”) relevant to the Project. The Bidders can request IREL and opt to go for site visit after due confirmation.
- 1.2.5 In the Qualification Stage, the Technically Eligible Bidders are required to submit their initial Techno-commercial bids based on their understanding and Technical Information as provided by IREL.  
  
The Techno-commercial Bid shall comprise of an Envelope (Envelope 2) comprising of the following in below mentioned order:
  - a) Form 1 to Form 9 of Appendix 6
  - b) Unpriced Price Bid as per Form 2 of Appendix 7

- c) All documentary proof for the above mentioned Annexes as mentioned in the RFP
  - d) Any other document as mentioned elsewhere in the RFP
- 1.2.6 IREL will conduct meetings (the “**Technical Discussion**”) with all the Technically Eligible Bidders who have submitted their Techno-commercial Bids as stated and may issue clarifications/addendum, if required. Based on the clarifications/addendum, if any; the Technically Eligible Bidders will submit the revised Techno-commercial Bid and Price Bid. In case, there is no change in the Techno-commercial Bid, the bidder is required to submit the requisite confirmation as per Form 10 - Appendix 6 along with Price Bid. The evaluation of the Techno-commercial Bids will be undertaken in accordance to the qualification scoring parameters as mentioned in clause 4.5 to have the list of technically qualified bidders (the “**Technically Qualified Bidders**”). Thereafter, the evaluation of Financial Bids of Technically Qualified Bidders will be undertaken as specified in Clause 4.8. The Bids will be ranked according to their combined Techno-commercial and financial scores as specified in Clause 4.9 for selection of the selected bidder (the “**Selected Bidder**”).
- 1.2.7 The Bidders will submit their Pre-Qualification Applications and Bids in accordance with the RFP provided by IREL (the “**Bidding Documents**”). The Pre-Qualification Applications and Bids shall be valid for a period of not less than 180 days from their respective due date of submission i.e. Application Due Date (the “**Application Validity**”) and Bid Due Date (the “**Bid Validity**”) respectively.
- 1.2.8 IREL shall receive Pre-Qualification Applications and Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by IREL, and all Pre-Qualification Applications and Bids shall be prepared and submitted in accordance with such terms on or before the date specified for submission in accordance with Clause 1.3 of this RFP.
- 1.2.9 The Selected Bidder (the “**Agency**”) shall be responsible for undertaking Design, Engineering, and Supervision of Construction, erection and commissioning activities of the Project under and in accordance with the provisions of an agreement (the “**Agreement**”) to be entered into between the Agency and IREL in the form provided by IREL as part of the Bidding Documents pursuant hereto. The Agreement sets forth the detailed terms and conditions for the Project, including the scope of the services and obligations.

### 1.3 Schedule of Bidding Process

1.3.1 The IREL shall endeavor to adhere to the following schedule:

S. No.	Event Description	Date (Approx time from last event)
1.	Date of issue of RFP	15.11.2018
2.	Last date for receiving Pre-Bid queries	30.11.2018

<b>S. No.</b>	<b>Event Description</b>	<b>Date (Approx time from last event)</b>
3.	Pre-Bid conference at IREL's Corporate Office, Mumbai	03.12.2018 at 15:00 hrs
4.	Last Date for submission of Pre-Qualification Application	17.12.2018 upto 15:00 hours
5.	Opening of Pre-Qualification Applications	17.12.2018 at 16:00 hours
6.	Intimation to the Technically Eligible Bidders for participating in Qualification Stage	24.12.2018
7.	Collection of Technical Information from IREL	31.12.2018 to 07.01.2019
8.	Optional site visit by the Bidders after approval from IREL	08.01.2019 to 12.01.2019
9.	Last date for submission of Techno-commercial Bid	28.01.2019 upto 15:00 hours
10.	Technical Discussion between the Technically Eligible Bidders and IREL	To be decided
11.	Issuance of clarification/addendum	To be decided
12.	Submission of revised/final Techno-commercial and Price Bid	To be decided
13.	Opening of Techno-commercial Bids of Technically Eligible Bidders	To be decided
14.	Declaration of Technically Qualified Bidders	To be decided
15.	Opening of Price Bids	To be decided
16.	Issuance of Letter of Intent (LoI)	To be decided



## 2 Instructions to Bidders

### 2.1 Mode of Bidding

- 2.1.1 Bidders are allowed to participate in the bidding process as a single entity only.
- 2.1.2 Consortium/ Joint Venture with any other party is not allowed.
- 2.1.3 The Bidder may, for the purpose of qualification, can use the technical or financial strength of any one of its Associates only as defined in the RFP.

### 2.2 General terms of Pre-Qualification Application and Bid

- 2.2.1 No Bidder directly or through its affiliate/subsidiary/holding company shall submit more than one Pre-Qualification Application and Bid for the Project.
- 2.2.2 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement.
- 2.2.3 Any condition or qualification or any other stipulation contained in the Pre-Qualification Applications or Bid shall render them liable to rejection as a non-responsive Pre-Qualification Application or a non-responsive Bid, as the case may be.
- 2.2.4 The Pre-Qualification Application, Bid and all communications in relation to or concerning the Bidding Documents and the Pre-Qualification Application and Bid shall be in English language.
- 2.2.5 The documents including this RFP and all attached documents, provided by IREL are and shall remain or become the property of IREL and are transmitted to the Bidders solely for the purpose of preparation and the submission of the Pre-Qualification Application and Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Pre-Qualification Application and Bid. The provisions of this clause shall also apply mutatis mutandis to Pre-Qualification Applications, Bids and all other documents submitted by Bidders, IREL shall have the right not to return to Bidders any Pre-Qualification Application, Bid, document or any information provided along therewith.
- 2.2.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Agency set forth in the Agreement or IREL's rights to amend, alter, change, supplement or clarify the scope of work, the Project to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by IREL.

### 2.3 Conditions of Eligibility of Bidders

The Bidders must read carefully the minimum conditions of eligibility (the “**Conditions of Eligibility**”) provided herein, and shall submit the Pre-Qualification Application for providing proof of satisfying the same. Bids of only those Bidders who satisfy the Conditions of Eligibility will be considered for evaluation. For determining the eligibility of Bidders, the following shall apply:

- 2.3.1 To be eligible for evaluation of its Bid, the Bidder should be a Company registered in India under Companies Act 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act of India, 2008.
- 2.3.2 The bidder should meet the Technical & Financial Pre-qualification Criteria as mentioned in Clause 2.4.
- 2.3.3 The Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified subject to Clause 2.5.
- 2.3.4 Any entity that has been barred by the Central/ State Government in India, or any entity controlled by it, from participating in any project, and the bar subsists as on the Application Due Date or Bid Due Date, would not be eligible to submit the Pre-Qualification Application and Bid.
  - (i) A Bidder including its Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or its Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or its Associate.
  - (ii) Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this clause is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to IREL for seeking a waiver from the disqualification hereunder and IREL may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

## 2.4 Pre- Qualification Bid

- 2.4.1 Bidders shall submit their Pre-Qualification Application in the formats at Appendix-1 (the “**Pre-Qualification Application**”).
- 2.4.2 To pre-qualify in this Bid, the Bidder shall fulfil the following:
  - a) Technical Criteria - The Bidder should have, over the past 10 (ten) years from Application Due Date, completed at-least one assignment each for:

- Any Chemical/Metallurgical plant involving Design and/or Engineering, Supervision of Construction, erection and commissioning, and having capital cost (excluding land) of at least INR 50 (Fifty) crore; And
- Any Industrial project involving Design and/or Engineering, Supervision of Construction, erection and commissioning, and having an capital cost (excluding land) of at least INR 120 (One Hundred and Twenty) Crore.
- The Bidder shall enclose in its Bid the following with Form 3 of Appendix-1:  
Work order and completion certificate for the claimed assignments.  
In case of unavailability of completion certificate, the bidder may submit certificate(s) from practicing chartered accountants stating the payments received and works completed, as the case may be, along with declaration on the letter head of the Bidder in respect of the projects specified in Pre-Qualification Application.  
In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support the claim for the share in work done for that particular job/ contract by producing the consortium agreement indicating the scope of work of the Bidder in that specific job, its role, responsibility and share in the total assignment value in such contract

b) Financial Criteria

- The Bidder should have a positive net worth as per last audited financial statement (FY 2017-18, if not audited then FY 2016-17)
- The Bidder should have a minimum average annual turnover of INR 2 (Two) crore over the last three audited financial years (i.e. FY 2015-16, FY 2016-17, FY 2017-18) from Consultancy Services.
- The Bidder shall enclose in its Bid the following with Form 4 of Appendix-1:  
Certificate(s) from practicing chartered accountant specifying the Net Worth as at the close of the preceding financial year and average Turnover of the preceding three years of the Bidder, , and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this RFP. For the purposes of this RFP, annual turnover (the “**Turnover**”) shall mean the gross amount of revenue recognized in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year and net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. The Bid must be accompanied by the Audited Annual Reports/Financial Statements of the Bidder for the last 3 (three) financial years, preceding the year in which the Bid is made.

## 2.5 Conflict of Interest

2.5.1 A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified.

In the event of disqualification, IREL shall be entitled to forfeit and appropriate the Bid Security or Security Deposit, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by IREL and not by way of penalty for, inter alia, the time, cost and effort of IREL, including consideration of such Bidder's Bid (the "**Damages**"), without prejudice to any other right or remedy that may be available to IREL under the Bidding Documents and/ or the Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, unless specifically permitted elsewhere in the tender documents, if

- a. the Bidder, or its Associate (or any constituent thereof), and any other Bidder, or its any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder or Associate, as the case may be) in the other Bidder or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- b. such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- c. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- d. such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- e. such Bidder, or any Associate thereof has participated as a consultant to the IREL in the preparation of any documents, design or technical specifications of the Project.

For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- 2.5.2 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of IREL in relation to the Project is engaged by the Bidder, or its Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the issuance of the LOI or execution of the Agreement. In the event any such adviser is engaged by the Selected Bidder or Agency, as the case may be, after issue of the LOI or execution of the Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOI or the Agreement and without prejudice to any other right or remedy of IREL, including the forfeiture and appropriation of the Bid Security or Security Deposit, as the case may be, which IREL may have thereunder or otherwise, the LOI or the Agreement, as the case may be, shall be liable to be terminated without IREL being liable in any manner whatsoever to the Selected Bidder or Agency for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or its Associate in the past but its assignment expired or was terminated prior to the date of issuance of RFP. Moreover, this disqualification shall not apply where such adviser is engaged by the Bidder, or its Associate in any work not related to the Project; the Bidder or Selected Party or Agency will however keep IREL informed in any such case(s). Nor will this disqualification apply where such adviser is engaged by the Agency after a period of 6 (six) months from the date of COD of the Project or by the unsuccessful Bidders after the issuance of LOI to the Selected Bidder.

## 2.6 Change in ownership

- 2.6.1 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control / change in ownership of the Bidder, the bidder's liability to honor the agreement and complete the Project would be continued.

## 2.7 Pre-bid conference

- 2.7.1 The date, time and venue of the Pre-Bid Conference will be:

Date: 03.12.2018

Time: 15:00 hrs

Venue: IREL Office, Plot No. 1207, Veer Savarkar Marg, Near Siddhi Vinayak Temple, Prabhadevi, Mumbai- 400028

- 2.7.2 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated below by the specified date.

Mr. Simanchal Acharjya  
CM (Technical)  
Indian Rare Earths Limited  
Plot No 1207, Veer Savarkar Marg, Near Siddhi Vinayak Temple,  
Prabhadevi, Mumbai – 400 028  
Phone: 022-2431 0601, Board No: 022-2421 1630 Extn- 242  
Email: technical-ho@irel.co.in

The envelopes/ communications shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: RFP for Selection of an Agency for undertaking Design, Engineering and Supervision of Construction, Erection and Commissioning activities for REPM plant”.

## 2.8 Clarifications

- 2.8.1 IREL shall endeavour to respond to the queries no later than fifteen (15) days prior to the Application Due Date. The responses shall be uploaded on IREL website [www.irel.co.in](http://www.irel.co.in) or [www.eprocure.gov.in/epublish/app](http://www.eprocure.gov.in/epublish/app).
- 2.8.2 IREL shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, IREL reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring IREL to respond to any question or to provide any clarification.
- 2.8.3 IREL may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by IREL shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by IREL or its employees or representatives shall not in any way or manner be binding on IREL.

## 2.9 Site visit

- 2.9.1 Technically Eligible Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction and operation, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.9.2 Technically Eligible Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project.
- 2.9.3 Technically Eligible Bidders can request to have visits to DMRL, BARC & IREL to gather further information related to the project at their own cost.

Technically Eligible Bidders may send a request to IREL for site visit as per their interest, at least one week prior to the schedule of site visit. IREL will have the right to either accept the request or suggest alternative dates suitable based on availability of concerned officials at the site.

## 2.10 Amendment of the RFP

- 2.10.1 At any time prior to the Application Due Date and Bid Due Date, IREL may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda.
- 2.10.2 Any addendum issued hereunder will be in writing and shall be uploaded on IREL website [www.irel.co.in](http://www.irel.co.in) or [www.eprocure.gov.in/epublish/app](http://www.eprocure.gov.in/epublish/app).
- 2.10.3 In order to allow the Bidders a reasonable time for taking an addendum into account, or for any other reason, IREL may, in its sole discretion, extend the Bid Due Date.

## 2.11 Cost of Bid and RFP Document

- 2.11.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. IREL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.
- 2.11.2 The Bidders can purchase the RFP document from IREL office in Mumbai by paying a sum of INR 1500/- (Rupees Fifteen Hundred only) exclusive of GST as the cost of the RFP document along with the Bid, in the form of Demand Draft in favour of Indian Rare Earths Limited, payable at Mumbai issued from any Scheduled Bank in India.
- 2.11.3 The Bidders can download the document from IREL website [www.irel.co.in](http://www.irel.co.in) or [www.eprocure.gov.in/epublish/app](http://www.eprocure.gov.in/epublish/app). Bidders who download the RFP document online need not submit any amount towards the cost of RFP document along with its bid

## 2.12 Acknowledgement by Bidder

- 2.12.1 It shall be deemed that by submitting the Bid, the Bidder has:
  - a. made a complete and careful examination of the RFP;
  - b. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of IREL relating to any of the matters referred to in this clause; and
  - c. agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.12.2 IREL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by IREL.



- 2.12.3 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, including the Project thereby granted by the IREL, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified and liable to be terminated without IREL being liable in any manner whatsoever.
- In such an event, IREL shall be entitled to forfeit and appropriate the Bid Security or Security Deposit, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to IREL under the Bidding Documents and/ or the Agreement or under Applicable Law, or otherwise.

## 2.13 Verification and disqualification

- 2.13.1 IREL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by IREL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by IREL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of IREL thereunder.
- 2.13.2 IREL reserves the right to reject any Pre-Qualification Application or Bid, and appropriate the Bid Security if:
- at any time, a material misrepresentation is made or uncovered, or
  - the Bidder does not provide, within the time specified by IREL, the supplemental information sought by IREL for evaluation of the Bid.
- 2.13.3 Such misrepresentation/ improper response shall lead to the disqualification of the Bidder.

## 2.14 Right to accept/reject any or all Pre-Qualification Applications and Bids

- 2.14.1 Notwithstanding anything contained in this RFP, IREL reserves the right to accept or reject any Pre-Qualification Application or Bid and to annul the Bidding Process and reject all Pre-Qualification Application or Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor.

## 2.15 Fraud and corrupt practices

- 2.15.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, IREL may reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.



- 2.15.2 Without prejudice to the rights of IREL under above Clause hereinabove, if a Bidder is found by IREL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by IREL during a period of 2 (two) years from the date such Bidder is found by IREL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 2.15.3 For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:
- a. “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of IREL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOI or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of IREL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under clause 2.5.2, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOI or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOI or the Agreement, who at any time has been or is a legal, financial or technical adviser of IREL in relation to any matter concerning the Project;
  - b. “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
  - c. “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
  - d. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by IREL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
  - e. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 2.16 Ethics in Tendering and Other Business Dealings

- 2.16.1 Indian Rare Earths Limited, a Government of India Undertaking, under the administrative control of Department of Atomic Energy is doing its business as per the rules and regulation of the Public Sector Undertaking and other statutory agencies. The business is done in an ethical, rational & impartial manner with good Corporate Governance.

2.16.2 In our endeavour to be more transparent in our dealings and to support our ideology all Vendors, Customers and Business Partners are requested not to provide any gift and /or inducement to any of our employees for securing/being granted favour in dealings with our Company. In assurance of your commitment to the aforesaid, it will be highly appreciated if you fill up, sign and abide by the attached undertaking as per Annexure-6.

2.16.3 Report of any gifts and /or inducements sought by any employee of the company (IREL) should be immediately reported to any one of the following:

Sri D Singh Chairman & MD Indian Rare Earths Ltd 1207 VS Marg,Prabhadevi, Mumbai 400 028 Ph.022-24225778 Email: <a href="mailto:cmd@irel.co.in">cmd@irel.co.in</a>	Sri Sanjay Banga, IES Chief Vigilance Officer Indian Rare Earths Ltd 1207 VS Marg,Prabhadevi Mumbai 400 028 Ph.022-24221068 Email: <a href="mailto:cvo@irel.co.in">cvo@irel.co.in</a>
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2.16.4 We assure you those complaints, if any, made by you on the subject will be kept confidential and fair investigation will be conducted and appropriate action will be taken. Similarly, we expect your commitment to the under taking and its violation will have consequences as per prevailing rule of the company.

## 2.17 Tender/RFP Documents

2.17.1 This RFP comprises the disclaimer set forth hereinabove, the contents as provided in the appendices and enclosed herewith, and will additionally include any addenda or corrigendum or clarification issued by IREL in accordance with Clause 2.10 and 2.10.

### 3 Preparation and submission of the Bid

#### 3.1 Language

- 3.1.1 The Pre-Qualification Application, Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Pre-Qualification Application and the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of Pre-Qualification Application and the Bid, the English language translation shall prevail.

#### 3.2 Bid Security

- 3.2.1 In terms of the RFP, a Bidder will be required to deposit, along with its Pre-Qualification Application, a bid security for **INR Two Lakh** (the “**Bid Security**”). The Bidders will provide Bid Security in the form of bank guarantee acceptable to IREL (the format for Bank Guarantee is provided at Appendix 2). It's the validity period shall not be less than 270 (Two Hundred and Seventy) days from the Bid Due Date, with an additional claim period of 30 (thirty) days, and may be extended as may be mutually agreed between IREL and the Bidder from time to time. The Bid shall be summarily rejected, if, it is not accompanied by the Bid Security. The Bid Security will be issued by a scheduled bank, in favour of “Indian Rare Earths Limited”, payable at Mumbai. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 3.2.2 The genuineness of bank guarantee shall be checked by IREL from the issuing bank.
- 3.2.3 IREL shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 3.2.4 Any Pre-Qualification Application not accompanied by the Bid Security shall be summarily rejected by IREL as non-responsive.
- 3.2.5 The Bid Security of unsuccessful Bidders will be returned by IREL, without any interest within 30 (thirty) days from the LOI issuance.
- 3.2.6 IREL shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in the RFP. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that IREL will suffer loss and damage on account of withdrawal of its Pre-Qualification Application or Bid or for any other default by the Bidder during the period of Bid Validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 3.2.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to IREL under the Bidding Documents and / or under the Agreement, or otherwise, if
- a) a Bidder submits a non-responsive Pre-Qualification Application at Pre-Qualification Stage, or a non-responsive Techno-commercial Bid, or a non-responsive Financial Bid at Bid Stage of the Bidding Process;
  - b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in this RFP;

- c) a Bidder submits false/fabricated documents;
- d) a Bidder withdraws its Pre-Qualification Application during the period of Application Validity, and as extended by mutual consent of the respective Bidder(s) and IREL;
- e) a Bidder withdraws its Bid during the period of Bid Validity, and as extended by mutual consent of the respective Bidder(s) and IREL;
- f) the Selected Bidder fails within the specified time limit-
  - i. to sign and return the duplicate copy of LOI; or
  - ii. to sign the Agreement; or
  - iii. to furnish the Security Deposit within the period prescribed therefor in the Agreement
- g) the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Security Deposit.

### 3.3 Structure of Bid

The Bidders will prepare their bids in the structure and sequence provided below. In case the Bids are not found as per the required structure, IREL shall have the right to declare the Bid as non-responsive and the Bid shall not be considered for further evaluation.

The following conditions shall be adhered to while submitting a Bid:

- 1. Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexures is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- 2. Information supplied by a Bidder must apply to the Bidder or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

#### **STAGE-I: PRE-QUALIFICATION STAGE**

##### **Envelope 1: PRE-QUALIFICATION APPLICATION:**

The Pre-qualification application Envelope shall comprise of following documents:

- a) Cost of RFP Document;
- b) Bid Security in form of Bank Guarantee as per Appendix 2;
- c) Undertaking on ethics as per Appendix 5;
- d) Signed copy of RFP and draft Agreement including all addendum, corrigendum and clarification;
- e) Secrecy agreement as per Appendix 4
- f) Forms 1 to 5 of Appendix 1 to this RFP;
- g) Power of Attorney(s) as per Appendix 3;

- h) Certificate of Registration, Incorporation, along with Memorandum and Articles of association;
- i) Declaration on letter head of Bidder confirming no Conflict of Interest that affects the Bidding Process in accordance to the Form 1 of Appendix 6;
- j) Letter of Association and Board resolution from the Associate, if applicable

**STAGE-II: QUALIFICATION STAGE (Post collection of Technical Information from IREL)**

**OUTER COVER OF BID**      The outer cover of Bid will consist of the Original Bid, Copy 1, and two soft copies of Techno-commercial Bid in Compact Discs/Pen-drive mentioned in the RFP

**COVER OF BID**      The Original Bid as well as the Copy 1 of the Bid will each comprise of an envelope –  
Envelope 2: Techno-commercial Bid

**Envelope 2: TECHNO-COMMERCIAL BID**

The Techno-commercial Bid shall comprise of the following in below mentioned order:

- a) Form 1 to Form 9 of Appendix 6
- b) Unpriced Price Bid as per Form 2 of Appendix 7
- c) All documentary proof for the above mentioned Annexes as mentioned in the RFP
- d) Any other document as mentioned elsewhere in the RFP

**STAGE-II: QUALIFICATION STAGE (Post Technical Discussion with IREL)**

**OUTER COVER OF BID**      The outer cover of Bid will consist of the Original Bid, Copy 1, and two soft copies of revised Techno-commercial Bid in Compact Discs/Pen-drive mentioned in the RFP

**COVER OF BID**      The Original Bid as well as the Copy 1 of the Bid will each comprise of two envelopes –  
Envelope 2: Revised Techno-commercial Bid **OR**  
Confirmation of No change as per Form 10 - Appendix 6  
Envelope 3: Price Bid

**Envelope 2: Revised TECHNO-COMMERCIAL BID**

The revised Techno-commercial Bid shall comprise of the following in below mentioned order:

- e) Form 1 to Form 9 of Appendix 6
- f) Unpriced Price Bid as per Form 2 of Appendix 7
- g) All documentary proof for the above mentioned Annexes as mentioned in the RFP
- h) Any other document as mentioned elsewhere in the RFP

**OR**

**Envelope 2: Letter confirming No change in the Techno-commercial Bid as per Form 10 - Appendix 6**

**Envelope 3: PRICE BID**

This envelope will comprise of the Price Bid as per format provided in Appendix 7 of the RFP.

**3.4 Financial Bid/Price Bid**

- 3.4.1 The Technically Eligible Bidders after receipt of the DPR and conclusion of the Technical Discussions shall submit the Financial Bid in the formats at Appendix-7 (**the “Financial Bid” or “Price Bid”**) along with the revised Techno-commercial Bid clearly indicating the total cost of the Work (Form-2 of Appendix-7) in both figures and words, in Indian Rupees, and signed by the Bidder’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Bid, the lower of the two shall prevail.
- 3.4.2 While submitting the Financial Bid, the Technically Eligible Bidders shall ensure the following:
  - a) All the costs associated with the Work shall be included in the Financial Bid. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc.), accommodation, air fare, equipment, printing of documents, surveys, etc. The total amount indicated in the Financial Bid shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Bid, it shall be considered nonresponsive and liable to be rejected.
  - b) The Financial Bid shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Bid. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.

### 3.5 Format and signing of Pre-Qualification Application

- 3.5.1 The Bidder shall provide all the information sought under the Clause 2.3 and 2.4 of this RFP. IREL will evaluate only the Pre-Qualification Applications received in the required formats with the relevant supporting documents and complete in all respects. Incomplete and /or conditional Pre-Qualification Applications shall be liable to rejection.
- 3.5.2 The Bidder shall prepare 1 (one) original set of the Pre-Qualification Application (together with the documents required to be submitted pursuant to Clause 2.3 and 2.4 of this RFP) and clearly marked as "ORIGINAL". In addition, the Bidder shall submit 1(one) copy of such Pre-Qualification Application and documents, which shall be marked as "COPY 1". The Bidder shall also provide 2 (two) soft copies thereof on a Compact Disc (CD)/Pendrive. In the event of any discrepancy between the original and the copy, the original shall prevail.
- 3.5.3 The Pre-Qualification Application and its copy shall be typed or written in indelible ink. It shall be signed by the authorized signatory of the Bidder who shall also initial each page of the Pre-Qualification Application (including each Appendix and Form) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Pre-Qualification Application shall be initialed by the person(s) signing the Pre-Qualification Application. The Pre-Qualification Application shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

### 3.6 Sealing and Marking of Pre-Qualification Application

- 3.6.1 The Pre-Qualification Application will comprise of one envelope comprising the documents specified in Clause 2.4 of this RFP and any other documents required to meet Conditions of Eligibility specified in Clause 2.3. This envelope should be titled with name of Project, name of Bidder, date of submission and disclaimer "PRE-QUALIFICATION APPLICATION FOR SELECTION OF AN AGENCY FOR UNDERTAKING DESIGN, ENGINEERING AND SUPERVISION OF CONSTRUCTION, ERECTION AND COMMISSIONING ACTIVITIES FOR REPM PLANT". The Bidder shall seal the original and the copy of the Pre-Qualification Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY 1". The envelopes shall then be sealed in an outer envelope that shall also be marked as mentioned in this Clause.
- 3.6.2 Each of the envelopes shall clearly bear the following identification "PRE-QUALIFICATION APPLICATION FOR SELECTION OF AN AGENCY FOR UNDERTAKING DESIGN, ENGINEERING, AND SUPERVISION OF CONSTRUCTION, ERECTION AND COMMISSIONING ACTIVITIES FOR REPM PLANT" and shall clearly indicate the name and address of the Bidder. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.
- 3.6.3 Each of the envelopes shall be addressed to:
- ATTN. OF: Rabi S Sabat
- DESIGNATION: Chief Manager
- ADDRESS: Plot No.1207, ECIL Building, Opposite Siddhivinayak Temple, Veer Savarkar Marg, Prabhadevi, Mumbai 400028
- TELEPHONE NO: +91 22 2421 1630/1851
- E-MAIL ADDRESS: purchase-ho@irel.co.in



- 3.6.4 If the envelopes are not sealed and marked as instructed above, IREL assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.
- 3.6.5 Bidders may submit their bids either by hand or by registered post/courier/speed post. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

### 3.7 Pre-Qualification Application Due Date

- 3.7.1 Bids should be submitted before 15:00 hours IST of 17.12.2018 at the address provided, in the manner and form as detailed in this RFP.

Address for Bid Submission: IREL Office, Plot No.1207, ECIL Building,  
Opposite Siddhivinayak Temple, Veer Savarkar Marg,  
Prabhadevi, Mumbai 400028

The IREL may, in its sole discretion, extend the Qualification Stage Bid Due Date by issuing an Addendum in accordance with Clause 2.10.3 uniformly for all Bidders.

### 3.8 Format and signing of Techno-commercial and Price Bids for Technically Eligible Bidders

- 3.8.1 The Bidder shall provide all the information sought under this RFP. IREL will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- 3.8.2 The Bidder shall prepare 1 (one) original set of the Bid (together with the documents required to be submitted pursuant to this RFP) and clearly marked as "ORIGINAL". In addition, the Bidder shall submit 1 (one) copy of such Bid and documents, which shall be marked as "COPY 1". The Bidder shall also provide 2 (two) soft copies thereof (excluding the Financial Bid) on a Compact Disc (CD)/Pendrive. In the event of any discrepancy between the original and the copy, the original shall prevail.
- 3.8.3 The Bid and its copy shall be typed or written in indelible ink. It shall be signed by the authorised signatory of the Bidder who shall also initial each page of the Bid (including each Appendix and Form) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

### 3.9 Sealing and marking of Technical and Financial Bids

- 3.9.1 The Technical and Financial Bids shall be submitted in a sealed envelope comprising of the following envelopes-
  - a) **Envelope- 2 : TECHNO-COMMERCIAL BID** (This should be titled with name of Project, name of Bidder, date of submission and disclaimer "TECHNO-COMMERCIAL BID TO BE OPENED ON xx/yy/20xx")
    - i. Techno-commercial Offer- Form 1 to 9 of Appendix- 6 and the supporting documents as requested in the RFP (This should be titled with name of Project, name of Bidder, date of submission)



b) **Envelope 3- FINANCIAL BID** (This should be titled with name of Project, name of Bidder, date of submission and disclaimer “DO NOT OPEN ALONG WITH TECHNO-COMMERCIAL BID”)

i. Financial Offer- Appendix- 7 (This should be titled with name of Project, name of Bidder, date of submission)

These two envelopes 2 and 3, along with their constituents, will together form one copy of the Bid.

3.9.2 The Technically Eligible Bidder shall seal Envelope 2 and Envelope 3 in an outer envelope and mark the envelope as “TECHNICAL AND FINANCIAL BIDS FOR SELECTION OF AN AGENCY FOR UNDERTAKING DESIGN, ENGINEERING, AND SUPERVISION OF CONSTRUCTION, ERECTION AND COMMISSIONING ACTIVITIES FOR REPM PLANT”. The Qualified Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY 1. The envelopes shall then be sealed in an outer envelope that shall also be marked as mentioned in this Clause.

3.9.3 Each of the envelopes shall clearly bear the following identification:

“TECHNICAL AND FINANCIAL BIDS FOR SELECTION OF AN AGENCY FOR UNDERTAKING DESIGN, ENGINEERING, AND SUPERVISION OF CONSTRUCTION, ERECTION AND COMMISSIONING ACTIVITIES FOR REPM PLANT”

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand corner of each of the envelopes.

3.9.4 Each of the envelopes shall be addressed to:

ATTN. OF: Rabi S Sabat

DESIGNATION: Chief Manager

ADDRESS: Plot No.1207, ECIL Building, Opposite Siddhivinayak Temple, Veer Savarkar Marg, Prabhadevi, Mumbai 400028

TELEPHONE NO: +91 22 2421 1630/1851

E-MAIL ADDRESS: purchase-ho@irel.co.in

3.9.5 If the envelopes are not sealed and marked as instructed above, IREL assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

3.9.6 Bidders may submit their bids either by hand or by registered post/courier/speed post. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

### 3.10 Bid Due Date

3.10.1 Bids should be submitted before 15:00 hours IST on Bid Due Date at the address provided, in the manner and form as detailed in this RFP.

Address for Bid Submission: IREL Office, Plot No.1207, ECIL Building,  
Opposite Siddhivinayak Temple, Veer Savarkar Marg,  
Prabhadevi, Mumbai 400028

The IREL may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10.3 uniformly for all Bidders.

### **3.11 Late Pre-Qualification Application or Bid submitted**

- 3.11.1 Pre-Qualification Applications received by IREL after the Application Due Date or Bids received by the IREL after the Bid Due Date, shall not be eligible for consideration and shall be summarily rejected. Such Pre-Qualification Application or Bids, as the case may be, will be returned to the parties in the same condition as received by or at IREL.

### **3.12 Modification/substitution of Pre-Qualification Applications and Bids**

- 3.12.1 The Bidder may modify or substitute its Pre-Qualification Application after submission, provided that written notice of the modification or substitution is received by IREL prior to the Pre-Qualification Application Due Date. No Pre-Qualification Application shall be modified or substituted by the Bidder on or after the Pre-Qualification Application Due Date.
- 3.12.2 The Bidder may modify or substitute its Bid after submission, provided that written notice of the modification or substitution is received by IREL prior to the Bid Due Date. No Bid shall be modified or substituted by the Bidder on or after the Bid Due Date.
- 3.12.3 The modification or substitution notice shall be prepared, sealed, marked, and delivered in accordance with above clause, with the envelopes being additionally marked "MODIFICATION" or "SUBSTITUTION", as appropriate.
- 3.12.4 Any alteration/ modification in the Pre-Qualification Application or Bid or additional information supplied subsequent to the Application Due Date or Bid Due Date, unless the same has been expressly sought for by IREL, shall be disregarded.

### **3.13 Validity of Pre-Qualification Application and Bids**

- 3.13.1 The Pre-Qualification Applications and Bids both shall be valid for a period of not less than 180(One Hundred and Eighty) days each from the Application Due Date and Bid Due Date respectively. The validity of Pre-Qualification Applications and Bids may be extended by mutual consent of the respective Bidders and IREL.

### **3.14 Confidentiality**

- 3.14.1 Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising IREL in relation to, or matters arising out of, or concerning the Bidding Process. IREL will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. IREL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or IREL or as may be required by law or in connection with any legal process.

## 4 Criteria for Qualification of Bidders and Evaluation Process

### 4.1 Opening and evaluation of Pre-Qualification Applications

- 4.1.1 IREL shall open the Pre-Qualification Applications at 16:00 hours IST 17.12.2018, at the place specified below and in the presence of the Bidders who choose to attend.
- 4.1.2 Address for Pre-Qualification Application Opening: IREL Office, Plot No.1207, ECIL Building, Opposite Siddhivinayak Temple, Veer Savarkar Marg, Prabhadevi, Mumbai 400028
- 4.1.3 IREL will subsequently examine and evaluate the Pre-Qualification Applications in accordance with the provisions set out in this RFP.
- 4.1.4 Bidders are advised that qualification of Bidders will be entirely at the discretion of IREL. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 4.1.5 Any information contained in the Bid shall not in any way be construed as binding on IREL, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 4.1.6 IREL reserves the right not to proceed with the Qualification Stage at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 4.1.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, IREL may, in its sole discretion, exclude the relevant project from evaluation.
- 4.1.8 In the event that a Bidder claims credit for an eligible project, and such claim is determined by IREL as incorrect or erroneous, IREL shall reject such claim and exclude the same from evaluation. Where any information is found to be patently false or amounting to a material misrepresentation, IREL reserves the right to reject the Pre-Qualification Application.

### 4.2 Test of responsiveness

- 4.2.1 Prior to evaluation of Pre-Qualification Applications, IREL shall determine whether each Pre-Qualification Application is responsive to the requirements of the RFP. A Pre-Qualification Application shall be considered responsive if:
  - a) it is received by Pre-Qualification Application Due Date (including any extension thereof) as per format prescribed along with all filled up forms, data/ details/ documents requested in this RFP;
  - b) it does not contain any condition or qualification; and
  - c) it is not non-responsive in terms hereof.
- 4.2.2 IREL reserves the right to reject any non-responsive Pre-Qualification and no request for alteration, modification or substitution shall be entertained by IREL in respect of such Pre-Qualification Application.  
Provided, however, that IREL may, in its discretion, seek certain clarifications, if the same do not constitute a material modification of the Pre-Qualification Application.

- 4.2.3 Only the Bidders who meet the eligibility criteria, and whose Application are responsive in accordance to clause 4.2.1 shall be declared as Technically Eligible Bidders, and will qualify for Qualification Stage. Pre-Qualification Applications of firms who do not meet these criteria shall be rejected.

#### 4.3 Opening and evaluation of Techno-commercial Bids

- 4.3.1 IREL shall open the Techno-commercial Bids at the place specified below and in the presence of the Bidders who choose to attend.

Address for Bid Opening: IREL Office, Plot No.1207, ECIL Building,  
Opposite Siddhivinayak Temple, Veer Savarkar Marg,  
Prabhadevi, Mumbai 400028

- 4.3.2 IREL will subsequently examine and evaluate the Techno-commercial Bids in accordance with the provisions set out in this RFP.
- 4.3.3 Bidders are advised that qualification of Bidders will be entirely at the discretion of IREL. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 4.3.4 Any information contained in the Bid shall not in any way be construed as binding on IREL, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 4.3.5 IREL reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 4.3.6 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, IREL may, in its sole discretion, exclude the relevant project from computation of the Qualification Score of the Bidder.
- 4.3.7 In the event that a Bidder claims credit for an eligible project, and such claim is determined by IREL as incorrect or erroneous, IREL shall reject such claim and exclude the same from computation of the Qualification Score, and may also, while computing the aggregate Qualification Score of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, IREL reserves the right to reject the Bid.

#### 4.4 Test of responsiveness

- 4.4.1 Prior to evaluation of Techno-commercial Bids, IREL shall determine whether each Techno-commercial Bid is responsive to the requirements of the RFP. A Techno-commercial Bid shall be considered responsive if:
- a) it is received by Bid Due Date (including any extension thereof) as per format prescribed along with all filled up forms, data/ details/ documents requested in this RFP;
  - b) it does not contain any condition or qualification; and
  - c) it is not non-responsive in terms hereof.

- 4.4.2 IREL reserves the right to reject any Bid that is non-responsive and no request for alteration, modification or substitution shall be entertained by IREL in respect of such Bid. Provided, however, that IREL may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

## 4.5 Calculation of Qualification Score

- 4.5.1 The Qualification Score of the Bidders will be calculated as below:

S. No.	Parameter	Scoring Details	Documents Required
1.	Any Chemical/metallurgical plant involving Design and/or Engineering, Supervision of Construction, erection and commissioning, and having an capital cost (excluding land) of at least INR 50 (Fifty) crore;  One project – 10 marks (as mentioned in PQC)  For each additional project 5 marks maximum upto 15 marks.	<b>25 Marks</b>	As per Clause 2.4.2a)
2.	Any Industrial project involving Design and/or Engineering, Supervision of Construction, erection and commissioning, and having an capital cost (excluding land) of at least INR 120 (One Hundred and Twenty) Crores  One project – 10 marks (as mentioned in PQC)  For each additional project 5 marks maximum upto 15 marks	<b>25 Marks</b>	As per Clause 2.4.2a)
3.	<b><u>Proposed Methodology and Work Plan</u></b>	25 Marks	<ul style="list-style-type: none"> <li><u>Understanding of TOR</u></li> </ul>

S. No.	Parameter	Scoring Details	Documents Required
	<ul style="list-style-type: none"> <li>Understanding of TOR</li> <li>Approach and Methodology</li> <li>Organization and Personnel</li> <li>Work Schedule</li> <li>Knowledge transfer mechanism</li> </ul>		<p>The Bidder's understanding of assignment's objectives, and the quality of suggestions made for ensuring more clarity in the Assignment's objectives will be considered for evaluation.</p> <ul style="list-style-type: none"> <li><u>Approach and Methodology</u> The Bidder will be evaluated on the following parameters - quality and feasibility of its proposed methodology for executing this Assignment, along with the proposed tools, sequence of activities, quality assurance plan, etc.</li> <li><u>Organization and Personnel</u> The Bidder will be evaluated on the following parameters - proposed composition of proposed team, proposed project governance structure, time commitment of the key experts, qualifications of the key experts, etc.</li> <li><u>Work Plan</u> The proposed work plan will be evaluated on the following parameters – consistency of work plan with the proposed approach and methodology, understanding of the TOR and feasibility of the workplan.</li> </ul>

S. No.	Parameter	Scoring Details	Documents Required
			<ul style="list-style-type: none"> <li><u>Knowledge Transfer Mechanism</u></li> </ul> <p>The Bidder will be evaluated on the methodology and tools proposed for ensuring smooth transition of supervision and control of operations between the Contractors and IREL.</p> <p>Approach and Methodology as per Form 8 of Appendix 6.</p>
4.	<b><u>Relevant Experience of Key Personnel</u></b>	25 Marks	
4.1	Project Manager – <ul style="list-style-type: none"> <li>Should have B.E./B.Tech engineering degree (full time), along with post-graduation in engineering or management.</li> <li>Should have at-least 15 years of post-qualification experience – 2 Marks</li> </ul> <p>Each additional year of experience – 0.5 marks, maximum upto 1.5 marks</p> <ul style="list-style-type: none"> <li>In case of PMP or PRINCE2 certification- 1.5 marks</li> </ul>	10 Marks	<ul style="list-style-type: none"> <li>CV, degree certificates and relevant work experience certificates.</li> </ul>

S. No.	Parameter	Scoring Details	Documents Required
	<ul style="list-style-type: none"> <li>Should have experience of managing assignments involving design and/or engineering, project execution and overall site project management for Industrial projects in the last 15 years of Bid Due Date</li> </ul> <p>1 project- 2 marks</p> <p>Each additional assignment – 1 mark, maximum upto 3 marks</p>		
4.2	<p>Mechanical / Electrical Engineer</p> <ul style="list-style-type: none"> <li>Should have full time B.E./B.Tech or equivalent in Mechanical / Electrical Engineering</li> <li>Should have 7 years of post-qualification experience –1 Mark</li> </ul> <p>Each additional year of experience – 0.5 mark, maximum upto1 marks</p> <ul style="list-style-type: none"> <li>Should have been part of the team for assignments involving design and/or engineering, of industrial projects</li> </ul> <p>1 project- 1.5 Mark</p> <p>Each additional assignment – 0.5 marks, maximum upto1.5 mark</p>	5 Marks	<ul style="list-style-type: none"> <li>CV, degree certificates and relevant work experience certificates.</li> </ul>
4.3	Civil Engineer	5 Marks	<ul style="list-style-type: none"> <li>CV, degree certificates and relevant work experience certificates.</li> </ul>



S. No.	Parameter	Scoring Details	Documents Required
	<ul style="list-style-type: none"> <li>Should have full time B.E./B.Tech or equivalent in Civil Engineering</li> <li>Should have 7 years of post-qualification experience – 1 Mark</li> </ul> <p>Each additional year of experience – 0.5 mark, maximum upto 1 mark</p> <ul style="list-style-type: none"> <li>Should have been part of the team for assignments involving design and/or engineering, procurement, project execution and overall site project management in the last 5 years Bid Due Date</li> </ul> <p>1 project- 1.5 Mark</p> <ul style="list-style-type: none"> <li>Each additional assignment – 0.5 marks, maximum upto 1.5 mark</li> </ul>		
4.4	<p>Process Engineer</p> <ul style="list-style-type: none"> <li>Should have full-time B.E./B.Tech or equivalent in Chemical or Metallurgical Engineering</li> <li>Should have 7 years of post-qualification experience – 1 Mark</li> </ul> <p>Each additional year of experience – 0.5 marks, maximum upto 1 mark</p>	5 Marks	<ul style="list-style-type: none"> <li>CV, degree certificates and relevant work experience certificates.</li> </ul>

S. No.	Parameter	Scoring Details	Documents Required
	<ul style="list-style-type: none"> <li>Should have been part of the team which has successfully completed in atleast 1 (one) assignments involving design, engineering, procurement, project execution and overall site project management in the last 5 years from Bid Due Date – 1.5 Marks</li> </ul> <p>Each additional Eligible Assignment – 0.50 marks, maximum upto 1.5 marks</p>		

#### 4.6 Documents to be submitted at Pre-Qualification Stage and Qualification Stage

- 4.6.1 The Bidder may, for the purpose of qualification, use the technical and/or financial strength of any one of its Associates as defined in the RFP in clause 2.5.1. In case the technical and/ or financial strength of an Associate is used at Qualification Stage or Bid Stage, the terms, conditions and liabilities as applicable on the Bidder shall also be applicable on the Associate. The Bidder will be required to provide a Letter of Association and Board Resolution from the Associate along with Pre-Qualification application to allow the use of its technical and/or financial strength by the Bidder for the purpose of the Project and committing all necessary technical and/or financial assistance required by the Bidder for the execution of the Project. In case, the bidder is not able to provide the board resolution at the time of Pre-Qualification application, the same is required to be provided in stage 2 of bidding while submitting the revised Techno-Commercial and Price bids. However, the bidder is required to submit the letter of association on the letter head signed by the authorized signatory of the Associate with the Pre-Qualification Application.
- 4.6.2 Certificate of Registration/Incorporation of the Bidders along with their Memorandum and Articles of Association will be provided with Pre-Qualification Application. In case the Bidder is not a company, equivalent documents will be provided by the Bidder in support of its Eligibility under Clause 2.3 as per the RFP.
- 4.6.3 The Bidder should submit a Power of Attorney as per the format at Appendix-3, authorising the signatory of the Bid to commit the Bidder with Pre-Qualification Application.
- 4.6.4 The Bidder shall enclose with its Pre-Qualification Application and Techno-commercial Bid, to be submitted as per the format at Appendix-1 and Appendix-6 respectively, the following:
- A copy of work order/contract and completion certificate for the claimed Eligible Assignments

In case of unavailability of completion certificate, the bidder may submit certificate(s) from practicing chartered accountants stating the payments received and works completed, as the case may be, along with declaration on the letter head of the Bidder in respect of the projects specified.

b) The Bidder shall enclose with its Pre-Qualification Application, to be submitted as per the format at Appendix-1, the following:

a. Audited copies of Balance Sheet, Profit Loss Statement for the last three Financial Years and certificate from a practicing chartered accountant for the Bidder and/ or its Associates specifying the Net Worth and Turnover of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this RFP.

For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

b. In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and a practicing chartered accountant shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

4.6.5 For supporting the CVs submitted of Key Personnel, the Bidders need to furnish relevant educational/degree certificates

4.6.6 In case of any certificates, work orders, contracts, agreements, copies of permits/license/ certificate of registration, documents, declaration, issued in any country other than India are submitted with Pre-Qualification Application or Techno-commercial Bid, the same will have to be duly endorsed by the chamber of commerce and the Indian Embassy of that country.

4.6.7 In case of unavailability of certain documents as requested in the RFP for Pre-Qualification Application or Techno-commercial Bid, the Bidder can give a self-certification on their letterhead for the same and should provide all required assistance to IREL for verification of the claim in the self-certification. The decision taken by IREL in this regard will be final.

4.6.8 For the purpose of conversion of data related to project cost, net worth, annual turnover, any other costs in currency (foreign currency) other than Indian Rupees, the average of TT buying and TT selling rate of State Bank of India, fifteen (15) days prior to the Bid Due Date will be adopted.

## 4.7 Evaluation of Techno-commercial Bids

In the second stage, post the Technical discussions with IREL and submission of Techno-commercial and Price Bid, the Techno-commercial Bid will be evaluated on the basis of Bidder's experience, its understanding of Scope of Work, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Bidders whose Techno-commercial Bids get a score of 50 (fifty) marks or more out of 100 (one hundred) shall qualify for further consideration, shall be ranked from highest to the lowest on the basis of their technical score (St) and shall be called as the Technically Qualified Bidder.

#### 4.8 Evaluation of Financial Bid

- 4.8.1 After the evaluation of Techno-commercial Bid, the Financial Bids submitted by the Technically Qualified Bidder will be evaluated as per Appendix 7. Each Financial Bid will be assigned a financial score (Sf).
- 4.8.2 For financial evaluation, the total cost indicated in the Financial Bid will be considered.
- 4.8.3 IREL will determine whether the Financial Bids are complete, unqualified and unconditional. The cost indicated in the Financial Bid shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest Financial Bid (F,) will be given a financial score (Sf) of 100 points. The financial scores of other Bids will be computed as follows:

$$Sf = 100 \times Fm/F$$

(F = amount of Financial Bid; Fm = Lowest Financial Bid)

#### 4.9 Combined and final evaluation

- 4.9.1 Bids will be ranked according to their combined technical (St) and financial (Sf) scores as follows:

$$S = (St \times Tw) + (Sf \times Fw)$$

Where S is the combined score, and Tw and Fw are weights assigned to Techno-commercial Bid and Financial Bid, which shall be 0.80 and 0.20 respectively.

- 4.9.2 Subject to the provisions of Clause 4, the Bidder whose Bid is adjudged as responsive in terms of Clause 4.4 and who scores the highest combined score shall be declared as the Selected Bidder.
- 4.9.3 In the event that two or more Bidders quote the same Bidding Parameter (the “**Tie Bidders**”), IREL shall identify the Selected Bidder based on their Qualification Score- The Bidder with the higher Qualification Score will be the Selected Bidder.
- 4.9.4 After selection, a Letter of Intent (the “**LOI**”) shall be issued, in duplicate, by IREL to the Selected Bidder and the Selected Bidder shall, within 15 (fifteen) days of the receipt of the LOI, sign and return the duplicate copy of the LOI in acknowledgement thereof. In the event the duplicate copy of the LOI duly signed by the Selected Bidder is not received by the stipulated date, IREL may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Selected Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOI.

- 4.9.5 The Selected Bidder will be required to submit the Security Deposit as mentioned in the Agreement within a period of twenty one (21) days from the issuance of LOI or at the time of signing of the Agreement, whichever is earlier. The Selected Bidder will have to keep its Bid Security valid for a period of at least thirty (30) days later than the date of submission of Security Deposit or verification of Security Deposit by IREL, whichever is later; and extend the validity of its Bid Security appropriately to meet this criteria. In case the Bid Security validity, as requested hereinabove, is not maintained by the Selected Bidder, IREL will have the right to encash the Bid Security of the Selected Bidder. In the event the Security Deposit is not received by the stipulated date, IREL may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to submit the Security Deposit.
- 4.9.6 After acknowledgement of the LOI and submission of Security Deposit as aforesaid by the Selected Bidder, it shall cause the Selected Bidder to execute the Agreement preferably within a period of thirty (30) days from the issuance of LOI or as prescribed by IREL. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

## 5 Miscellaneous

### 5.1 Jurisdiction

- 5.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts in Mumbai, where IREL has its headquarters, shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

### 5.2 General

- 5.2.1 IREL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b. consult with any Bidder in order to receive clarification or further information;
  - c. pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - d. retain any information and/ or evidence submitted to IREL by, on behalf of, and/ or in relation to any Bidder; and/ or
  - e. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder
- 5.2.2 It shall be deemed that by submitting the Bid, the Bidder agrees and releases IREL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

### 5.3 Proprietary data

- 5.3.1 All documents and other information supplied by IREL or submitted by a Bidder to IREL shall remain or become the property of IREL. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. IREL will not return any Bid or any information provided along therewith.

### 5.4 Contacts during Pre-Qualification Application and Bid Evaluation

- 5.4.1 Pre-Qualification Applications or Bids, as the case may be, shall be deemed to be under consideration immediately after they are opened and until such time IREL makes official intimation of award/ rejection to the Bidders.

While the Pre-Qualification Applications or the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, IREL and/ or their employees/ representatives on matters related to the Pre-Qualification Applications or Bids, as the case may be, under consideration.

## 5.5 Correspondence with the Bidder

- 5.5.1 Save and except as provided in this RFP, IREL shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Pre-Qualification Application or Bid.

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## Appendix

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## Appendix 1 – PRE-QUALIFICATION APPLICATION

### Form 1 – Particulars of Bidder

#### Particulars of the Bidder

S. No.	Particulars	Details
1.	a) Name of Bidder b) Legal status (e.g. incorporated private company, unincorporated business, partnership etc.): c) Country of Incorporation d) Address of the corporate headquarters and its branch office(s), if any, in India e) Date of incorporation and/ or commencement of business	
2.	Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in this Project	
3.	Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder a) Name b) Designation c) Company d) Address e) Telephone Number f) Email address	
4.	Particulars of the Authorised Signatory of the Bidder a) Name b) Designation c) Company d) Address e) Telephone Number	

	f) Email address	
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5. The following information shall also be provided for the Bidder

Name of Bidder:

S. No.	Criteria	Yes	No
1	Has the Bidder been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (similar nature or other)?		
2	If the answer to 1 is yes, does the bar subsist as on the Application Due Date or Bid Due Date?		
3			

Signature of Authorised Signatory with seal

Name, Designation, Date, Place

Form 2 - Conditions of Eligibility of the Bidder

**Conditions of Eligibility of the Bidder**

Name of Project:

Name of Bidder:

<b>S. No.</b>	<b>Eligibility Requirement</b>	<b>Eligibility of Bidder</b>	<b>Documentary proof provided with reference</b>
1.			

Signature of Authorised Signatory with seal

Name, Designation, Date, Place

Form 3 – Eligible Assignment of Bidder

**Eligible Assignments of Bidder**

Assignment Name :	Country:
Location within Country:	Professional Staff Provided by Your Firm/Entity (Profiles):
Name of Firm/Entity:	No. of Staff:
Address:	No. of Staff-Months: Duration of Assignment:
Start Date (Month / Year)	Completion Date (Month / Year)
Name of Associated Consultants, If Any:	No. of Months of Professions; Staff Provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:	
Narrative Description of project:	
Description of Actual Services * Provided by Your Staff:	

**Firm's Name:**

**Signature of Authorized Representative:**

Form 4 – Financial Capacity of Bidder

**Financial Capacity of the Bidder**

Name of Project:

Name of Bidder:

**Net-worth of Bidder**

<b>Net-worth of the Bidder</b> <b>As per last Financial Year's</b> <b>audited financial</b> <b>statements dated</b> _____ <b>Currency</b> _____	_____ (in figures)	_____ (in words)
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**Turnover of the Bidder**

<b>Turnover of the Bidder</b> <b>For the last three Financial</b> <b>Years ending [month],</b> <b>[year]</b> <b>Currency</b> _____	FY _____ _____ (in figures) _____ (in words)	FY _____ _____ (in figures) _____ (in words)	FY _____ _____ (in figures) _____ (in words)
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Signature of Authorised Signatory with seal

Name, Designation, Date, Place

Note:

- The Bidders will provide all necessary documents in support of the financial strength including audited financial statements and certificate from practicing chartered accountant.
- For the purpose of conversion of foreign currency, the provisions of Clause 4.6.8 of the RFP will prevail.
- In case of sole Bidder taking support of Associate to meet the financial criteria, the above information for the Bidder as well as its Associate will be provided with documentary proof for both.

- Format for certificate from the practicing chartered accountant

**Certificate from the practicing chartered accountant**

This is to certify that(name of the Bidder) has received the payments shown above against the respective years on account of professional fees.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

Form 5 – Statement of Legal Capacity

**Statement of Legal Capacity**

(To be forwarded on the letterhead of the Bidder)

Ref.

Date.

To,

.....

.....

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the RFP document.

We have agreed that ..... (insert individual's name) will act as our representative and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

\$ Please strike out whichever is not applicable

## **Appendix 2 – FORMAT FOR BANK GUARANTEE FOR BID SECURITY**

### **Bank Guarantee for Bid Security**

B.G. No.

Dated

In accordance with RFP No. \_\_\_\_\_ Dated \_\_\_\_\_ for the work of \_\_\_\_\_ (herein after referred to as “the said Works”) for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only), under \_\_\_\_\_ (Corporate Office) of M/s Indian Rare Earths Limited, a company incorporated under Indian Companies Act, having its registered office at Plot No.1207, ECIL building, Opp. to Siddhivinayak Temple, Veer Savarkar Marg, Prabhadevi, Mumbai – 400028, India (herein after referred to as “IREL”), M/s \_\_\_\_\_ Address \_\_\_\_\_ [Herein after referred to as Bidder (s)] wish /wishes to participate in the said tender and a Bank Guarantee for the sum of Rs. \_\_\_\_\_ (in words) valid for a period of \_\_\_\_\_ days (in words) is required to be submitted by the Bidder towards the Bid Security.

We the \_\_\_\_\_ Bank (hereinafter called the said Bank) do hereby undertake to pay to IREL, the sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) by reason of the said Bidder’s failure to enter into an agreement of contract on intimation of acceptance of his Bid and/or to commence the works and/or failure to deposit the security deposit within the stipulated period as per the terms and conditions relating to and/or governing the contract and/or specified in the RFP. We also agree that any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. We also agree that notwithstanding any dispute or difference or any litigation in respect of or arising from the said contract and/or the acceptance of the Bid of the Bidder afore stated by IREL including the question as to the tenability of the claim of IREL for forfeiting the Bid Security being the Bank Guarantee herein, we shall forthwith pay the said amount to IREL on demand being made as aforesaid.

We \_\_\_\_\_ Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for entering into an Agreement of contract and that it shall continue to be enforceable till all the dues of IREL under the terms and conditions of the RFP for the work have been fully paid and its claims satisfied or discharged or till IREL certifies, that the terms and conditions of the RFP have been fully and properly carried out by the said Bidder and accordingly discharges the guarantee.

We \_\_\_\_\_ Bank further agree with IREL that IREL shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the RFP and/or terms and conditions governing the Agreement or to extend the time of validity of the offer from the said Bidder from time to time or to postpone for any time or from time to time any of the powers exercisable by IREL against the said tenderer and to forbear or enforce any of the terms and conditions of the RFP and we shall not be relieved from our liability hereunder by reason of any such variation, or extension being granted to the said Bidder or for any forbearance, act or omission on the part of IREL or any indulgence by IREL to the said Bidder or by any such matter or thing whatsoever which under the law relating to surety/guarantee would but for this provision have effect of so relieving us.

We \_\_\_\_\_ Bank do hereby further agree that any change in the Constitution of the said Bidder or the Bank will not affect the validity of this guarantee.



We \_\_\_\_\_ Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of IREL in writing.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2017

\_\_\_\_\_ Bank

(Signature with name in Block letters with designation,

Attorney as per power of Attorney No. \_\_\_\_\_ dt. \_\_\_\_\_)

Bank's Common seal

### Appendix 3 – POWER OF ATTORNEY FOR SIGNING OF BID

#### Power of Attorney for signing of Bid

Know all men by these presents, We, \_\_\_\_\_ (name of the Bidder and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of \_\_\_\_\_ and presently residing at \_\_\_\_\_, who is [presently employed with us and holding the position of \_\_\_\_\_], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the “Selection of an Agency for undertaking Design, Engineering and Supervision of Construction, Erection and Commissioning Activities for a Plant of strategic importance” proposed or being developed by the Indian Rare Earths Limited (the “IREL”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to IREL, representing us in all matters before IREL, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with IREL in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Agreement with IREL.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, \_\_\_\_\_, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\*\*.

For \_\_\_\_\_

(Signature)

(Name, Title and Address)

Witnesses:

1.

2.

Accepted

[Notarised]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

## Appendix 4 – SECRECY AGREEMENT

Secrecy Agreement to be executed on a Non-Judiciary Stamp paper of appropriate value

### SECRECY AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_th day of \_\_\_\_\_, 20- - by and between INDIAN RARE EARTHS LTD., a company incorporated under Indian Companies Act having its registered office at Plot No.1207, , Opp. to Siddhivinayak Temple, Veer Savarkar Marg, Prabhadevi, Mumbai – 400 028, India (hereinafter called “IREL”) on one part and \_\_\_\_\_, a company duly incorporated under \_\_\_\_\_, with its registered office \_\_\_\_\_ (hereinafter called \_\_\_\_\_) includes its successors and permitted assigns, on the other part.

### WITNESSETH:

#### WHEREAS:

**WHEREAS, IREL** intends to set up a Rare Earth Permanent Magnet (REPM) plant within the BARC, Visakhapatnam project site located at Atchuthapuram in Andhra Pradesh.

**WHEREAS,** \_\_\_\_\_ [Bidder] had participated in the RFP and now will be undertaking Design, Engineering, Supervision Of Construction, Erection And Commissioning Activities for Rare Earth Permanent Magnet (REPM) Plant within BARC, Visakhapatnam project site located at Atchuthapuram in Andhra Pradesh.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. The term “Confidential Information” means:
  - i. All details supplied by IREL/ (Name of the company) on technical, commercial and other information and data on the Process.
  - ii. All details supplied by IREL/ (Name of the company) on technical, commercial and other information and data relating to the products.
2. Each party hereto shall keep secret and confidential any and all Confidential information it receives from any other party or parties hereto under this Agreement, and shall not use such Confidential Information for any purposes except for the said tender purpose hereunder. The obligations under this Article shall not apply to any information or data that :
  - i. at the time of its disclosure hereunder is in the public domain,
  - ii. after disclosure hereunder becomes part of the public domain by publication or otherwise through no fault of the party to whom such information or data is disclosed hereunder (“Receiving party”) (but only after it is published or otherwise becomes part of the public domain),

- iii. the Receiving Party can show in its possession at the time of disclosure hereunder and which the Receiving party, without breach or any obligation is free to disclose to others, or
- iv. was received by the Receiving Party after the time of disclosure by a party hereto ("Disclosing Party") hereunder from a third party who did not acquire it, directly or indirectly, from the Disclosing Party under an obligation of confidence and which the Receiving party, without breach of any obligation, is free to disclose to others.

For the purpose of this Article 2, information or data which is specific, e.g., those on operating conditions or equipment, shall not be deemed to be within the foregoing exceptions merely because it is embraced by general information or data in the public domain or in the possession of Receiving Party. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the possession of the Receiving Party, but only if the combination itself and its principle of operation are in the public domain or in the possession of the Receiving Party.

- 3. The Receiving Party shall limit the access to the Confidential Information received hereunder to its directors, officers and employees, who (i) need to have access with such Confidential Information, (ii) have been informed of the confidential nature thereof and (iii) have agreed to undertake the obligations of non-disclosure and non-use of such Confidential Information.
- 4. Upon request of IREL, .....(name of the party) shall, free of charge, promptly return to IREL all the Confidential information received from IREL hereunder.
- 5. Each party hereto shall not, without the other party's prior express written consents, disclose or allow the disclosure of the existence of this Agreement.
- 6. It is mutually understood and agreed that no license or other rights are granted to any party hereto under this Agreement, by implication or otherwise, for any of the patents or patents applications of any other party hereto or as to any information and data disclosed by any other party or parties hereto under this Agreement.
- 7. None of the parties may assign its rights or obligations hereunder without the prior written consent of the other parties.
- 8. The obligation of non-disclosure and non-use of the Confidential information under this Agreement shall remain in effect for five (5) years after the date hereof and shall terminate upon lapse of said five (5) years.
- 9. This Agreement shall be governed by and construed in accordance with Indian laws.
- 10. Each party hereto acknowledges and agrees that monetary damages for any breach or threat of breach of this Agreement are inadequate. Each party hereto shall, therefore, be entitled to seek and obtain temporary and injunctive relief for any breach or threat of breach of this Agreement relating to its Confidential Information, in addition to any other remedy.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives on the day and year first above written. The original shall remain with IREL and the duplicate with .....(name of the party).

RFP for selection of Technical Agency

1. For \_\_\_\_\_  
(Name)  
Designation

Witness:

1. (Name)  
Designation
2. (Name)  
Designation

2. For Indian Rare Earths Ltd.  
(Name)  
Designation

Witness:

1. (Name)  
Designation
2. (Name)  
Designation

## Appendix 5 - UNDERTAKING BY THE BIDDER

### Undertaking by the Bidder

Date:

To,

M/s. Indian Rare Earths Ltd.,  
1207, V.S. Marg, Prabhadevi,  
Mumbai 400 028

I / We ..... am / are a Vendor / Customer of  
Indian Rare Earths Limited (now onwards to be referred as Company).

I / We agree and undertake:

Not to provide any gift and / or inducement to any employee of the Company in connection with  
securing / being granted favour (s) in my / our dealings with the Corporate office of the company  
and / or its any field units namely MK, Chavara, OSCOM, RED & IRERC.

To immediately report any gift and / or inducement sought by any employee of the Company  
granting favour(s) to me / us in my / our dealings with the Company and / or its field units.

Signature.....

Name.....

Title.....

Name of the Company and Address (with Seal).....

## **Appendix 6 – TECHNO-COMMERCIAL PROPOSAL**

### Form 1- Letter Comprising Bid

#### **Letter comprising the Bid**

Dated:

To:

Subject: Bid for ----- project

Dear Sir,

1. With reference to your RFP document dated \*\*\*\*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. All information provided in the Bid and in the Appendices is true and correct.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to IREL any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of IREL to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. We certify that in the last three years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
  - a. I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by IREL.
  - b. I/ We do not have any conflict of interest in accordance with the RFP document.
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or Expression of Interest issued by or any agreement entered into with IREL or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 2.15 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.



8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
9. I/ We believe that we satisfy the Eligibility requirements as specified in Clause 2.3 of the RFP document and are/ is qualified to submit a Bid.
10. I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/ employees.
13. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of ineligibility in terms of the provision of the RFP, we shall intimate IREL of the same immediately.
14. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, I/We shall inform IREL forthwith along with all relevant particulars and IREL may, in its sole discretion, disqualify us or withdraw the Letter of Intent, as the case may be.
15. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement but prior to Commencement Date of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without IREL being liable to us in any manner whatsoever.
16. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by IREL in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
17. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
18. I/We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set-forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by IREL or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Project.

19. The Bidding Parameter has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.
20. I/We offer a Bid Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to IREL in accordance with the RFP Document.
21. The Bid Security in the form of a Bank Guarantee (strike out whichever is not applicable) is attached.
22. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened.
23. I/We hereby submit our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.
24. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
25. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

(Signature of the Authorised signatory)

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder Firm

Date:

Place:

Form 2 - Qualification Score calculation

**Qualification Score of the Bidder**

Name of Project:

Name of Bidder:

<b>S. No.</b>	<b>Qualification Parameter</b>	<b>Experience of Bidder</b>	<b>Documentary proof provided with reference</b>
1.			
2.			
3.			
4.			
5.			

Signature of Authorised Signatory with seal

Name, Designation, Date, Place

Form 3 – Abstract of Eligible Assignments of Key Personnel**Abstract of Eligible Assignments of Key Personnel<sup>\$</sup>**

Name of Key Personnel:      Designation:

S.No	Name of Project <sup>\$</sup>	Name of Client	Estimated capital cost of project (in INR Crore/ US\$ million)	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Man days spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							
5							

<sup>\$</sup> Use separate Form for each Key Personnel.

<sup>\$\$</sup> The names and chronology of projects included here should conform to the project-wise details submitted in Form-7 of Appendix-6. Note: The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

Form 4 – Eligible Assignment of Bidder

**Eligible Assignments of Bidder**

Assignment Name :	Country:
Location within Country:	Professional Staff Provided by Your Firm/Entity (Profiles):
Name of Firm/Entity:	No. of Staff:
Address:	No. of Staff-Months: Duration of Assignment:
Start Date (Month / Year)	Completion Date (Month / Year)
Name of Associated Consultants, If Any:	No. of Months of Professions; Staff Provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:	
Narrative Description of project:	
Description of Actual Services * Provided by Your Staff:	

\*(Completion Certificate from Client regarding experience should be furnished)

**Firm's Name:**

**Signature of Authorized Representative:**

Form 5 – Team Composition

**Team Composition, Task Assignments**

**Team Leader and Key Professionals**

S. No.	Name of Staff	Area of Expertise	Years of Experience	Task Assigned	CV Details with signature
1.					
2.					
3.					
4.					

**Support Staff (if any)**

S. No.	Name of Staff	Position Assigned	Task Assigned
1.			
2.			
3.			
4.			
5.			

**Form 6 - Abstract of Eligible Assignments of the Bidder<sup>§</sup>**

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in INR. crore/ US\$ million)	Payment\$\$ of professional fees received by the Bidder (in INR crore)
1				
2				
3				
4				

<sup>§</sup>The Bidder should provide details of only those projects that have been undertaken by it under its own name.

<sup>£</sup>The names and chronology of Eligible Projects included here should conform to the project-wise details submitted in Form-4 of Appendix-6.

**Certificate from the practicing chartered accountant**

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Bidder and/ or the clients.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

Note: The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.

Form 7 - Curriculum Vitae (CV) for Proposed Experts

**Curriculum Vitae (CV) for Proposed Experts**

*(Summary of CV: Furnish a summary of the above CV. The information in the summary shall be precise and accurate. The information in the summary will have bearing on the evaluation of the CV)*

1. Proposed Position [only one candidate shall be nominated for each position]:
2. Name of Firm [Insert name of firm proposing the expert]:
3. Name of Expert [Insert full name]:
4. Date of Birth: Citizenship:
5. Education [Indicate college/university and other specialized education of expert, giving names of institutions, degrees obtained, and dates of obtainment]:
6. Membership of Professional Associations:
7. Other Training [Indicate significant training since degrees under 5 -Education were obtained]:
8. Languages [For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]:
9. Employment Record [Starting with present position, list in reversed order, every employment held. List all positions held by staff member since graduation, giving dates, names of employing organization, title of positions held and location of assignments. For experience period of specific assignment must be clearly mentioned, also give Employer references, where appropriate.]:

From [Date]: To [Date]:

Employer:

Positions held:

10. List all task to be performed under this project and corresponding experience of the expert
11. Certification:

I, the undersigned, certify to the best of my knowledge and belief that:

- i. This CV correctly describes my qualifications and my experience.
- ii. I am employed by the Executing /Implementing Agency.
- iii. I am/ in regular full-time employment with the Agency
- iv. I am willing to work on the project and I will be available for entire duration of the project assignment and I will not engage myself in any other assignment during the currency of this assignment on the project
- v. I, the undersigned, certify that to the best of my knowledge and belief, this bio-data correctly describes me my qualification and my experience I am committed to undertake the assignment within the validity of Bid.



- vi. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date: [Days/Month/Year]

[Signature of expert and authorized representative of the firm]

Full name of authorized representative:

**Notes:**

- Use separate form for each Key Personnel
- The names and chronology of assignments included here should conform to the project-wise details submitted in Form-5 of Appendix 6.
- Each page of the CV shall be signed in ink and dated by both the Personnel concerned and by the Authorised Representative of the Bidder firm along with the seal of the firm. Photocopies will not be considered for evaluation.

## Form 8 – Proposed Methodology and Work Plan

### **Proposed Methodology and Work Plan**

The proposed methodology and work plan shall be described as follows:

#### **1. Understanding of TOR (not more than two pages)**

The Bidder shall clearly state its understanding of the TOR, and will highlight its important aspects. The Bidder may supplement various requirements of the TOR. In addition, the Bidder can make precise suggestions that may improve clarity of the Assignment's objectives, and for assisting IREL in ensuring successful construction and commissioning of the plant.

#### **2. Approach and Methodology (not more than three pages)**

The Bidder will submit its methodology for this Assignment, and will outline its approach toward achieving the objectives of this Assignment. The Bidder should specify the sequence and locations of important activities, the proposed tools for execution of the Assignment, and a quality assurance plan for execution of the Work.

#### **3. Organization and Personnel**

In this chapter, the Bidder should propose the structure and composition of proposed team. The Bidder should list the main disciplines of the Assignment, the key expert responsible, their time commitment, and proposed technical and support personnel. The experts required as per the RFP is an indicative minimum requirement. The Bidder should assess the specific and realistic manpower with reference to specific project package.

#### **4. Work Plan**

In this chapter, the Bidder should propose the main activities of the Assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by IREL), and delivery dates of the reports, drawings, etc. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including report to be delivered as final output, should be included here.

#### **5. Knowledge Transfer Mechanism**

An efficient knowledge transfer mechanism is essential for the successful execution of the project, as it will enable a smooth transition of supervision and control of operations between the Contractors and IREL. Prior to closure of the Assignment, the Selected Bidder need to deploy a suitable mechanism for conducting such knowledge transfer. In this chapter, the Bidders need to provide the methodology, tools and timeline for establishing the knowledge transfer mechanism.

Note: Marks will be deducted for writing lengthy and out of context responses

Form 9 – Financial Capacity of Bidder

**Financial Capacity of the Bidder**

Name of Project:

Name of Bidder:

**Net-worth of Bidder**

<b>Net-worth of the Bidder</b> <b>As per last Financial Year's audited financial statements dated</b> _____ <b>Currency</b> _____	_____ (in figures)	_____ (in words)
---	-----------------------	---------------------

**Turnover of the Bidder**

<b>Turnover of the Bidder</b> <b>For the last three Financial Years ending [month], [year]</b> <b>Currency</b> _____	FY _____	FY _____	FY _____
	_____ (in figures)	_____ (in figures)	_____ (in figures)
	_____ (in words)	_____ (in words)	_____ (in words)

Signature of Authorised Signatory with seal

Name, Designation, Date, Place

Note:

- The Bidders will provide all necessary documents in support of the financial strength including audited financial statements and certificate from practicing chartered accountant.
- For the purpose of conversion of foreign currency, the provisions of Clause 4.6.8 of the RFP will prevail.

- In case of sole Bidder taking support of Associate to meet the financial criteria, the above information for the Bidder as well as its Associate will be provided with documentary proof for both.
- Format for certificate from the practicing chartered accountant

**Certificate from the practicing chartered accountant**

This is to certify that(name of the Bidder) has received the payments shown above against the respective years on account of professional fees.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

Form-10 - Letter confirming No change in the Techno-commercial Bid

**Letter confirming No change in the Techno-commercial Bid**

(On Bidder's letter head)

(Date and Reference)

To,

.....

.....

.....

Dear Sir,

Subject: Appointment of Agency for undertaking design, engineering and supervision of construction, erection and commissioning activities for REPM plant

I/We, ..... (Bidder's name) herewith confirm that there is no change in the Techno-commercial Bid.

I/We request you to consider the Techno-commercial bid submitted earlier as the final Techno-commercial Bid for evaluation.

Yours faithfully,

(Signature of the Authorised signatory)

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder Firm

Date:

Place:

## Appendix 7 – FINANCIAL BID

Form-1

### **Covering Letter**

(On Bidder's letter head)

(Date and Reference)

To,

.....

.....

.....

Dear Sir,

Subject: Appointment of Agency for undertaking design, engineering and supervision of construction, erection and commissioning activities for REPM plant

I/We, ..... (Bidder's name) herewith enclose the Financial Bid for selection of my/our firm as Agency for above.

I/We agree that this offer shall remain valid for a period of 90 (ninety) days from the date of opening of financial bid Bid Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Note: The Financial Bid is to be submitted strictly as per forms given in the RFP

Form -2

**Format for Price Bid**

Name of Project: Design, engineering and supervision of construction, erection and commissioning activities for REPM Plant

Name of Bidder:

**A. Fee for the services to be provided by the Agency**

S. NO.	Particulars	Amount (figures)	Amount (words)
1	Fee for undertaking design, engineering and supervision of construction, erection and commissioning activities for REPM Plant		
2	Applicable Tax on the Fee		
3	<b>Total Fee</b>		

Signature and Seal of Bidder

Name

Designation

Date

Place

Notes:

- The fee will be quoted in Indian Rupees only.
- The fee will be inclusive of all costs to be incurred by the Bidder.
- No escalation on any account will be payable on the above amounts.
- Tax applicable on the fee will be paid by the IREL as per Applicable Law.
- In case of difference in amount in words and figures, amount in words will prevail.
- In case the Price Bid is not as per the format and directions provided in the RFP, the same shall be termed as non-responsive and shall be liable for rejection by IREL and shall result in forfeiture of the Bid Security.

- g) In case any conditional Price Bid is submitted by the Bidder, IREL shall have the right to reject the Price Bid and forfeit the Bid Security.
- h) The fees and Tax should be mentioned separately as indicated in the Price Bid structure. In such a case where no amount is mentioned towards tax, then the price thus quoted will be considered as the fees inclusive of tax.



## Appendix 8 - CHECKLIST OF DOCUMENTS TO BE PROVIDED BY THE BIDDER

S.No.	Document	Reference
<b>1</b>	<b>Pre-Qualification Application ( Envelope 1 )</b>	
1.1.	Pre-Qualification Application	Appendix 1 ( Form 1 to 5)
1.2.	Cost of RFP Document;	General
1.3	Bid Security;	Appendix 2
1.4	Undertaking on ethics	Appendix 5
1.5	Signed copy of RFP and draft Agreement including all addendum, corrigendum and clarification;	General
1.6	Secrecy agreement	Appendix 4
1.7	Power of Attorney(s)	Appendix 3
1.8	Certificate of Registration, Incorporation, along with Memorandum and Articles of association;	General
1.9	Declaration on letter head of Bidder confirming no Conflict of Interest that affects the Bidding Process	Appendix 6 – Form 1
1.10	Letter of Association and Board resolution from the Associate (if applicable)	General
<b>2</b>	<b>Techno-Commercial Bid ( Envelope 2 )</b>	
2.1	Letter comprising the bid	Appendix 6 – Form 1
2.2	Qualification Score calculation along with documentary proof	Appendix 6 – Form 2
2.3	Abstract of Eligible Assignments of Key Personnel	Appendix 6 – Form 3
2.4	Eligible Assignments of bidder	Appendix 6 – Form 4
2.5	Team composition and Task Assignments	Appendix 6 – Form 5
2.6	Abstract of Eligible Assignments of the Bidder	Appendix 6 – Form 6
2.7	CVs pf proposed Experts	Appendix 6 – Form 7
2.8	Proposed Methodology and Work Plan	Appendix 6 – Form 8
2.9	Financial Capacity of the bidder along with proofs (Audited copies of Balance Sheet, Profit Loss Statement for the last three Financial Years and certificate from a practicing chartered accountant for the Bidder and/ or its Associates specifying the Net Worth and Turnover of the Bidder)	Appendix 6 – Form 9 along with certificates as mentioned
2.10	Unpriced Price Bid	Appendix 7 – Form 2
2.11	Any other document/ data/ details to be submitted as mentioned in the RFP	General
2.12	Letter conforming No change in the Techno-commercial Bid	Appendix 6 – Form 10
<b>3</b>	<b>Financial Bid ( Envelope 3 )</b>	
3.1	Covering Letter	Appendix 7 – Form 1
3.2	Filled in format of Price Bid mentioning the fees and applicable taxes	Appendix 7 – Form 2

## Appendix 9 – PROJECT DETAILS

### Introduction

IREL intends to set up an REPM plant, the brief details of which are mentioned below:

### Project location

The proposed project is located within the BARC, Visakhapatnam project site located at Atchuthapuram in Andhra Pradesh.

### Location and Connectivity

<b>Co-ordinates</b>	<b>Latitude : 17°32'45.79"N</b> <b>Longitude: 83° 0'55.28"E</b> <b>Altitude : + 10.5 m above Mean Seal Level</b>
<b>Railways</b>	Nearest major railway station is Visakhapatnam on the Howrah-Chennai rail line
<b>Airport</b>	Nearest airport is also in Visakhapatnam, located at a distance of about 45
<b>Sea Ports</b>	Nearest seaport is also in Visakhapatnam, located at a distance of about 31 km

The salient features & current status of proposed facility are indicated below:

- a) Site demarcation is done
- b) Boundary wall is completed
- c) Plant Area: 2.92 acre plot
- d) Temporary Approach road is constructed
- e) DPR of the project is available
- f) 3 tonnes per annum capacity is envisaged
- g) Environment consultant is appointed. Form 1 is submitted for environmental clearance.
- h) TOR issued by MoEF&CC, EIA study under progress

## **Appendix 10 – TERMS OF REFERENCE**

[Enclosed separately with the RFP]

## **Appendix 11 – DRAFT OF AGREEMENT**

### **Draft Agreement for undertaking Design, Engineering and Supervision of Construction and commissioning activities for a plant of strategic importance**

[Enclosed separately with the RFP]

# ***Appendix 11 – Terms of Reference***

## **1. General**

- 1.1. IREL intends to setup a Rare Earth Permanent Magnet (REPM) plant (“**Project**”). As part of this endeavor, IREL has decided to appoint an Agency as their engineering consultant. The Agency shall undertake design, engineering, procurement assistance, supervision of construction, erection and commissioning activities for establishing the Plant in conformance with the Scope of Work specified in the Terms of Reference (the “**TOR**”) and in accordance with the Applicable Law, Approvals and Good Industry Practices over the full term of the Agreement. The Agency is required to cover all aspects under TOR to suitably guide IREL in realization of the Project.

## **2. Scope of Work**

The activities to be undertaken by the Agency for execution of the Project (in consultation with IREL, BARC & DMRL) shall broadly mean and include:

- Design and Engineering (“**D&E**”) for the Project in conformity with the Specifications and Standards set forth in Annexure-XX;
- Procurement assistance activities related to the project
- Supervision of Construction and commissioning of plants; and
- Performance and fulfilment of all other obligations of the Agency in accordance with the provisions of the Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Agency under the Agreement.
- Other related works which may not be specifically mentioned and all such incidental items not specified but reasonably implied and necessary for the successful completion of the work as a whole as desired and directed by IREL.

The detailed Scope of work shall include but not be limited to:

### **2.1. Study of Detailed Project Report**

- 2.1.1. The Agency shall undertake detailed study of the existing DPR and technical specifications (tentative) for carrying out the activities mentioned in the scope of work detailed herein. The Agency shall have discussions with all relevant stakeholders including IREL, BARC, DMRL, etc. for understanding the objective and project details of REPM plant.
- 2.1.2. The Agency shall undertake the required site visits, visits to DMRL, BARC & IREL to gather information, survey, investigation, design, and engineering of the Project

and observe, fulfil, comply with and perform all its obligations set out in the Agreement or arising hereunder.

## **2.2. Activities prior to D&E**

2.2.1. Within 21 (twenty-one) days of the Effective Date, the Agency shall:

- a. appoint a SPOC (Specific Point of Contact) who will represent the Agency and shall be responsible for all the activities under the TOR including but not limited to surveys, investigations (including soil investigation), collection of data, design and detailed engineering;
- b. undertake and perform all such acts, deeds and activities as may be necessary or required before commencement of Works under and in accordance with the Agreement; and
- c. shall submit to IREL an Implementation Plan for execution of all the activities under scope of work, developed using networking techniques and giving the following details:

**Part I** Agency's organisation for the Project, the general methods and arrangements for D&E, Quality Assurance Plan including design and engineering quality plan and key personnel of the Agency.

**Part II** Programme for completion of scope of work covering all major Project Milestones The Agency shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Agency's obligations.

- d. For the avoidance of doubt, the Agency acknowledges and agrees that IREL/PMU unit may, within a period of 15 (fifteen) days of receipt of the Implementation Plan, convey its comments to the Agency stating the modifications, if any, required for compliance with the provisions of the Agreement.
- e. Upon obtaining the comments, the Agency shall carry out such modifications, to the extent required for conforming to the provisions of the Agreement.

## **2.3. Design and Engineering**

2.3.1. The Agency shall undertake designing, detailed engineering, preparation and finalization of technical specifications, bills of quantities (BOQ), identification of functional requirements, design and sizing criteria, functional guarantees, requirement of spares, erection, commissioning and quality requirement, etc., for Project and systems including all mechanical, electrical, instrumentation and control system, Heating, Ventilation and Air Conditioning(HVAC), civil works,

plumbing, sanitary, landscaping, DM(De-Mineralising) Plant, Mechanical and Electrical Pumping(MEP), effluent treatment, sewage treatment, rainwater harvesting, argon handling, and other related works as required to execute the Project.

The designed capacity of the equipment and associated facilities as applicable should be 20% higher than the rated capacity.

#### 2.3.2. Process Engineering:

The Agency shall undertake the preparation, review and finalization of the following:

- a. Process Design Basis, Process Description, Process Flow Diagram, Process Datasheet - Equipment and Instrument, Heat and Material balance, water balance, Piping and Instrumentation Drawings (P&ID), , Effluent and Emission Summary, Cause and Effect Diagram, Utility Summary, etc. The Agency shall get all the designs, drawings, diagrams and datasheet reviewed and subsequently approved/accepted by IREL.
- b. Line list with flow rate, pressure, temperature, materials of construction, etc.
- c. Equipment list and technical specification.
- d. Finalization / optimization of utility requirement.
- e. Area classification and selection of chemical group from hazard/explosion point of view.
- f. Hazop study, Safety Assessment Report and other reports required by authorities for obtaining consent for operation of plant.

#### 2.3.3. Civil Engineering

The Agency shall undertake the preparation, review and finalization of the following:

- a. Geotechnical investigation including liquefaction analysis of soil.
- b. Topographical survey of the plant
- c. Civil and Structural Specifications, Standards and design Basis. Drawings of all structure and works for fabrication and installation with details of foundation while taking care that all civil works to be carried out in compliance with the

applicable seismic zone design. The facility shall comply with the applicable building design Indian standard for stability taking into consideration of the cyclonic wind speed condition prevailing in the area. Stability analysis report to be submitted from a competent Civil engineering institute./organization who has given such report to any government organization in the past.

- d. Constructability review
- e. Revised plot plan incorporating the new facility.
- f. Architectural designs and construction Drawings for buildings and plants.
- g. Design and Drawings (Issue / Good for Construction) of building sub structure including foundation, super structure, plant equipment, and process equipment.
- h. Civil & Interior finishes drawings (Issue / Good for Construction) including necessary MEP layout.
- i. Design and layout of approach roads, service trenches, drains, etc.

#### 2.3.4. Mechanical and Piping Engineering

The Agency shall undertake the preparation, review and finalization of the following:

- a. Mechanical equipment layout Drawings.
- b. Technical specifications for plants, machinery, auxiliary systems, utilities, pumps, gas (Argon) distribution system, etc.
- c. Piping layout drawings, plans, sections, elevations isometrics where required for all utility and process pipelines (including DM plant) taking care for inter connecting facilities to the upstream and downstream units as applicable.
- d. Design of insulation, selection of materials, thickness, etc. and preparation of insulation erection specification wherever required.
- e. Design of ventilation/HVAC systems as per applicable guidelines.
- f. Material take off lists for valves, fittings, flanges, gaskets, hangers, supports and associated hardware.
- g. Review, design and finalization of firefighting system, and preparation of specification for supply and installation.



- h. Design of implementation of corrosion protection measures, plant safety means, sewerage and drainage and effluent disposal system.

#### 2.3.5. Electrical Engineering

The Agency shall undertake the preparation, review and finalization of the following for effective implementation of REPM facility:

- a. System studies and calculation of fault level, preparation of electrical equipment list, load estimation etc.
- b. Design of power distribution scheme including critical load identification and emergency power etc. and preparation of single line diagram.
- c. Technical specifications of required electrical system / equipment
- d. Technical specifications of equipment to be procured for electrification work.
- e. Earthing system as per IS 3043 with its latest amendments of the electrical installations like MCC room, HT and LT installations, all the newly installed drives and the area as well as the installed lighting installations including plate earthing, electrode earthing, earth pits and earthing flats of 25 x 4 mm, 50 x 6 mm, 100 x 10mm GI flat only.

#### 2.3.6. Instrumentation and Control ( I & C)

The Agency shall undertake the preparation, review and finalization of the following I & C system adequate for efficient and effective monitoring of REPM facility:

- a. Scheme of instruments based on operating parameters and design philosophy.
- b. Finalization of operational procedures and preparation of control logic and alarm/annunciation system.
- c. Defining and specifying safety features, control devices, and panel details.
- d. Preparation of specification of all pneumatic and electronic instruments, tube layouts and hook-up diagram.
- e. Preparation of instrumentation erection specification.

2.4. The Agency shall also undertake the preparation, review and finalization of the water supply and distribution system, quality control laboratory and the required equipment, LDO storage and distribution system, Microprocessor based intelligent addressable type

automatic Fire detection and audio-visual alarm system for early warning in case of smoke, heat and/or fire in all fire sensitive locations, IOLAR grade argon gas handling system, compressed air system, etc.

- 2.5. Preparation of technical specification of all the packages for tender for engaging contractor towards the supply, erection and successful commissioning of the REPM plant.
- 2.6. Notwithstanding anything in Paragraph 2.1, Paragraph 2.2, Paragraph 2.3, Paragraph 2.4 and Paragraph 2.5 the Agency's responsibility will involve, but shall not be limited to the following:

- a. Provide complete project information including water quality, meteorological data, wind and seismic data, general technical requirements, quality control and quality assurance requirements, performance parameters, etc.
- b. Finalize the detail list of procedures and standards required for Construction, erection, testing, trial runs, commissioning tests and commercial operation, including formats for executing guarantees.
- c. Prepare list of guarantees applicable on the Contractor related to successful commissioning of the project which are required to demonstrate capabilities of equipment/auxiliaries/systems. Agency shall recommend rates of liquidated damages/penalty for shortfall in performance for identified guarantees and provide calculations for arriving at those values. Agency to specifically recommend correction that will be applicable to the guaranteed performance parameters and list the same for Contractor to submit along with the bid.
- d. Recommend spare parts requirement listing the mandatory spares/fast-wearing parts and optional spare parts separately.
- e. Prepare a list of engineering documents; detailed list of engineering drawings, documents, calculations, procedures during detailed engineering stage along with sequence of submission so as to match with overall schedule of project implementation.
- f. Design and Drawings shall be developed in line with various relevant Indian Standards, engineering code of practices and various other statutes including environmental and pollution statutes as applicable

2.6.1. Submissions and review of the design and Drawings

- a. The Agency shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule (L3 level) , hard & soft copies of the design and Drawings to IREL for review;

- b. Agency to make sure third party quality control (TPQ) of the work by getting the civil/structural drawings having load implications vetted and approved by IITs, NITs, Govt. Engineering College, Central Building Research Institute (CBRI) or other central/state government institutes providing such services and certification.
- c. By submitting the Drawings for review to IREL, the Agency shall be deemed to have represented that it has determined and verified that the design and engineering, including field Construction criteria related thereto, are in conformity with the Scope of Work, Specifications and Standards, Applicable Laws and Good Industry Practices;
- d. Approval of the design drawings means that they are checked for the general conformity with the engineering requirement and applicable specifications covered in ToR. Agency shall, however, remain fully responsible for the completeness of job and correctness of his design for successful implementation and satisfactory running of the REPM plant.
- e. No review and/or observation of IREL and/or its failure to review and/or convey its observations on any Drawings shall not relieve the Agency of its obligations and liabilities under the Agreement in any manner nor shall IREL or its representatives be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, the Agency shall be responsible for correcting the same.
- f. the Agency shall be responsible for delays in submitting the Drawings, as set forth in Annexure-XX, caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in respect thereof from IREL; and
- g. the Agency warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify IREL against any damage, expense, liability, loss or claim, which IREL might incur, sustain or be subject to arising from any breach of the Agency's design responsibility and/or warranty as set out.

## **2.7. Appointment of the Contractors for procurement, Construction and commissioning activities**

- 2.7.1. The Agency shall assist IREL in defining eligibility criteria, evaluation criteria, technical specifications, BOQ, drawings, etc., required for floating tenders for appointing suitable Contractor for undertaking procurement, Construction and commissioning activities.

2.7.2. After receiving bids from the bidders, the Agency shall assist IREL in evaluation of the technical bids, issue of clarification letters, participate in detailed bid discussions with the Bidders for obtaining required clarification, etc.

2.7.3. The Agency shall review/vet any modifications/alterations suggested by the Contractor in D&E and other subsequent activities till the successful commissioning of REPM plant.

## **2.8. Site Management Services**

2.8.1. The Agency's obligations includes, but is not limited to the following:

- a. Supervision of Construction, inspection and approval of erection method, quality surveillance of execution of the Works as per approved Drawings, testing and commissioning of plant, equipment and facilities by the Contractor to ensure full compliance with regard to quality, safety and performance.
- b. Inspection of fabrication and supervision of installation of Plant & Machinery covered under the scope of work.
- c. Certifying placement of embedded parts and lineout of Plant & Machinery foundation, etc.
- d. Assistance to IREL in technical scrutiny of Contractors bills relating to the Scope of Work.
- e. Review of Construction schedules and monitoring site activities with respect to the latest approved schedule.
- f. Advise IREL regarding adequacy of special tools/equipment, manpower and resources of the Contractor.
- g. Review of the Contractor's work plans for ensuing week/month.
- h. Preparation of fortnightly/ site progress reports covering current Construction status, deviations from approved schedules, critical areas and proposed remedial measures.
- i. Providing advice to IREL regarding technical problems encountered at site.
- j. Proposing corrective actions to be taken in case of works that are not in line with approved designs / specifications.
- k. Review and advise IREL regarding field changes desired by the Contractor.
- l. Review and advise IREL regarding quality assurance plans and compliance.
- m. Advise on safety aspects during Construction and commissioning of the project and monitor the Contractor's and subcontractor's safety efforts.

- n. Reviewing of documents for testing, commissioning, performance testing for establishing guaranteed performance parameters and for operation and maintenance and training of personnel.
- o. Review of pre commissioning checklists prepared by Contractor for various equipment and systems.
- p. Interface and co-ordinate activities to monitor the plant testing from initial synchronization / mechanical completion (erection in accordance with drawings, specifications, vendor instructions, applicable codes & regulations and IREL requirements) of the unit through all performance testing.
- q. Witness performance guarantee test at site on equipment / system, review and evaluation of test results, with comments / recommendations.
- r. Conduct independent calculations to verify test results.
- s. Follow up with vendors as required to check that scheduling and material take-off have commenced, that engineering work and drawing submission are underway and progress in accordance with the delivery schedule including pre-dispatch inspection whenever required.
- t. Obtaining copies of suborders from the Contractor and their verification against the Project schedule to ensure that delivery dates coordinate with the main production schedule.
- u. Ensuring timely submission from the Contractor of technical documentation such as manufacturing schedules, testing, procedures, erections and maintenance manuals.
- v. Identifying of incoming materials and co-relating with test certificates and advice on claims for damages/ short supply, etc. at Project site.

## **2.9. Monitoring and Supervision**

### **2.9.1. Inspection at site**

- a. Assist IREL to inspect and review the progress and quality of the Construction of Works and issue appropriate directions to the Contractor either at IREL' site or Contractor's site, as and when required and directed by IREL, for taking remedial action in the event the Works are not in accordance with Specifications and Standards.

### **2.9.2. Plant related services**

The Agency's scope of work under this includes:

- a. Witnessing performance testing of the plant to be conducted by the Contractor at site prior to take-over.
- b. Scrutinizing the quality assurance plan by the contractor for various equipment including welding procedures and approval of vendors' performance qualification tests.
- c. Witnessing of non-destructive testing as and when required.
- d. Dimensional / alignment / tolerance checking as per approved fabrication Drawings.
- e. Witnessing and recording hydrostatic / pneumatic, and performance testing.
- f. Coordination with Contractor for issue of as built drawings
- g. Approval of test certificates and certifying acceptance of equipment for dispatch. (In case any equipment fails to meet the specific requirements fully, acceptance of the same with design concessions or rejection would be done in consultation with IREL).
- h. Assistance to IREL in interpretation and acceptance of the test results.
- i. Preparation of Defect and liability list.
- j. Preparation of Snag list for civil components
- k. Preparation of warranty and guarantee points for the Contractor.
- l. Review of the equipment running hour criteria, demonstration and acceptance of the same.
- m. Resolution of open points from erection / commissioning.

#### **2.10. Other Obligations**

2.10.1. The Agency, in discharge of all its obligations under the Agreement, shall ensure the Contractor appointed for procurement, Construction and commissioning activities conforms with and adheres to Good Industry Practices up to Commissioning of the Plants in conformance to scope of work.

2.10.2. The Agency shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in the Agreement:

- a. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it in connection with the performance of its obligations under the Agreement;

- b. ensure that its employees comply with all Applicable Permits in the performance by them of any of the Agency's obligations under the Agreement;
- c. always act in a manner consistent with the provisions of the Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violate of any of the provisions of the Agreement;
- d. ensure that its employees comply with the safety and other measures in accordance with Applicable Laws and Good Industry Practices;
- e. keep on the Plant, a copy of the Agreement, publications named in the Agreement, the Drawings, documents relating to the Project, and Change of Scope Orders and other communications sent under the Agreement, and provide access to all these documents at all reasonable times to IREL and its authorized personnel;
- f. cooperate with other contractors employed by IREL and personnel of any other public authority

#### 2.10.3. Obligations relating to Agency's personnel

- a. The Agency shall ensure that the personnel engaged by it for performance of its obligations under the Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Applicable Laws and Good Industry Practice.
- b. Approval of Personnel  
  
Professional Personnel listed in the bid submitted by the Agency shall be engaged for this Project. No other Professional Personnel shall be engaged without prior approval of IREL.

#### 2.10.4. Obligations relating to advertisement on Project

- a. The Agency shall not use the Project or any part thereof in any manner for branding or advertising purposes including for advertising any commercial product or services or companies.

2.10.5. Agency shall ensure sound civil, structural, electrical and mechanical engineering design, Construction, installation and commissioning of the Plant by Contractor, in line with various relevant Indian Standards, engineering code of practices and various other statutes including environmental and pollution statutes as applicable.

2.10.6. Documents prepared by the Agency to be property of IREL

- a. All plans, Drawings, specifications, designs, reports and other documents (collectively referred to as “**Works Documents**”) prepared by the Agency in performing the Works shall become and remain the property of IREL, and all intellectual property rights in such Works Documents shall vest with IREL. Any Works Document, of which the ownership or the intellectual property rights do not vest with IREL under law, shall automatically stand assigned to IREL as and when such Works Document is created and the Agency agrees to execute all papers and to perform such other acts as IREL may deem necessary to secure its rights herein assigned by the Agency.
- b. The Agency shall, not later than termination or expiration of the Agreement, deliver all Works Documents to IREL, together with a detailed inventory thereof. The Agency will not retain a copy of such Works Documents.
- c. The Agency shall hold IREL harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as “**Claims**”) which may arise from or due to any unauthorized use of such Works Documents, or due to any breach or failure on part of the Agency or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of IREL.

#### 2.10.7. Accuracy of Documents

- a. The Agency shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, Drawings, estimates and all other details prepared by it as part of these services. Agency shall indemnify IREL against any inaccuracy in its work which might surface during implementation of the Works, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Agency or arises out of its failure to conform to Good Industry Practice, the Agency shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey /investigations.

2.10.8. The Agency shall be fully responsible for the payment of any kind of dues/claim to the employee and any dispute with the employee shall be settled by the Agency. No claim whatsoever on this account shall be entertained by IREL.

2.10.9. Installation of quality control, pollution control and monitoring facilities shall be supervised by the Agency;

2.10.10. Agency shall ensure procurement and installation of the electrical equipment by the Contractor that conforms to the relevant ISS/BIS/IEEE standards with respect to technical specifications, system configuration, reliability and safety



aspects. The equipment shall conform to relevant Electricity Act/ Rules/ Regulation of the State and Central Government.

- 2.10.11. Agency to provide details of storage and circulation system for utilities such as Argon / compressed air, water, DM, etc., material handling system, auxiliary services such as laboratory, stores, warehouses, office complex, communication system, Effluent Treatment Plant(ETP), Sewage Treatment Plant(STP)

### **3. Deliverables**

3.1. The Agency shall deliver the following deliverables (the “**Deliverables**”) during the course of the Assignment. Five hard copies and soft copy in CD/Pendrive of all the final reports including technical specifications for tendering purpose, design basis reports, drawings, etc. shall be submitted to IREL. The size of drawings shall be A-3 and A-0 (as per requirement). IREL shall provide comments on the draft of each of the following Deliverables within 15 (fifteen) days prior to its finalization by the Agency.

#### **3.1.1. Inception Report**

- a. Within 6 weeks of the Commencement Date on commencement of the Assignment, the Agency shall submit an Inception Report. The Inception Report shall include the Agency’s submissions towards the work plan..

#### **3.1.2. Fortnightly Report**

- a. Agency shall submit a Fortnightly Report of the preceding weeks by Monday of the succeeding week. Such reports shall include the historical background of the Project; a brief description of actual versus planned progress; problems encountered and resolutions; and comments on the quality of work and the Contractor’s performance. The reports shall include graphs or charts showing physical progress of works. The reports shall also include colour photographs showing completed work and construction activities undertaken during the relevant reporting period.
- b. Fortnightly Report should also indicate item wise detail status of various procurement and status of statutory approvals. Fortnightly report will contain a section devoted entirely to an assessment of the impact of accumulated delays, if any, in the execution of works and a projected date for completing the delayed jobs without affecting the Project schedule. The progress report shall highlight the specific delays, impact of accumulated delays, reason for such delays, action plans proposed to bring back to original schedule, major bottlenecks and holdups. The format of the progress report shall be discussed and mutually agreed by IREL and the Agency.

#### **3.1.3. Interim Reports**

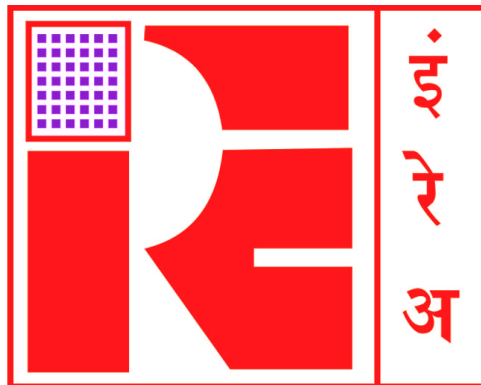
- a. The Agency shall prepare a report after completion of each Project Milestone and shall submit it within 10 days of completion of the Project Milestone or by the 10th of each calendar month, whichever is the earliest;
- b. Such report shall be accompanied by relevant drawings and designs, suggestions made, and any other documents to be furnished by the Agency as per the Scope of Work and the Agreement.

#### **3.1.4. Other Reports and Documentation**

- a. Agency shall submit to IREL any other reports/documents within the stipulated timelines required for fulfillment of its obligations under the Agreement.
- b. IREL may ask the Agency to prepare technical reports / studies as required for obtaining statutory clearances as the case may be.



**DRAFT AGREEMENT  
FOR  
UNDERTAKING DESIGN, ENGINEERING,  
SUPERVISION OF CONSTRUCTION,  
ERECTION AND COMMISSIONING  
ACTIVITIES  
FOR  
RARE EARTH PERMANENT MAGNET  
(REPM) PLANT**



**Indian Rare Earths Limited**

**(A Govt. of India Undertaking – Dept. of Atomic Energy)**

**Plot No. 1207, Veer Savarkar Marg, Near Siddhi Vinayak Temple,  
Prabhadevi, Mumbai- 400028. Website: <http://irel.co.in>**



[To be printed on non-judicial stamp paper of appropriate value]

**DRAFT AGREEMENT  
FOR UNDERTAKING DESIGN, ENGINEERING AND SUPERVISION OF CONSTRUCTION,  
ERECTION AND COMMISSIONING ACTIVITIES FOR RARE EARTH PERMANENT MAGNET  
(REPM) PLANT**

THIS AGREEMENT No..... made on this .....day  
of ..... [month] Two Thousand and ..... in ..... [place], India

**BETWEEN**

**INDIAN RARE EARTHS LIMITED (IREL)** incorporated under the Companies Act, 1956/2013 and having its registered office at PLOT NO. 1207, VEER SAVARKAR MARG, NEAR SIDDHI VINAYAK TEMPLE, PRABHADEVI, MUMBAI-400028, INDIA, which term or expression unless excluded by or repugnant to the context or the meaning thereof shall be deemed to include its successors and permitted assigns, OF THE ONE PART,

**AND**

..... (**Name of Company of Selected Bidder**), an agency organized and existing under Companies Act 2013 and having its Registered/ Principal Office at.....  
(hereinafter referred to as "**Agency**"), which term or expression unless excluded by or repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns, OF THE OTHER PART,

**AND WHEREAS**

- A. IREL in collaboration with BARC & DMRL intends to setup the plant for production of Rare Earth Permanent Magnet under aegis of Department of Atomic Energy (DAE). As part of this endeavor, IREL has decided to appoint an Engineering Company for undertaking Design, Engineering, Procurement Assistance, Supervision of Construction, erection and Commissioning work, and sourcing of the required raw materials;



- B. IREL had floated a tender wherein Bidder had participated and met the qualification requirements. IREL has accepted the Bid submitted by the Bidder which formed the Agency, on the terms and conditions for the aforesaid arrangement as specified in the RFP and Agreement to undertake Design, Engineering (D&E), Supervision of Construction, erection and commissioning activities for establishing a Plant to produce desired quantity of Rare Earth Metal Alloy and Rare Earth Permanent Magnets (hereinafter referred to as “**PLANT**”);
- C. The Agency is having requisite competence in the business, inter-alia of, and intends to undertake Design, Engineering, Supervision of Construction, erection and commissioning activities for establishing the Plant, and as per the terms and conditions more particularly appearing hereinafter;
- D. The Agency has satisfied itself to the site conditions and has acquainted itself in general with all local conditions, workability on the site, facility for transport & storage of materials, and all its responsibilities for compliance to Applicable Laws and regulations and has obtained all other information on its own both as to risk, contingencies & other circumstances which may influence or affect the work and other requisites for proper execution of the Agreement after due inspection of site and surrounding and scrutiny of other related factors, and probable contingencies.



NOW IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES AS FOLLOWS:

## Article 1 Definitions

- 1.1. **"Agreement"** shall mean, this Agreement between IREL and the Agency duly signed by both for undertaking engineering, procurement, and Supervision of construction and commissioning activities for a plant of strategic importance, as may be amended, modified or supplemented from time to time;
- 1.2. **"Agreement Value"** shall have the meaning set forth in Clause 11.1.3;
- 1.3. **"Agency"** shall mean firm or company that was declared the Selected Bidder through the bidding process specified in RFP dated XXX issued by IREL, and includes the firm's or company's employees. The Agency shall be responsible for providing services in accordance to Article 10 of this Agreement;
- 1.4. **"Agency Event of Default"** shall have the meaning set forth in Clause 19.4.1;
- 1.5. **"Applicable Law"** shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision, or determination, or any interpretation or adjudication having the force of law in India;
- 1.6. **"Arbitration"** shall have the meaning set forth in Clause 20.2;
- 1.7. **"Change in Applicable law"** shall mean If, after Effective Date of this Agreement, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or amended (which shall be deemed to include any change in interpretation or application by the competent authorities). Such changes will not invalidate the Agreement but the impact of the changes will be settled on mutually agreed terms.
- 1.8. **"Conciliation"** shall have the meaning set forth in Clause 20.1;
- 1.9. **"Contractor"** shall mean the person or persons, as the case may be, with whom the IREL has entered into a contract or any other material agreement or contract for procurement, Construction, erection & commissioning or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Agency;



- 1.10. "**Commencement Date**" shall mean the date on which all Conditions Precedent under Clause 4.4 and 4.5 have been satisfied in accordance with the provisions of Article 4;
- 1.11. "**Commercial Operation Date (COD)**" shall mean the date on which commercial production of Rare Earth Permanent Magnets starts;
- 1.12. "**Construction**" include, unless the context otherwise requires, survey and investigation (If required), site development, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the Construction and "**construct**" shall be construed accordingly;
- 1.13. "**PCB**" shall mean Pollution Control Board, Government of Andhra Pradesh/Government of India;
- 1.14. "**Dimensions**" shall mean the dimension as per metric system;
- 1.15. "**Defect**" means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards;
- 1.16. "**Detailed Project Report**" or "**DPR**" shall be the detailed project report for production of Rare Earth Metal and Rare Earth Permanent Magnet prepared by Tata Consulting Engineers Limited subsequent to their appointment by IREL vide work order no. COP/IRE/1265/2017 dated 17.01.2017.
- 1.17. "**Drawings**" means all of the drawings, calculations and documents pertaining to the Project and shall include 'as built' drawings of the Project as well;
- 1.18. "**Effective Date**" shall mean the date of signing of Agreement;
- 1.19. "**Financial Year**" shall refer to the Indian financial year commencing April 1<sup>st</sup> and ending on the following March 31<sup>st</sup> or as notified and amended by the Government of India. It shall refer to a fiscal year or the accounting period of 12 months;
- 1.20. "**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Agency and the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

- 1.21. **"Governmental Approval"** shall mean all permits, licenses, authorizations, consents, clearances, decrees, waivers, privileges, no-objection certificate or approvals from and the Government of India and/or the Government of Odisha or the respective nodal agencies necessary for development, Construction and operation of the Plant and the completion of the Project;
- 1.22. **"GOI" or "Government"** shall mean the Government of India including any and / or all ministries thereof and /or departments thereof having duly constituted authorities to grant approvals under any applicable statutes, rules and regulations enforced from time to time;
- 1.23. **"Implementation Plan"** shall cover, but will not be limited to key tasks to be undertaken, Annexure of these tasks, associated costs, responsibility allocation, monitoring mechanism, etc. for executing the Scope of the Project as per Article 10 of this Agreement;
- 1.24. **"Indemnifying Party"** and **"Indemnified Party"** shall have the meaning set forth in clause 17.1;
- 1.25. **"IREL Event of Default"** shall have the meaning set forth in Clause 19.4.2;
- 1.26. **"Intellectual Property"** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;
- 1.27. **"Letter of Intent" or "LOI"** means based on the offer of Bidder, IREL issues its acceptance to the said offer requesting Selected Bidder to sign the Agreement;
- 1.28. **"Material"** are all the supplies used by the Contractor for Construction and commissioning of the Plant under Supervision of the Agency;
- 1.29. **"Metric tonne" or "t"** for the purpose of this Agreement shall be used for the weighment;
- 1.30. **"Parties"** shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the parties to this Agreement individually;
- 1.31. **"Personnel"** means persons hired by the Agency as employees and assigned to the performance of the Works or any part thereof;



- 1.32. **“Plant”** means the Rare Earth Permanent Magnet Plant (REPM), which includes Rare Earth Metal Alloy plant, REPM, stores, interconnecting facilities and ancillary/supporting facilities, warehouse, utilities etc. as detailed below, installed by the Contractor, for production of Rare Earth Permanent Magnet;

Indicative list of plant, auxiliary & ancillary facilities are as under:

- RE Metal Plant
- REPM Plant
- Quality control laboratory
- Utility System
- Water System including DM Plant
- MCC & DG
- Workshop (Repair Shop)
- Stores
- Administrative Building
- Canteen, Parking Area
- Sewage Treatment Plant
- Slag Disposal Yard
- Rain Water Harvesting

- 1.33. **“Preliminary Notice”** shall have the meaning set forth in Clause 19.6.1;
- 1.34. **“Products”** shall mean the Rare Earth Metal and Rare Earth Permanent Magnets produced from the Plant;
- 1.35. **“Project”** shall mean the Plant to be installed for production of REPM at BARC, Visakhapatnam project site, Atchuthapuram, Visakhapatnam district, Andhra Pradesh.;
- 1.36. **“Project Completion Date”** means the date on which the No Dues Certificate is issued to the Agency by IREL
- 1.37. **“Project Completion Schedule”** means the progressive Project Milestones set forth in Article 7 for completion of the Project on or before the Scheduled Completion Date;
- 1.38. **“Project Milestone”** means the project milestone as set forth in Article 7 and includes the Scheduled Completion Date;
- 1.39. **“Scope of Work” or “Scope of the Project”** shall mean the work specified in Article 10 of the Agreement and shall include all the activities towards Design, engineering, procurement, Supervision of construction, erection and commissioning activities of plant for production of REPM.

- 1.40. **"Security Deposit"** shall have the meaning set forth in Clause 6.1;
- 1.41. **"Site"** of the Project shall include the land, buildings, structures, road works, etc., as described in the DPR;
- 1.42. **"Specifications and Standards"** shall mean, the relevant standards, schedules, codes and all such particulars relating to the quality, quantity, capacity and other requirements for the Project and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Agency to, and expressly approved by, IREL;
- 1.43. **"Supervision"** shall mean successive control and directions given by the Agency to its staff or the Contractor in relation to the work under the Agreement;
- 1.44. **"Termination"** shall have the meaning set forth in Clause Article 19;
- 1.45. **"Termination due to Agency Event of Default"** shall have the meaning set forth in Clause 19.6;
- 1.46. **"Termination Notice"** means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement;
- 1.47. **"Third Party"** means any person or entity other than IREL or the Agency
- 1.48. **"Time"** shall be reckoned by months, day and hours. Month being equivalent to the calendar month according to the Gregorian calendar. The day or days unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each;
- 1.49. **"Works"** shall mean Design, engineering, procurement, Supervision of Construction, erection and commissioning activities in relation to the Plant to be undertaken by the Agency. It will also include other necessary works as specified in Article 10 to this Agreement and which include all extra or additional or any work of emergent nature, which in the opinion of IREL becomes necessary during the progress of the works.

## **Article 2 Interpretations/ Defined Terms**

### **(A) Definitions**

Unless the context of this Agreement otherwise requires

- 2.1. The paragraph headings and numbering are for convenience only and shall be ignored in the interpretation of this Agreement;
- 2.2. The singular includes the plural and vice versa;
- 2.3. Words of any gender are deemed to include the other gender;
- 2.4. The term "Clause" refers to the specified Clause of this Agreement;
- 2.5. The terms "hereof", "herein", "hereby", "hereto" and derivative or similar words refer to this entire Agreement or specified Sections of this Agreement as the case may be;
- 2.6. The words "include" and "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;
- 2.7. Terms defined under Definitions shall have the meanings ascribed thereto in that Clause when used elsewhere in this Agreement;
- 2.8. Reference to any agreement, enactment, ordinance or regulations includes any amendment or replacement thereof in whole or in part;
- 2.9. Reference to clauses, paragraphs and annexures are unless the context otherwise requires, references to clauses, paragraphs and annexures respectively, of this Agreement;
- 2.10. The headings and inserted for convenience only and shall not affect the Construction of the Agreement;
- 2.11. Any act which is to done on a day which is not a business day, must be done on the next business day;

### **(B) Other Terms**

- 2.12. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement;

### **(C) Supersession**

- 2.13. Unless otherwise mentioned, this Agreement supersedes all previous correspondence, communications, understandings, representations, and warranties between the Parties;

### **(D) Discrepancies, if any in the Agreement**

- 2.14. The Agreement and the schedules, annexures, enclosures shall be read harmoniously as being mutually explanatory and as part of a complete set. In case of any repugnancy/conflict between the Agreement and the schedules, annexures, enclosures, the provisions of the Agreement shall prevail;
- 2.15. Any error in description, quantity or rate in schedule or quantities or omission therefrom, shall not vitiate the Agreement or release the Agency from discharging his obligations under the Agreement including execution of the Works;
- 2.16. If the Agreement and the schedule, annexure, enclosure documents provide for different standards of product, workmanship or finish, the Agency must specify those of the highest standard provided in any part of the Agreement;
- 2.17. The Agreement may be signed in one or more counterparts and each counterpart shall have the same effect as the original;
- 2.18. The Agreement shall come into force on and from the Effective Date.

## **Article 3 Business Purpose**

It is expressly understood that;

- 3.1. The Agency shall undertake Design, Engineering, and Supervision of Construction, erection and commissioning activities for establishing the Plant in conformance with the technical specifications and scope of work of this Agreement, and in accordance with all legal requirements, approvals, applicable laws and Good Industry Practices.

## Article 4 Conditions Precedent

### 4.1. Effective Date of the Contract

- 4.2. This Agreement shall be deemed to have come into effect on the date of signing of the Agreement (the “**Effective Date**”), preferable within twenty one (21) days from the date of issuance of LOI. However, the roles, responsibilities, warranties, obligations and other terms and conditions as mentioned in the Agreement shall be deemed to have come into effect from the date of acceptance of LOI.

### 4.3. Commencement Date

- 4.3.1. Commencement Date shall mean the date on which IREL certifies and declares the completion of all conditions precedent mentioned in Clause 4.4 and 4.5 of this Agreement by IREL and the Agency.

### 4.4. Conditions Precedent of IREL

- 4.4.1. IREL should have provided the copy of DPR and technical specifications (tentative) prepared for the Project to the Agency at the time of tendering.

### 4.5. Conditions Precedent of the Agency

- 4.5.1. Submission of the Implementation Plan to IREL;

- 4.5.2. Agency shall submit, on the date of signing of this Agreement or within twenty one (21) days from the date of issuance of LOI by IREL, whichever is earlier, a Security Deposit as specified in Article 6 of this Agreement.

- 4.6. The Commencement Date shall take place within twenty one (21) days from the Effective Date unless extended in writing by IREL at its sole discretion. If the Conditions Precedent are not satisfied within the above-mentioned period, IREL shall have the right to terminate the Agreement, by notice in writing and forfeit the Security Deposit.

- 4.7. Provided that upon request in writing by the Agency, IREL may, in its sole discretion, waive any of the Conditions Precedent set forth in this Clause 4.5 or grant extension of time for fulfillment thereof, as the case may be.

### 4.8. Best Endeavors

Both Parties shall make best endeavors to provide assistance to the each other wherever possible in relation to the fulfilment of the Conditions Precedent by them.

## **Article 5 Duration of Agreement**

5.1. This Agreement shall take effect from the Effective Date of the Agreement and shall remain in force for a period of 18 (eighteen) months of which initial 3 (three) months would be for design & detailed engineering and the remaining period of 15 (fifteen) months would be for supervision of construction, erection & commissioning. However, the time taken by IREL for providing approvals on deliverables shall not be considered as part of the duration of the agreement. In case of any delay on account of obtaining statutory clearances for the project, which results in delay of commencement of construction work by the contractor, the duration of agreement shall be extended suitably as mentioned in Clause 19.3.

### **5.2. Expiry of Agreement**

Unless terminated earlier pursuant to Clause 19.3.3 and 19.6, this Agreement shall, unless extended by the Parties by mutual consent, expire upon completion of the duration as mentioned in clause 5.1 above.

## Article 6 Security Deposit

- 6.1. Agency shall submit, within twenty one (21) days from the issuance of LOI or at the time of signing of Agreement, whichever is earlier, a Security Deposit (the “**Security Deposit**”) in the form of a demand draft/ banker’s cheque/ or bank guarantee, for an amount equal to ten percent (10 %) of the Agreement Value as per Clause 11.1.
- 6.2. Bank guarantee shall be as per format given in Annexure-I, valid for eighteen (18) months from the date of issue with an additional claim period of ninety (90) days and shall be issued from any Scheduled Bank. The Bank Guarantee shall be extended suitably in accordance to clause 5.1 & 19.3. Other instruments for Security Deposit in place of bank guarantee shall be in favour of “Indian Rare Earths Limited” payable at Mumbai;
- 6.3. In case the Security Deposit is not furnished within the stipulated period, IREL shall be at liberty to initiate suitable action, as deemed fit against the Agency including cancellation of the Agreement awarded to the Agency;
- 6.4. IREL shall be at liberty to deduct and/or appropriate from the Security Deposit such sums as are due and payable by the Agency to IREL under the Agreement, and the amount so deducted and/or appropriated from the Security Deposit, towards such sums due from the Agency, shall be restored by the Agency within a period of thirty (30) days of IREL notifying the Agency of such a deduction. In case of breach of any of the terms of this Agreement, IREL, at its sole discretion and without prejudice to its other rights, may encash the entire Security Deposit without assigning any reasons to the Agency;
- 6.5. The Security Deposit shall not bear any interest.
- 6.6. Forfeiture of Security Deposit

The Security Deposit shall stand forfeited in favour of IREL, without any further notice to the Agency in the following circumstances:

- 6.6.1. In case of any failure whatsoever on the part of the Agency at any time during performance of his part of the Agreement including the extended periods of the Agreement, where notice is given and time for rectification allowed;
- 6.6.2. If the Agency indulges at any time in any subletting/ sub-contracting of any portion of the Works without approval of IREL;
- 6.6.3. If the Agency abandons the Agreement;

Notwithstanding anything in the Agreement, the refund of the Security Deposit, shall be subject to IREL’s right to deduct its dues which are payable by the Agency to IREL;



- 6.7. The Security Deposit shall be released (without any interest) only after completion of the Agreement Period and on submission of **“No Dues Certificate”** by the Agency obtained from IREL and compliance of statutory provisions after deduction of any dues from the Agency arising out of any claim by IREL on the Agency;
- 6.8. No Dues Certificate shall be obtained by the Agency after the COD is achieved by submitting a written request to IREL;
- 6.9. No Dues Certificate shall be issued by IREL, duly countersigned by their authorized representative or signatory, after ensuring that no amounts are recoverable from the Agency;

## Article 7 Time Schedule and Implementation Plan

- 7.1. Time is the most important feature of the Agreement.
- 7.2. Subject to IREL fulfilling its obligations under Article 14, Agency shall follow the following time schedule for ensuring installation, testing and commissioning of the Plant, and will achieve the COD within eighteen (18) months from the Commencement Date of this Agreement.

S. No.	Project Milestone	No. of months from To (Commencement Date of Work)
1.	Completion of design and detailed engineering	To + 3
2.	Technical Specifications including qualification, scoring, scope of work, etc. for Selection of Contractor	To + 3
3.	Ensuring procurement and supply of mechanical, piping, electrical, IC, etc. equipment, machinery and other necessary assets as required for the REPM plant by the Contractor Ensuring Civil engineering and works by the Contractor Ensure mechanical, electrical, plant & machinery, auxiliary facilities, etc. erection by the Contractor Supervision and completion of Commissioning by the contractor	To + 18

- 7.3. If the Agency fails in meeting any Project Milestone related to Design, detailed engineering and technical specifications including qualification, scoring, scope of work, etc. for Selection of Contractor within the stipulated time as mentioned, then the Agency shall pay IREL liquidated damages (LD) as per Article 13

## **Article 8 Commissioning of the Plant**

- 8.1. The Agency shall ensure that the Contractor completes the installation and commissioning of the Plant on the land provided by IREL, within a stipulated period of eighteen (18) months from the Commencement Date of the Agreement, subject to the terms mentioned in Article 10 herein below;
- 8.2. The Plant is to be located suitably on the land provided by IREL. The Agency shall finalize the Plant layout keeping in view the optimum utilization of existing infrastructure and topography of the area;
- 8.3. The commissioning of the Plant shall be under periodical inspection of the representatives of Agency and IREL;
- 8.4. The Agency shall adhere to the Implementation Plan as submitted as part of the Conditions Precedent and shall ensure no delay due to any reason whatsoever, other than Force Majeure and subject to IREL fulfilling its obligations under this Agreement;
- 8.5. The Agency shall ensure that all the personnel / employees engaged by them in Supervision of Construction and commissioning of the Plant up to its stabilisation, shall follow all the safety rules as applicable.
- 8.6. The Agency shall have strict compliance of all Safety provisions / norms of IREL at Site

## **Article 9 Declaration of the Agency**

- 9.1. The Agency acknowledges that prior to the execution of this Agreement, the Agency has after a complete and careful examination made an independent evaluation of the Site conditions and all the information provided by IREL and has determined to the Agency's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Agency in the course of performance of its obligations hereunder. The Agency shall not be entitled for any compensation, or extension in time, whatsoever on account of its failure to make such examination and evaluation;
- 9.2. The Agency does not, and shall not, at any time, claim ownership of the land provided for the purpose of installation of the Plant.



## Article 10 Agency's Scope of Work

- 10.1. Under this Agreement, the scope of work (the “**Scope of Work**”) shall refer to Clause 2 of Terms of Reference attached at Appendix – 10 to the RFP.

## Article 11 Payments to the Agency

### 11.1. Agreement Value

11.1.1. IREL shall pay the following cost for executing the Works to the Agency:

S. No.	Particulars	Amount (figures)	Amount (words)
1	Fee for undertaking Design, Engineering, Procurement Assistance, and Supervision of Construction, erection and commissioning activities for the REPM plant as per Terms of Reference (Agreement Value)		
2	Applicable Tax on the Fee		
3	Total Fee		

11.1.2. The payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs.XXXX (Indian Rupees XXXX).

11.1.3. The Agreement Value is the basic amount or fee as mentioned above excluding the applicable taxes.

### 11.2. Payment Schedule

11.2.1. The following Payment Schedule will be adopted for paying the Agreement Value payable to the Agency:

S.No.	Project Milestone	No. of months from To (Commencement Date of Work)	Payment %
1.	Detailed engineering and approval	To + 3	30 %
2.	Technical Specifications including qualification, scoring, scope of work, etc. for Selection of Contractor	To + 3	10 %
3.	Procurement assistance, Supervision of Construction, erection & commissioning	4- 18	40 % in 5 equal installments of 8% each based on



			every 20% physical progress under the Contractor's scope of work as certified by the Independent Agency (PMU) appointed by IREL
4.	Commissioning	To + 18	20 %

### 11.3. Currency of payment

11.3.1. All payments shall be made in Indian Rupees.

## Article 12 Billing and Payment

- 12.1. Subject to the provisions of this Agreement, IREL shall pay to the Agency percentage of the Agreement Value payable after completion of a Project Milestone as specified in Clause 11.2.1, after adjusting for Liquidated Damages and other recoveries etc., if any;
- 12.2. The agency shall raise invoice as per the milestones specified herein and shall state the amount billed accompanied by the following:
  - 12.2.1. Deliverables submitted for each Project Milestone along with IREL's approval for the same;
  - 12.2.2. The net amount payable under the monthly invoice.
- 12.3. The payment shall be made by IREL within thirty (30) days after verification of the documents submitted by the Agency with the invoice
- 12.4. Agency shall give an undertaking in non-judicial stamp paper that it shall not have any further claim from IREL after the payment of final bill. In the event of acceptance by the Agency of the final bill in full and final settlement of Agreement, the Agreement shall be deemed to have come to an end and there after the Agency shall be stopped from raising any dispute whatsoever of the said Agreement. Submission of conditional acceptance/undertaking by the Agency shall render the final bill (along with other dues) pending, for which the Agency shall be solely responsible;
- 12.5. Taxes and Duties

While the Agreement Value shall constitute the consideration under the Agreement, the payment of taxes and duties shall be reimbursed on actuals against documentary evidence.

- 12.5.1. The amount of Goods and Services Tax (GST) as applicable/assessed on the Agreement Value under this Agreement shall be paid separately by IREL; however, in case of delay in submission of GST by Agency to relevant tax authority IREL shall have the right to withhold further payment of GST until the GST submission is regularized by the agency.
- 12.5.2. It shall be sole responsibility of the Agency to ensure that all kinds of taxes/duties/levies are deposited by it, in time and in the prescribed manner, with the concerned taxation authorities and IREL shall not bear any responsibility, whatsoever, with regard to non/delayed payment of taxes/duties/levies by the Agency to the concerned taxation authorities;



- 12.5.3. In case the Government subsequent to the Effective Date of Agreement imposes any new tax, duty or levy, the same shall be reimbursed, if applicable, on production of relevant statutory documentary evidence. Further, in case of variation (increase/decrease) in the rate of tax, duty or levy after the Effective Date of Agreement, the said varied rate shall be reimbursed/recovered on production of relevant statutory documentary evidence;
  - 12.5.4. Any increase/decrease in taxes and duties on account of statutory increase/decrease/fresh imposition of any duty or taxes which take place during the extended period of Agreement shall be admissible/availed of, provided it is admissible against these levies;
  - 12.5.5. In case of waiver/concession of statutory taxes and duties admissible under law/act., for which Agency shall make sincere efforts, the benefit of the same shall be passed on to IREL;
  - 12.5.6. The Agency shall comply with the provisions of the Goods and Services Tax (GST) laws and rules framed thereunder and the orders or instructions issued in this behalf by the appropriate authorities. The Agency shall also make available the records to the appropriate taxation authorities as and when required;
  - 12.5.7. The Agency shall bear all kinds of tax/penalty/interest etc. imposed by taxation authorities for non-observance of the taxation laws and procedures and IREL shall not bear any liability or responsibility, whatsoever, in this regard;
- 12.6. Income Tax
- 12.6.1. Tax deduction at source (TDS) shall be made towards income tax from all the invoices of the Agency at rates applicable as per income tax act and rules.

## Article 13 Liquidated Damages

### 13.1. Liquidated Damages (LD) against delay

- 13.1.1. If the Agency fails in meeting any Project Milestone related to Design, detailed engineering and technical specifications as mentioned in Clause 7.2, then the Agency shall pay IREL liquidated damages of amount equivalent to zero point five percent (0.5%) of the allocated Agreement Value as mentioned in Clause 11.1.2 (Basic amount without tax) for delay by each week or part thereof following the scheduled Project Milestone, however, the Agency shall not be liable to pay any liquidated damages during the Supervision of Construction, erection & commissioning activities. Also, in no event shall the Agency be required to pay more than five percent (5%) of the allocated Agreement Value as LD under this Clause;
- 13.1.2. The Agency shall not in any event be obligated to pay any Liquidated Damages under this Clause during any period for which a Project Milestone is delayed as a result of any event of Force Majeure;



## **Article 14 Obligations of IREL**

14.1. IREL shall provide the Agency access to site for performance of its scope of work.

14.2. In consideration of the Works performed by the Agency under this Agreement, IREL shall make undisputed payments and in such manner as is provided in Article 11 of this Agreement.

## Article 15 Representations and Warranties

### 15.1. IREL's Representations and Warranties

- 15.1.1. This Agreement constitutes its valid, legal and binding obligation, enforceable in accordance with the terms hereof except that the enforceability thereof may be limited by applicable bankruptcy, insolvency, re-organisation, moratorium or other similar law affecting creditor's rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defences, the discretion of the court before which any proceeding thereof may be brought and the principles of equity in general.

### 15.2. Agency's Representations and Warranties

The Agency represents and warrants as to itself that:

- 15.2.1. It is duly organised and validly existing entity under the laws of India. It has complied with the requirements of all Applicable Law and all requisite legal right, power and authority to execute and deliver this Agreement and all the agreements and documents referred to herein to which it is the party and to carry out the terms, conditions and provisions hereof and thereof,
- 15.2.2. The execution delivery and performance by it of this Agreement and all of the agreements and documents referred to herein to which it is the party have been duly authorised by all requisite corporate action, and shall not contravene any provisions of, or constitute a default under, any other agreement or instrument to which it is the party. The execution, delivery and performance by it of this Agreement and all of the agreements and documents referred to herein to which the Agency is the party does not constitute a violation:-
- a. of any statute, judgment order, decree or regulation or rule of any court, government authority or arbitrator of competent jurisdiction applicable or relating to the Agency, its assets or its business; or
  - b. the Agency articles, constituting documents or any indenture, agreement or agreement to which it is the party or by which it or its property is bound.
- 15.2.3. This Agreement constitutes its valid, legal and binding obligation, enforceable in accordance with the terms hereof except that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar law affecting creditor's rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defences, the discretion of the court

before which any proceeding thereof may be brought and the principles of equity in general;

- 15.2.4. There are no attachments or warrants served on it, in respect of GST, income tax, central government revenues or any other state government of India revenues, any other taxes and dues, that might materially adversely affect its ability to meet and carry out its obligations under this Agreement;
- 15.2.5. There are no actions, suits or proceeding pending or, to its knowledge threatened against or affecting the Agency or its employees, before any court or administrative body or arbitral tribunal that might materially adversely affect its ability to meet and carry out its obligations under this Agreement;
- 15.2.6. It is not in default under any agreement to which it is the party or by which it or its property may be bound, nor in any material default of any obligation under this Agreement and all of the agreements and documents referred to herein to which it is the party.

## Article 16 Liability

- 16.1. The Agency's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 16.2. The Agency shall, subject to the limitation specified in Clause 16.3, be liable to IREL for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 16.3. The Parties hereto agree that in case of negligence or willful misconduct on the part of the Agency or on the part of any person or firm acting on behalf of the Agency in carrying out the Work, the Agency, with respect to damage caused to IREL's property, shall not be liable to IREL:
  - 16.3.1. for any indirect or consequential loss or damage; and
  - 16.3.2. for any direct loss or damage that exceeds the Agreement Value set forth in Clause 11.1 of this Agreement.
- 16.4. This limitation of liability specified in Clause 16.3 shall not affect the Agency's liability, if any, for damage to Third Parties caused by the Agency or any person or firm acting on behalf of the Agency in carrying out the Work subject, however, to a limit equal to the Agreement Value.

## Article 17 Indemnity

- 17.1. The Agency (“**Indemnifying Party**”) shall indemnify IREL (“**Indemnified Party**”) against any claim or damage, demand and any other expenses incurred by IREL for defending such claims / demand made by any authority due to the commission, omission and negligence on the part of the Agency in complying with any of the statutory provisions, being the owner of the Plant;
- 17.2. Without prejudice to the generality of Clause 17.1, the Indemnifying Party shall indemnify, and keep the Indemnified Party indemnified against any claim, damages, compensation proceeding, suit and any award rendered in any such suit or proceeding where such claim, proceeding, suit arises out of or in relation to:
- 17.2.1. Violation or breach of any Applicable Law as may be applicable to the Agreement which may arise out of or in consequence of the Construction or maintenance or performance of the Works under the Agreement;
  - 17.2.2. Breach of any conditions imposed by all and any Government Approvals in relation to the Works or any part thereof;
  - 17.2.3. Any accident or injury caused to any Third Party, any employee of the Indemnified Party, where such accident or injury is directly or indirectly attributable to any act, omission or negligence on the part of the Indemnifying Party, its agents, representatives or employees.
  - 17.2.4. Any damage or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the execution and completion of the Works and the remedying of any defects by the Agency.
  - 17.2.5. Any breach of the representations and warranties provided herein.
  - 17.2.6. Any sum payable by IREL to Agency for any breach of the Agreement, or otherwise which is directly or indirectly attributable to the acts and /or omission of the Agency, its agents, representatives or employees under this Agreement.
  - 17.2.7. The Agency shall indemnify IREL and keep IREL indemnified to the extent of the value of free issue materials to be issued till such time the entire Agreement is executed and proper account for the free issue materials is rendered. The Agency shall not utilize the IREL’s free issue materials for any job other than the one contracted out in this Agreement and also not indulge in any act, commission or negligence which shall cause/result in any loss/damage to IREL and in which case, the Agency shall be liable to IREL to pay compensation to the full extent of damage/loss and undertakes to pay the same.

## Article 18 Force Majeure

- 18.1. **“Force Majeure”** is an event beyond the control of Agency and not involving the Agency’s fault or negligence and which is not foreseeable. Such events may include, but are not restricted to acts of IREL/Agency either in its sovereign or contractual capacity, wars or revolution, hostility, acts of public enemy, civil commotion, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts and freight embargoes or any other event which IREL may deem fit to consider so. The decision about Force Majeure shall rest with IREL that shall be final and binding. Force Majeure clause has to be compulsorily embedded in the order;
- 18.2. If there is delay in performance or other failures by the Agency to perform obligations under this Agreement due to event of a Force Majeure, the Agency shall not be held responsible for such delays/failures;
- 18.3. If a Force Majeure situation arises, the Agency shall promptly notify IREL in writing of such conditions and the cause thereof within fifteen (15) days of occurrence of such event. Unless otherwise directed by IREL in writing, the Agency shall continue to perform its obligations under the Agreement as far as reasonable/practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event;
- 18.4. If the performance in whole or in part or any obligation under this Agreement is prevented or delayed by any reason of Force Majeure for a period of exceeding sixty (60) days, IREL may at its option terminate the Agreement without any financial repercussion on either side;
- 18.5. Any delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall not:
- 18.5.1. constitute a default or breach of the Agreement;
  - 18.5.2. give rise to any claim for damages or additional cost or expense occasioned thereby;
- if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.



## Article 19 Breach of Terms, Suspension and Termination

### 19.1. Breach of Terms

- 19.1.1. Should either Party here-to commit breach of any of the terms of this Agreement and in any such case the other Party, shall be entitled, without incurring any liability what-so-ever, to fore-bear from doing such acts or fulfilling such obligations as are to be done or fulfilled by it here under until the Party committing breach on terms herein makes good the said breach;

### 19.2. Suspension

- 19.2.1. IREL may suspend the Works in whole or in part at any time by giving the Agency a notice in writing, if the Agency shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Works, provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Agency to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Agency of such notice of suspension.
- 19.2.2. On receiving the notice of suspension from IREL, the Agency shall stop all such work, which IREL has directed to be suspended with immediate effect. IREL may at any time cancel the suspension notice for all or any part of suspended work by giving written notice to the Agency specifying the part of work to be resumed and the effective date of suspension withdrawal. The Agency shall resume the suspended work as expeditiously as possible after receipt of such withdrawal of suspension notice. In the event of suspension of work, IREL shall not be liable to the Agency for any damage and loss.

### 19.3. Temporary Suspension in case of delay:

- 19.3.1. In case of any delay on account of obtaining statutory clearances for the project resulting in delay of commencement of construction work by the contractor, while expecting to get the clearances in near future or otherwise, IREL may at any time at its sole discretion temporarily hold the progress of work being performed under the contract or any part thereof by notice in writing to the Agency. All the work so held shall be resumed by the Agency and extended suitably for the period amounting to temporary suspension based on a schedule as directed by IREL and mutually agreed upon between the Agency and IREL.
- 19.3.2. IREL will not pay the Agency for any work, which is performed during such an interval of suspension, and the IREL shall not be liable to the Agency for any damages or loss caused by such suspension of work.
- 19.3.3. The timeline for the temporary suspension due to delay in obtaining statutory clearance shall be as below:
  - (i) Upto 6 months after completion of detailed engineering: The contract can be temporarily suspended for the period as mentioned in accordance to clause 19.3.1 and 19.3.2

- (ii) More than 6 months and upto 18 months after completion of detailed engineering: The decision on suspension or extension of contract will be based on the mutual agreement between IREL and the Agency.
- (iii) More than 18 months after completion of detailed engineering: The contract can be terminated if desired and requested by IREL or Agency.

#### 19.4. Event of Default

Event of Default means the Agency Event of Default or the IREL Event of Default or both as the context may admit or require.

##### 19.4.1. Agency Event of Default

Any of the following events shall constitute an event of default by the Agency ("**Agency Event of Default**") unless such event has occurred as a result of IREL Event of Default or a Force Majeure event;

- a. the Agency fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 19.2.1 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as IREL may have subsequently granted in writing
- b. The Agency fails to commence the Works within twenty one (21) days from the Effective Date;
- c. The Agency fails to ensure that COD of the Plant is achieved within eighteen (18) months of the Commencement Date;
- d. Any representation made or warranties given by the Agency under this Agreement is found to be false or misleading;
- e. The transfer, pursuant to law of either (a) the rights and/or obligations of the Agency under the Agreement, or (b) all or material part of the Agency; except where such transfer in the reasonable opinion of IREL does not affect the ability of the Agency to perform, and the Agency has the financial and technical capability to perform, its material obligations under the Agreement;
- f. The Agency suspends or abandons the Works without prior consent of IREL, provided that the Agency shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by IREL;

- g. the Agency becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
  - h. the Agency fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 20.2 hereof;
  - i. the Agency submits to IREL a statement which has a material effect on the rights, obligations or interests of IREL and which the Agency knows to be false;
  - j. any document, information, data or statement submitted by the Agency in its Proposals, based on which the Agency was considered eligible or successful, is found to be false, incorrect or misleading; or
  - k. The Agency repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- 19.4.2. IREL Event of Default

The following events shall constitute events of default by IREL ("**IREL Event of Default**"), unless any such IREL Event of Default has occurred as a result of Agency Event of Default or due to a Force Majeure Event:

- a. IREL is in breach of this Agreement and has failed to cure such breach within sixty (60) days of receipt of notice in that behalf from the Agency;
  - b. IREL repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
  - c. Any representation made or warranties given by the IREL under this Agreement is found to be false or misleading.
- 19.5. Recourse to Event of Default
- 19.5.1. In case of an event of default, the following recourse is available to IREL and the Agency or both as the situation may warrant:
- a. In case of occurrence of Event of Default mentioned in Clause 19.4.1.b and 19.4.1.c, the Agency shall have an option to ask for extension from IREL specifying the conditions that have restricted the Agency to complete the tasks in stipulated time. However, IREL's decision on said matter shall stand final as the case may be;

- b. In case of occurrence of Event of Default mentioned in Clause 19.4.1.a, 19.4.1.d, 19.4.1.e, 19.4.1.f, 19.4.1.g, 19.4.1.h, 19.4.1.i, 19.4.1.j and 19.4.1.k IREL shall have the option to seek Termination of contract. The Termination shall be governed by Clause 19.6 of this Agreement
- c. In case of occurrence of Event of Default mentioned in Clause 19.4.2, the Agency shall have an option to seek Termination of this Agreement. In seeking the Termination of the Agreement, Agency would have to clearly demonstrate that the Event of Default has occurred despite all possible steps taken by Agency to avoid Termination. The Parties shall mutually decide the modalities of Termination.

#### 19.6. Termination due to Agency Event of Default

- 19.6.1. Without prejudice to any other right or remedy which IREL may have in respect thereof under this Agreement, upon the occurrence of an Agency Event of Default, IREL shall be entitled to terminate this Agreement by issuing a Termination Notice (the “**Termination Notice**”) to the Agency, provided that before issuing the Termination Notice, IREL shall by a notice in writing inform the Agency of its intention to issue the Termination Notice (the “**Preliminary Notice**”). In case the underlying breach/default is not resolved within a period of sixty (60) days from the date of the Preliminary Notice, IREL shall be entitled, to terminate this Agreement by issuing the Termination Notice. Provided further, that IREL shall be entitled to forfeit the Security Deposit;
- 19.6.2. Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 19.5.1.b or 19.5.1.c hereof, the Agency shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Works to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

#### 19.7. Payment upon Termination

- 19.7.1. Upon termination of this Agreement pursuant to Clauses 19.5.1.b or 19.5.1.c hereof, IREL shall make the following payments to the Agency (after offsetting against these payments any amount that may be due from the Agency to IREL):
  - a. remuneration pursuant to Article 11 hereof for Works satisfactorily performed prior to the date of termination;

#### 19.8. Disputes about Events of Termination`

- 19.8.1. If either Party disputes whether an event specified in Clause 19.4.1 or in Clause 19.4.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration



pursuant to Clause 20.2 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

## Article 20 Resolution of Disputes

### 20.1. Conciliation

- 20.1.1. All disputes or difference whatsoever arising between the Parties out of or relating to the Agreement shall be settled through discussions between the Chairman & Managing Director of IREL and the Authorised signatory of the Agency (the “**Conciliation**”). In case an amicable settlement is not arrived at, the matter shall be settled through Arbitration by appointment of sole arbitrator as approved by CMD, IREL.
- 20.1.2. Conciliation shall be resorted to prior to invoking Arbitration. The Arbitration clause is to be invoked by the Parties to the Agreement only on failure of Conciliation proceedings to amicably settle the disputes;

### 20.2. Arbitration and Jurisdiction

- 20.2.1. All disputes and differences of any kind what so ever arising out of or in connection with the contract or carrying out of the works (whether during the course of works or after their completion and whether before or after determination, abandonment or breach of contract) shall be referred to and settled by the person authorized and notified in writing by IREL who shall state his decision in writing. Such a decision may be in the form of a final certificate or otherwise, within a period of 30 days from the date of receipt of such reference to them.
- 20.2.2. If the Agency is dissatisfied with the decision of such authorized person, then he may within 30 days of receipt of such decision send a written appeal to IREL, represented by the Chairman and Managing Director at the registered office, Mumbai for Arbitration, in accordance with the provisions of the Arbitration and Conciliation Act and the Rules framed there under from time to time, and for the time being in force. Such written appeals should however specify only those matters in dispute, which have been referred to such authorized person but not satisfied with the decision and the reasons leading to his dissatisfaction.
- 20.2.3. If the period of 30 days has expired at any stage, stipulated in the preceding paras without any response from the Agency before such expiry, the Agency is deemed to have communicated his satisfaction to the decision of IREL at the relevant stage and all his rights of further appeal or as the case may be, adjudication are deemed to have been waived once and for all.
- 20.2.4. The seat of arbitration will be at Mumbai and only the appropriate Court coming under High Court of Mumbai will have jurisdiction to entertain all matters of litigation to the exclusion of all other courts.
- 20.2.5. The Agency shall not in any way delay or default or cause to delay or default the carrying out of the works by reason of the fact that any matter has been agreed to be referred to and / or referred to Arbitration.

## Article 21 Copyright and Intellectual Property Rights

- 21.1. As between the Parties, the Agency shall retain the copyright and other Intellectual Property rights for all the design, engineering and other documents made by (or on behalf of) the Agency. The Agency shall be deemed (by signing this Agreement) to give to IREL a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Agency's Documents, including making and using modifications of them. This license shall:
- a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
  - b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Agency's Documents for the purposes of completing the Works.
  - c) in the case of Agency's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement.
- 21.2. The Agency's design, engineering and other documents made by (or on behalf of) the Agency shall not, without the Agency's consent, be used, copied or communicated to a third party by (or on behalf of) IREL for purposes other than those permitted under this Article 21.
- 21.3. As between the Parties, IREL shall retain the copyright and other Intellectual Property rights in this Agreement and other documents made by (or on behalf of) IREL. The Agency may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the consent of IREL, be copied, used or communicated to a third party by the Agency, except as necessary for the purposes of the contract.



## **Article 22 Governing Law**

22.1. The execution, interpretation, Construction and performance of this Agreement shall be governed by and constructed according to the Laws of India.





## Article 23 Notices

23.1. All Notices or other communications which are required or permitted hereunder shall be in writing and shall be sufficient if delivered personally or sent by registered or certified mail, facsimile or certified courier to the address shown below.

In case to IREL :

.....

.....

Telephone No.:

Fax No.:

E-mail address:

In case to the Agency:

.....

.....

Telephone No.:

Fax No.:

E-mail address:

## Article 24 General Provisions

- 24.1. The provisions made under this Agreement shall be applicable except where the context requires otherwise;
- 24.2. Disclosure of Information and Right of Inspection: The Parties shall furnish to each other all information reasonably requested in regard to the performances of their respective duties and obligations under this Agreement in such manner and form as the Parties may mutually determine from time to time;
- 24.3. Amendments and Supplements: All additions, supplements, amendments or variations to this Agreement shall be in writing and shall be signed by the duly authorized representatives of the Parties;
- 24.4. Entire Agreement: This Agreement including all Annexures hereto, represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all previous oral or written agreements or understanding between the Parties in respect of the Plant;
- 24.5. Assignments: The rights and obligations hereunder of each of the Parties hereto shall not be assigned to a Third Party without having obtained in writing the prior approval of the other Party;
- 24.6. Waivers:
- 24.6.1. No waiver by either Party of any default by the other in the performance of this Agreement (i) shall be effective unless recorded in a document duly executed by an authorised representative of such Party; (ii) shall operate or be construed as a waiver of any other or further default whether of a similar or different character;
- 24.6.2. The failure by either Party on any occasion to insist upon the performances of any of the terms, condition or provisions of this Agreement shall not constitute a waiver. The grant of additional time or order indulgence by one Party to the other, or acceptance of any variation in performance, shall not constitute a waiver.
- 24.7. Confidentiality:
- 24.7.1. The Agency, its and the Personnel of either of them shall not, either during the term or after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, Drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by IREL to the Agency, its and the Personnel; any information provided by or relating to IREL, its technology, technical processes, business affairs or finances or any

information relating to IREL's employees, officers or other professionals or suppliers, customers, or contractors of IREL; and any other information which the Agency is under an obligation to keep confidential in relation to the Project, the Works or this Agreement ("**Confidential Information**"), without the prior written consent of IREL.

Notwithstanding the aforesaid, the Agency, and its personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- a. is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Agency, its and the Personnel of either of them shall give IREL, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- b. is provided to the professional advisers, agents, auditors or representatives of the Agency or its personnel or either of them, as is reasonable under the circumstances; provided, however, that the Agency or personnel or either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

24.8. No Third Party Beneficiaries: This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, standard of care with respect to, any liability to, or any right of suit or action in, any Third Party.

24.9. Severability: The declaration, as void or unenforceable, of any provisions of this Agreement by any judicial authority or arbitration panel shall not ipso facto render the remaining provisions of the Agreement void or unenforceable.

24.10. Relationship of the Parties: This Agreement shall not constitute either Party as a partner, agent or legal representative of the other Party. Neither Party shall have any right or authority to assume, create or incur any liability or obligation of any kind, expressed or implied, against, in the name of or on behalf of the other Party except in accordance with this Agreement or as may otherwise be agreed in writing by the Parties.

24.11. Governing Language: The language that governs the interpretation of this Agreement is the English language. All Notices required to be given by either Party to the other and all other communications and documentation which are in any way relevant to this Agreement or which are relevant to the execution and implementation of this Agreement, including any dispute resolution proceedings, shall be in English language.



- 24.12. Counterparts: This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute but one and the same instrument.
- 24.13. General Liability Provision: The rights and obligations of the Parties are finally and conclusively defined in this Agreement. Claims for indirect, remote or consequential damages such as loss of production, loss of profit, loss of use are excluded.



## Article 25 Annexures

The following Annexures shall also form integral part of this Agreement.

- (i) Annexure I: Bank guarantee format for Security Deposit
- (ii) Annexure II: RFP document, all addendums, corrigendum and clarifications issued by IREL and any other official communication
- (iii) Annexure III: Bid submitted by the Selected Bidder

**IN WITNESS HEREOF**, the Parties hereto have executed this Agreement in two originals by putting the signature of their respective duly authorised representatives effective as of the day, month and year first written above.

**For and on behalf of Agency**

**For and on behalf of IREL**

Signature.....

Signature.....

Name

Name

Designation

Designation

Seal

Seal

Witness

Signature.....

Signature.....

Name

Name

Designation

Designation

Seal

Seal



## Annexure I - BANK GUARANTEE FORMAT FOR SECURITY DEPOSIT

WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_  
M/s \_\_\_\_\_ (Selected Bidder's name & address), having its  
registered office situated at \_\_\_\_\_ (Postal address)  
(herein after referred to as the 'Agency') entered into an Agreement bearing reference no.  
\_\_\_\_\_ dtd. \_\_\_\_\_ with M/s Indian rare Earths Limited, a company  
incorporated under Indian Companies Act having its registered office at Plot No.1207, ECIL  
building, Opp. to Siddhivinayak Temple, Veer Savarkar Marg, Prabhadevi, Mumbai – 400 028,  
India (herein after referred to as IREL), for \_\_\_\_\_ (details of order)  
(herein after referred to as 'the Agreement').

AND WHEREAS under the terms and conditions of the Agreement the Agency is required to keep  
with IREL a Security Deposit of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) or  
submit a bank guarantee in lieu of cash deposit for the fulfillment of the terms and conditions of  
the contract, and whereas the AGENCY has chosen to submit a bank guarantee.

We \_\_\_\_\_ Bank do hereby undertake to pay the amounts due and  
payable under this guarantee without any demur, merely on a demand from IREL stating that the  
amount claimed is due by way of loss or damage caused to or that would be caused to or suffered  
by IREL by reason of breach of any of the terms and conditions of the said Agreement. Any such  
demand made on the bank shall be conclusive as regards the amount due and payable by the  
bank under this guarantee. The payment will be released within three working days from the date  
of demand for payment.

We undertake to pay to IREL any money so demanded notwithstanding any dispute or disputes  
raised by the Agency in any suit or proceeding pending before any court or tribunal relating  
thereto, our liability under these present being absolute and unequivocal.

The payment so made by us under this guarantees shall be valid discharge of our liability for  
payment thereunder and the Agency shall have no claim against us for making such payment.

We \_\_\_\_\_ (Name of Bank) further agree that the guarantee herein contained  
shall remain in full force and effect during the period that would be taken for the performance of  
the said Agreement and that it shall continue to be enforceable till all the dues of IREL under or  
by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till  
IREL certifies that the terms and conditions of the said Agreement have been fully and properly  
carried out by the said Agency and accordingly discharges this guarantee. Our guarantee shall  
remain in force until \_\_\_\_\_ and unless a demand or claim under this guarantee is made



on us in writing within three months from the expiry of the guarantee period, we shall be discharged from all liability under this guarantee thereafter.

We \_\_\_\_\_ (Name of Bank) , further agree that IREL shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extent time of performance by the said Agency from time to time or to postpone for any time or from time to time any of the powers exercisable by IREL against the said Agency and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relived from our liability by reason of any such variation, or extension being granted to the said Agreement or for any forbearance, act or omission on the part of IREL or any indulgence by IREL to the said Agency or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.

This guarantee will not be discharged due to the change in the constitution of the bank or the Agency.

We \_\_\_\_\_ (Name of Bank) lastly undertakes not to revoke this guarantee during its currency except with the previous consent of IREL in writing.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ YEAR

\_\_\_\_\_ Bank

(Signature with name in Block letters with designation,  
Attorney as per power of Attorney No. \_\_\_\_\_ dt. \_\_\_\_\_)

Bank's Common seal

## **Annexure II**





## Annexure III