



IREL (India) Limited  
(A Government of India Enterprise)

“Rate Contract Bid for Development and Operations of Mineral Sands mine  
at  
Brahmagiri, Odisha”

The document contains total 223 pages.

CPPP Tender No.	2024_IREL_200245_1 Dated:06/07/2024
Pre bid meetig date and time	23/07/2024 11:30 AM
Bid due date and time	27/08/2024 3.00 PM

IREL (India) Limited  
(A Government of India Enterprise)  
Plot No.1207, Veer Savakar Marg,  
Prabhadevi, near Siddhi Vinayak temple,  
Mumbai, India

### **NOTICE INVITING TENDER**

Tender Notice no.: 2024\_IREL\_200245\_1

Date: 06/07/2024

1. IREL (India) Limited, a Mini-Ratna Category-I company, is a Central 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 Mineral Sand 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 in Mumbai.
2. IREL invites bids through e-Tenders from reputed and experienced contractors for “Rate Contract Bid for Development & Operation of Mineral Sands Mine at Appointment of Mine Developer and Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha” over an initial contract period of Twenty (20) years with provision of contract extension for a period of 05 (five) years, solely under discretion of IREL.
3. The annual sand volume to be mined from Brahmagiri Sands Complex in Brahmagiri area of Puri district, Odisha is around 75 Lakh tonnes.
4. The interested contractors are requested to note the following:
5. Under the bidding process, the bids shall comprise of two-parts. First part (the “Techno Commercial Bid”) involving qualification of interested parties in accordance with the provisions of the qualification criteria stipulated in the tender and the Second part (the “Financial Proposal” - Price Bid) with the “Price Offer”. The hard copies of the Two-part Bids shall be submitted to IREL office (on or before the time mentioned in the bidding sheet).
6. Financial Proposal (Price Bid) shall be opened for techno-commercially qualified bidders.
7. After the completion of the Bidding Process, IREL shall accept the Proposal of the Successful Bidder and shall issue its Letter of Award (hereinafter called the "LoA") to the Successful Bidder and Successful Bidder shall acknowledge the receipt of LoA and acceptance of LoA within seven (7) days of the issue of the LoA. On receipt of LoA acceptance, the Successful Bidder shall be declared as “Successful Bidder”.
8. The Tender Documents can be viewed and **downloaded** in electronic form from the e-tendering platform [www.etenders.gov.in/irel.co.in](http://www.etenders.gov.in/irel.co.in) website and interested bidders have to participate through CPPP site [etenders.gov.in](http://etenders.gov.in) only.
9. IREL also reserves the right to issue any corrigendum(s) to this tender, if felt necessary, before the due date of opening of the tender. Also, IREL reserves the right to extend bid opening date due to administrative reasons.

10. Bidder has to check Corrigenda/ Amendments/ Clarifications/ other notices uploaded against the tender from time to time on the e-tendering website and resubmit their bids in case of any change in their offer due to the notices, before the final bid submission date/ time.
11. The Bid shall initially remain valid and binding for at least 180 days from the Bid Submission Date. Any Bid with a shorter validity period shall be rejected by IREL. Under exceptional circumstances, IREL may in writing request the Bidders to extend the Bid Validity Period of their Bids.
12. The Bids have to be submitted only in the e-tendering portal. No physical submission of Proposal is required/acceptable. The Tenders shall be opened as per bidding schedule mentioned in the tender document. However, in the eventuality of the day of opening of the tenders becomes a non-working day due to a force majeure event or public holiday, the date of opening of the tenders will shift to the next working day at the same time.
13. This tender is floated under the category of works contracts as per definition of "works" available in public procurement manual. Hence, it does not come under the purview of MSME policy
14. Interested parties require any clarification regarding any of the terms & conditions stipulated in this tender document, the same can be clarified through e-mail communications before the due date of submission of bids at the following e-mail id: [purchase-os@irel.co.in](mailto:purchase-os@irel.co.in). Address for Communication: IREL (India) Ltd, OSCOM, Matikhalo.

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## 1. Disclaimer

- 1.1. This Tender Document along with its Annexure and Schedule is not transferrable to any third party.
- 1.2. This document is not an agreement or an offer by IREL (India) Limited (IREL) to Bidders or any third party. The purpose of this document is to provide information to interested parties to facilitate the formulation of their Proposal for qualification and price bid. This document does not constitute and will not be deemed to constitute, any commitment on the part of IREL. Furthermore, this document confers neither any right nor expectation on any party to participate in the tender contemplated herein.
- 1.3. This document does not purport to contain all the information required by the Bidder. The Tender Document may not be appropriate for all persons, and it is not possible for IREL to consider the needs of each party who uses or reads this document. The concerned parties should conduct their own investigations and analysis and should verify the accuracy, reliability and completeness of the information in this document and obtain independent advice from appropriate sources. Neither IREL nor its employees or its consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this document.
- 1.4. Neither IREL nor its employees or consultants shall have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with this document, or any matter deemed to form part of this document, the award of the work, or the information and any other information supplied by or on behalf of IREL or its employees, any consultants or otherwise arising in any way from the selection process.
- 1.5. The bidder should confirm that the Tender Document issued by IREL is complete in all respects. In the event that the Tender Document or any part thereof is missing, the Bidder must notify IREL immediately at the address mentioned in the Bid Data Sheet. If no intimation is received from the Bidder within 10 (ten) days from the date of issuance of this document, it shall be considered that the Tender Document issued, is complete in all respects.
- 1.6. IREL reserves the right to change, modify, add, alter the Tender Document or cancel the Bidding Process without assigning any reasons thereof, at any stage during the Bidding Process. Such changes will be updated in the form of Corrigendum/ Amendments/ Clarifications/ other notices uploaded against the tender from time to time on the tendering website. The Bidders or any third party shall not object to such changes/ modifications/ additions/ alterations explicitly or implicitly. Any such objection by the Bidder shall make the Bidder's Proposal liable for rejection by IREL. Further objection by any third party shall be construed as infringement on confidentiality and privileged rights of IREL with respect to this document. It is clarified that IREL would not entertain any request for change in the Tender Documents where such change relates to a stage of the Bidding Process where the process has already been concluded.
- 1.7. The Tender Document and the information contained herein are strictly confidential and privileged and are for the exclusive use of the party to whom it is issued. This document must not be copied or distributed by the recipient to third parties (other than, to the extent required by the applicable law or in confidence to the recipient's professional advisors, provided that such advisors are bound by confidentiality restrictions at least as strict as those contained in this document). If after the issue of the document, the recipient does not continue with its involvement in the Bidding Process for any reason whatsoever, this document and the

information contained herein must always be kept confidential by such party and its professional advisors.

- 1.8. It is clarified that provisions of Section 1.6 and 1.7 above shall not apply to information already available in the public domain prior to the issue of this Tender Document.
- 1.9. Submission of bid shall amount to undertaking for not challenging the provisions of the bid document.
- 1.10. The Bidder shall bear all costs associated with the preparation and submission of the Techno-Commercial Proposal and Financial Proposal. IREL and their consultants shall not, under any circumstances, be responsible or liable for any such costs. Nothing contained in this Tender Document shall be binding on the Nominated Authority or confer any rights on the prospective Bidders. The examples set out in this Tender Document are for illustrative purposes only.



## 2. Bid Data Sheet

Sl. No.	Particulars	Information
1.	<b>Contact Person and Address of IREL for Communication, purchase of Tender Document, submission and opening of Proposal</b>	<p><b>Contact person:</b> Shri R S Sabat, DGM-Tech(Purchase)</p> <p><b>E-mail address for communication:</b> <a href="mailto:rssabat@irel.co.in">rssabat@irel.co.in</a></p> <p><b>Address of communication:</b> Address of communication: IREL (India) Limited OSCOM, Matikhalo, Ganjam, Odisha</p>
2.	<b>Project Proponent</b>	IREL (India) Limited (IREL)
3.	<b>Name of the Project</b>	Rate Contract Bid for Development & Operation of Mineral Sands Mine at Brahmagiri, Odisha
4.	<b>Earnest Money Deposit</b>	Rs. 1,00,00,000 (Indian Rupees One Crore only)
5.	<b>Validity of Proposal</b>	Proposal submitted by the Bidder should be valid for a period of at least 180 (One Hundred and Eighty) days from the Bid Due Date.
6.	<b>Manner of Proposal submission</b>	<p>Proposal shall be submitted in 2-part format.</p> <p><b>First part</b> (the “Techno Commercial Bid”) involving qualification of interested parties in accordance with the provisions of the qualification criteria stipulated in the tender and</p> <p><b>Second part</b> (the “Financial Proposal” - Price Bid) with the “Price Offer”.</p>
7.	<b>Technical Qualification to be met</b>	As stipulated in Technical Criteria at Section 8.5.1
8.	<b>Financial Qualification to be met</b>	As stipulated in Financial Criteria at Section 8.5.4
9.	<b>Pre-Bid Meeting Venue</b>	<p>IREL (India) Limited OSCOM, Matikhalo, Ganjam, Odisha Pin-761045</p> <p><b>Project Coordinator:</b> Shri G K Nayak,</p>

Sl. No.	Particulars	Information
		Email: gknayak@irel.co.in Mobile: +91 9437262215 _____

### 3. Bidding Schedule

IREL shall endeavour to adhere to the schedule provided for under this clause. However, in case IREL in its sole discretion undertakes any modification in the schedule specified below, the same shall be notified from time to time on the tendering/IREL website. Hence, bidders are requested to periodically visit tendering/IREL website for any notification.

S No.	Event	Tentative Schedule
1.	Publication of NIT on tender website of IREL( <a href="http://irel.co.in">http://irel.co.in</a> ) or on <a href="http://etenders.gov.in">http://etenders.gov.in</a>	To
2.	Site visit duration	To + 12
3.	Last date for receipt of pre-bid queries (queries to be submitted by bidder to IREL through emails sent to <a href="mailto:rssabat@irel.co.in">rssabat@irel.co.in</a> & <a href="mailto:purchase-os@irel.co.in">purchase-os@irel.co.in</a> )	To + 12
4.	Pre-bid meeting	To + 17
5.	Responses to pre-bid queries, Addendum/ Corrigendum to be issued by IREL	To + 24
6.	Last date and time for submission of Proposal (Bid Due Date)	To + 52 at 03:00 PM
7.	Opening of EMD security and Techno-Commercial Proposals submitted by bidders (in presence of bidders who choose to attend)	To + 53 at 04:00 PM
8.	Evaluation of Techno-commercial Proposal	To be declared later
9.	Opening of Financial Proposal	
10.	Issue of Letter of Award (LOA)	
11.	Incorporation of JVC/SPV (Project Company), if required	
12.	Signing of Mining Services Agreement	

#### 4. List of Abbreviations

<b>COD</b>	Commercial Operation Date
<b>CPCB</b>	Central Pollution Control Board
<b>CPWD</b>	Central Public Works Department
<b>Crore</b>	Ten Million OR 10,000,000
<b>CTE</b>	Consent to Establish
<b>CTO</b>	Consent to Operate
<b>DSC</b>	Digital Signature Certificate
<b>EC</b>	Environmental Clearance
<b>EIA</b>	Environment Impact Assessment
<b>EMP</b>	Environment Management Plan
<b>FC</b>	Forest Clearance
<b>FPO</b>	Final Price Offer
<b>FY</b>	Financial Year
<b>GST</b>	Goods and Services Tax
<b>IREL</b>	IREL (India) Limited
<b>INR</b>	Indian National Rupees / Legal tender currency of India
<b>JOA</b>	Joint Operating Agreement
<b>SPCB</b>	State Pollution Control Board
<b>JV</b>	Joint Venture
<b>Lakh</b>	Hundred Thousand or 100,000
<b>LOA / LoA</b>	Letter of Award
<b>M or m</b>	Meter
<b>MDO</b>	Mine Developer cum Operator
<b>MoEF&amp;CC</b>	Ministry of Environment Forest and Climate Change
<b>MSA</b>	Mining Service Agreement
<b>MT</b>	Million tonnes
<b>MTPA</b>	Million tonnes per Annum
<b>NIT</b>	Notice Inviting Tender
<b>NMET</b>	National Mineral Exploration Trust
<b>PAN</b>	Permanent Account Number
<b>POA</b>	Power of Attorney
<b>R&amp;R</b>	Rehabilitation and Resettlement
<b>RFP</b>	Request For Proposal
<b>SPV</b>	Special Purpose Vehicle

## 5. Definitions and rules of construction

### 5.1. Definitions

- 5.1.1. **Affiliate:** means and includes with respect to any person, any other person directly or indirectly controlling, controlled by or under common Control with such person and shall include Holding and Subsidiary Companies.
- 5.1.2. **Applicable Laws:** shall mean all laws, brought into force and effect by Government of India or the Government of any State, including rules, regulations, ordinances and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record or government authority or such other government restriction or any similar form of decision of, or determination by or any interpretation or adjudication having the force of law in India.
- 5.1.3. **Associate Company:** shall have the meaning ascribed to it in Section 2(6) of the Companies Act, 2013.
- 5.1.4. **Authorized Representative / Authorized Signatory:** Each Bidder shall designate maximum of three person(s) authorized to represent the Bidder in all matters pertaining to its Proposal. In case of Bidding Consortium, Lead Member will designate/ appoint all the Authorized Representatives who shall be an employee/officer of the Lead Member. Such person(s) shall constitute the Authorized Representative/Authorized Signatory of the Bidder. The Authorized Representative/Authorized Signatory should hold the power of attorney (in the format provided in Section 12.12 and/or Section 12.13) duly authorizing him/her to perform all tasks including but not limited to sign and submit the proposal; to participate in all stages of the Bidding Process; to correspond for and on behalf of the Bidder, and to execute the Mining Service Agreement and any other documents required to give effect to the outcome of the Bidding Process. The original power of attorney, duly notarized, in favour of the Authorized Representative/Signatory shall be enclosed by the Bidder along with the covering letter. Further, it is clarified that any one Authorized Signatory can also bind the Bidder on all matters i.e., even if one Authorized Representative signs/agrees on any matter with IREL, same shall be binding on the Bidder. No change in the Authorized Representative would be made by the Bidder without the prior written consent of the IREL.
- 5.1.5. **Total Heavy Mineral or Heavy Mineral**(commonly referred to as Beach Sand Mineral) shall have its meaning as defined in sub-clause (c) of clause (1) of rule 2 of Atomic Minerals Concession Rules, 2016/2019.
- 5.1.6. **Bid or Tender or Offer:** Bid/Tender/Offer shall mean the proposal along with required supporting documents submitted by the Bidder/Service Provider for consideration by the Employer.
- 5.1.7. **Bidder or Bidding Entity:** The Bidder/ Tenderer means the Company /Corporation /Organization/entity, who participated in the Tender under sole bidding route, bidding group or as part of Consortium as defined in Section 8.
- 5.1.8. **Bidding Company:** Bidding Company shall mean the single registered corporate entity in India that has submitted its Proposal in response to this Tender Document.
- 5.1.9. **Bidding Consortium:** If the Bid for the proposed project has been made by more than one legal entity (Company/LLP/ LLC incorporated in India as per Applicable laws), then this group of entities shall be referred to as the Bidding Consortium. The Bidding Consortium can be of a maximum two Bidding Entities who undertake to form a Joint Venture (JV) Company incorporated under the Applicable Laws prior to the execution of the Mining Service Agreement, which has submitted a Proposal in response to this Tender Document.
- 5.1.10. **Bidding Group:** Bidding Group shall be as defined at clause 8.2.1.

- 5.1.11. **Bidding Process:** The procedural activities formed under this Tender Document for Appointment of the MDO shall be referred to as the Bidding Process.
- 5.1.12. **Earnest Money Deposit (EMD)** shall have the meaning ascribed to it in Section 10.7.
- 5.1.13. **Employer or Owner** shall mean IREL (India) Limited, a Central Public Sector Undertaking, incorporated under the Company's Act 1956 and having its Registered office at Plot No. 1207, Veer Savarkar Marg, Prabhadevi, Mumbai, Maharashtra-400086 and includes its successors, assigns and Units.
- 5.1.14. **Bid Due Date:** The last date for submission of Bid as specified in Section 3, Bidding Schedule.
- 5.1.15. **Bidding Schedule:** Tentative schedule or timelines for events/ activities forming part of the Bidding Process as specified in Section 3.
- 5.1.16. **Bid Validity Period:** shall have the meaning as defined in Section 11.7.1.
- 5.1.17. **Corporate Performance Guarantee:** shall mean the Bank Guarantee to be submitted by the Supporting Partner for an amount as referred in Clause 9.4 of Mining Services Agreement.
- 5.1.18. **Contract or Agreement or Mining Services Agreement (MSA):** Contract/Agreement/Mining Services Agreement (MSA) shall mean an agreement between Employer and the MDO for execution of the Service(s) as per Contract Documents and its subsequent amendment(s), if any in writing thereto
- 5.1.19. **Contract Period:** Contract Period shall mean the term of the Mining Services Agreement as stipulated in the draft Mining Service Agreement provided in Schedule 1 of this Tender document.
- 5.1.20. **Control:** shall have the meaning ascribed to it in Section 2(27) of the Companies Act, 2013 and the word controlling shall be construed accordingly.
- 5.1.21. **Consortium Agreement:** shall mean the consortium agreement to be entered by the Lead Member and the Other Member pursuant to the format provided in Section 12.10.
- 5.1.22. **Delivery Point:** Delivery Point shall mean the designated point(s) identified by IREL near the mineral separation plant for the purpose of delivery of HM Concentrate..
- 5.1.23. **Financial Proposal:** The Financial Proposal of the Bid shall comprise of the Price Offer, which is quoted by bidders.
- 5.1.24. **Financial Year:** Financial Year shall have the meaning ascribed to it in Companies Act, 2013.
- 5.1.25. **Holding Company:** shall have the meaning ascribed to it in Section 2(46) of the Companies Act, 2013.
- 5.1.26. **HM Concentrate** shall have its meaning as ascribed to it in Clause 7.1.
- 5.1.27. **Lead Member or Lead Member of the Bidding Consortium:** shall mean the member of the Bidding Consortium who is so designated by the members of the Bidding Consortium and meets the Financial Criteria as set forth in Section 8.5 of this Tender Document, and shall hold minimum 51% (fifty one percent) equity in the Biding Consortium/JV Company at all times.
- 5.1.28. **Letter of Award or LOA** shall mean the letter issued by IREL to the Successful Bidder as defined in Section 10.13.
- 5.1.29. **Material Misrepresentation:** is the act of intentional hiding or fabrication of a material fact which, if known to the other party, could have terminated, or significantly altered the basis of, a contract, deal, issuance of LoA to Successful Bidder or transaction.
- 5.1.30. **Member in Bidding Consortium:** Each individual member entity in the Bidding Consortium are referred to as a Member in the Bidding Consortium.

- 5.1.31. **Mine Lease** or **Mining Lease** means the mining lease applied over by IREL for the Brahmagiri Heavy Mineral deposit located in Brahmagiri & Puri tahasil of Puri district, Odisha. The agreement is to be executed between IREL and the Government of Odisha in accordance with the Mines and Minerals (Development and Regulation) Act, 1957 and shall include any lease renewals/ extensions thereof.
- 5.1.32. **Mine** shall refer to the mine corresponding to Brahmagiri Mine Lease.
- 5.1.33. **Mineral Sand** shall mean the beach sand available in the Lease Area comprising of Heavy Minerals.
- 5.1.34. **Mine Developer Cum Operator (MDO):** The Mine Developer cum Operator would be the Successful Bidder selected through the Bidding Process, as ascribed to in this Tender Document, who would sign and execute the Mining Services Agreement and/or legal agreements as prescribed by the laws applicable, with IREL. The MDO shall include its legal representatives, successors and permitted assigns.
- 5.1.35. **Net worth** shall have the meaning ascribed to it in Section 2(57) of the Companies Act, 2013. Net worth will be calculated in compliance with Indian Accounting Standard.
- 5.1.36. **Nominated Authority:** The team member of IREL or nominated by IREL for the purpose of this tender document.
- 5.1.37. **Other Member:** As specified in Section 8.3 of this Tender Document, "Other Member" or the "Other Member of the Bidding Consortium" shall be the other member/ corporate entity (non-Lead Member) who meets the Technical Criteria set forth in Clause 8.5.1..
- 5.1.38. **Performance Security:** Performance Security shall mean the bank guarantee to be furnished by the Successful Bidder (or the MDO) for an amount as referred in clause 9.1 of the draft Mining Services Agreement.
- 5.1.39. **Promoter** shall have the meaning ascribed to it in Section 2(69) of the Companies Act, 2013.
- 5.1.40. **Peak Rated Capacity(PRC)** shall mean the maximum mining capacity in MTPA as per the Approved Mining Plan.
- 5.1.41. **Qualified Bidder:** Qualified Bidder shall have the meaning as defined in the Section 10.8 (iix).
- 5.1.42. **Section:** means a Section in the RFP/ Tender document.
- 5.1.43. **Successful Bidder or Selected Bidder** shall mean the Bidder selected through the Bidding Process as per Section 10.
- 5.1.44. **Site:** Site shall mean the land within the Mining Lease area as per the lease deed.
- 5.1.45. **Subsidiary Company/Subsidiary:** shall have the meaning ascribed to it in Section 2 (87) of the Companies Act, 2013.
- 5.1.46. **Supporting Partner:** shall mean the direct Subsidiary company or direct Holding company of the Bidder which provides technical/financial support to the Bidder to enable it to qualify for this Proposal and enters into a Joint Operating Agreement as per the format provided in Section 12.10 A.
- 5.1.47. **Tender Document:** The Tender Document comprises of definitions, rules of construction, description of the selection process, qualifying requirements and instruction to Bidders, etc. to enable the Bidders to prepare their Proposal for Appointment of Mine Developer and Operator (MDO) for the development and operation of the Brahmagiri sand mine and Concentration plant project of IREL competitive bidding and shall include any modifications, amendments/corrigenda or alterations or clarification thereto. The documents are as follows:
- a) Notice Inviting Tender (NIT)

- b) Request for Proposal (RFP)
- c) Draft Mining Services Agreement (provided in Schedule 1)
- d) Any corrigenda /clarification(s) / amendments to the Tender Document issued by IREL.
- e) Any other relevant technical reports available with IREL
- f) The corrigendum (corrigenda)/clarification(s)/ amendments as mentioned in (d) of this sub-section herein above shall prevail over the documents mentioned in (a), (b), (c) and (e) mentioned above.

5.1.48. **Techno-commercial Proposal:** shall comprise of the documents as prescribed in the Clause 9.2.

5.1.49. **Turnover:** shall have the meaning ascribed to it in Section 2(91) of the Companies Act, 2013.

5.1.50. **Wet Upgradation Plant** or **WUP** shall have its meaning ascribed to it in Clause 7.1

5.1.51. All other capitalized words not defined herein shall have the meaning ascribed to them in the Draft Mining Services Agreement. Terms and expressions not defined anywhere in the Tender Documents shall have the meaning as are assigned to them in Indian Contract Act, 1872, Companies Act, 2013 and the General Clauses Act, 1897 and other applicable laws and rules. Where such terms are not defined then the same shall bear its ordinary English meaning.

## **5.2. Rules of Construction or Interpretation**

5.2.1. Unless otherwise specified, a reference to this Tender Document includes all Sections, Clauses, Annexure, Schedules, Attachment or paragraph of this Tender Document.

5.2.2. Words imparting singular shall also include plural and vice-versa and any word defined in the singular shall have the corresponding meaning when used in the plural and vice versa.

5.2.3. The titles or headings in this Tender Document are for convenience and easy reference only and shall not be considered for construction or interpretation of this Tender Document.

5.2.4. Any reference to "person" shall include companies, firms, corporations and associations or bodies of individuals, whether incorporated or not and shall include their respective successors in business and permitted assigns.

5.2.5. A reference to any gender includes the other gender.

5.2.6. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision.

5.2.7. The metric system of measurement shall be used for the purpose of submitting this offer.

5.2.8. A reference to any person includes that person's executors, administrators, substitutes, successors and permitted assigns.

5.2.9. A reference to an agreement, deed, instrument or other document include the same as amended, novated, supplemented, varied or replaced from time to time.

5.2.10. A reference to the terms 'MSA' or 'Draft Mining Services Agreement' shall be read as MSA or Mining Services Agreement once the Successful Bidder has executed the same with IREL.

5.2.11. The terms "include" and "including" shall be deemed to be suffixed with the words "without limitations", whether or not so followed.

5.2.12. The expression "writing" or "written" shall include communications by electronic mail and/or letter.

5.2.13. The expression "day" shall refer to a calendar day.

5.2.14. The requirement of consent of IREL wherever appearing in the Tender Document shall always mean the prior written consent of IREL.

### 5.3. Governing Law and Jurisdiction of Courts

This Bid Document and Bidding Process shall be governed by and construed in accordance with Applicable Laws in force in India. The courts in Bhubaneswar (Odisha, India) shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Document and Bidding Process.

## 6. Introduction and Background

IREL (India) Limited (IREL), a Mini-Ratna Category-I company, is a Central Public sector enterprise of the Government of India under the administrative control of the Department of Atomic Energy. The company has been issued a Letter of Intent for allotment of a mine for Mineral Sand mining.

The brief description of the project is mentioned below:

S.N.	Particulars	Description
1	Name of the mine	Brahmagiri sand mine
2	Name of the Lease holder	IREL India Limited
5	Total Lease area	1487.746 Ha
6	Location	Brahmagiri and Puri tahasil of Puri dist, Odisha
7	Coordinates	Latitude: 19° 45' 00.00", Longitude: 85° 40' 46.78"
10	Status of Clearances	Current status of all the statutory clearances is provided in the Schedule E, Draft Mine Service Agreement (MSA)

\*Details of the project and operations are mentioned in Schedule 1: Draft Mining Service Agreement attached with this tender document

## 7. Objective & Scope of Work

### 7.1. Objective of IREL

The Government of Odisha has issued a Letter of Intent to IREL for grant of mining lease over an area of 1487.746 Hectares for Mineral Sand in favour of IREL in Brahmagiri & Puri tahasil of Puri district, Odisha. The Mine Lease extends along the coastline of Bay of Bengal containing assemblage of heavy minerals viz. Ilmenite, Rutile, Zircon, Garnet, Sillimanite & RE bearing minerals.

IREL plans to setup and operate a complex for Mineral Sand processing for the corresponding mine. The complex would involve facilities for mining of Mineral Sand from the lease area, upgradation of the Mineral Sand and then separation of constituent minerals.

The Mineral Sand shall be excavated through suitable methods of mechanized mining. Such mined Mineral Sand shall be pumped into processing units ("**Wet Upgradation Plant**" or "**WUP**"), where it shall be upgraded for Heavy Minerals i.e., unwanted gangue minerals (quartz) shall be removed by gravity separation via equipment like spiral banks, trommel screen, teeter bed separator etc. Such operation in the WUP is referred as "Wet Upgradation". Accordingly, the upgraded output from WUPs shall be referred to as "**HM Concentrate**" and the quartz rich rejects shall be referred to as "**Tailings**". This is followed by separation of constituent minerals in the HM Concentrate in a mineral separation plant.



Now, IREL intends to appoint a Mine Developer and Operator (MDO) for mining of Mineral Sand and its upgradation in WUP. The MDO shall undertake all required works for setting up the facilities for such operations, and then subsequently operate it. This shall include preparation of Mining plan, facilitate IREL in getting all statutory clearances, permits & approvals, facilitation in land acquisition or consent from landowners for a short period for surface operation, deployment of equipment & machinery, erection and commissioning of WUPs and other infrastructures, operation & maintenance of the deployed equipment, machinery & plants, delivery of HM Concentrate to IREL at designated delivery point and any other related activities.

## **7.2.Scope of the Work**

The scope of the Project (the “**Scope of Work**”) for MDO shall mean and include all the activities required to develop and operate the Brahmagiri Mine, excavation of Mineral Sand from the Mine, Wet Upgradation of the excavated Mineral Sand and delivery of the upgraded Heavy Mineral concentrates at the Delivery Point identified by IREL. The Scope of the Wok of the MDO shall briefly cover the following responsibilities:

1. Undertake G1 level exploration of the Mine Lease area and furnish all exploration related data to IREL.
2. Prepare Mining Plan for Brahmagiri mine and obtain approval of the same on behalf of IREL. The MDO shall also update its scheme of mining as and when required.
3. Undertake activities for obtaining all statutory clearances, permits and approvals on behalf of IREL for the commencement of mining, WUP operations and mineral separation plants as well. CTO/CTE for MSP shall not be MDO’s responsibility.
4. Assist IREL in obtaining consent from the occupier of the surface of the land over which the lease has been granted. Such consent shall be obtained for a short duration of time for undertaking operations over that surface as per the provisions of Atomic Minerals Concession Rules,2016/2019.
5. Assist IREL in acquisition of land, if required for any activity necessary for the operations.
6. Undertaking all and any R&R activities including, facilitating the Project Affected People (PAPs) in relocation, construction of R&R houses if required.
7. The MDO shall obtain and maintain throughout the contract period, all Approvals necessary to perform the Scope of Work.
8. MDO shall be responsible for adherence to all the statutes and regulatory compliance pertaining to mine development, operation and maintenance including but not limited to MMDR Act,1957 and subsequent amendments.
9. Construct, commission and operate the Wet Upgradation Plant.
10. Deploy equipment and machinery as per the Approved Mining Plan for excavation of Mineral Sand. The MDO shall ensure that sustainable mining practices are followed by usage of low carbon emitting equipment/machineries and clean source of energy.
11. Deploy all manpower and workmen for the operations in accordance with the Applicable Laws.
12. Maintenance of all equipment, machinery and plant throughout the contract duration.
13. Excavation of Mineral Sand, it’s upgradation for Heavy Mineral in the Wet Upgradation Plant and delivery of HM Concentrate at the Delivery Point.
14. Backfilling of tailings discharged from the Wet Upgradation Plant into the worked-out area of the mine lease followed by its compaction and plantation over he backfilled area.
15. IREL shall be responsible for setting up of a central power substation near the mining lease area with provisions of providing power for the entire Brahmagiri Project including mine, WUP and as well as MSP units. The MDO shall make its own arrangement for drawing power from the substation to WUP and the mining areas. The cost of setting up of transformers and other necessary infrastructure for drawing power from the central power substation to the mine areas and WUP to be borne by the MDO itself.
16. Arranging supply of utilities including water at its own cost for operation.

## 8. Qualification Requirements

### 8.1. Qualification Routes:

8.1.1. The Proposal is to be submitted by:

**A. Route A:** Bidder or Bidding entity, which shall include any company or legal entities (LLC/ LLP/) incorporated in India as per Applicable Laws; or

**B. Route B:** Bidding Consortium, members of which shall be any company or legal entities (LLC/ LLP/) incorporated in India as per Applicable Laws.

### 8.2. Route A: Sole Bidding / Bidding Group

8.2.1. Under Route A, the Bidder should either be a Company/ LLC/ LLP/ meeting the Technical and Financial Criteria on its own on standalone basis or with the help of a Supporting partner in the form of a direct Holding company or Subsidiary company of the Bidder. Such a Bidder taking help of a Supporting partner in the form of a direct Holding company or Subsidiary company shall be referred to as a **“Bidding Group”**.

8.2.2. If Bidder does not meet either, the Technical or Financial Criteria on its own, it can take strength from the experience of any Supporting Partner. The Supporting Partner of the Bidder shall meet (either the entire Financial Criteria or the entire Technical Criteria), as applicable, for which the Bidder is taking its strength and thus meeting both Technical and Financial Criteria. In case the Bidder draws the financial strength from the Supporting Partner then for this purpose, audited standalone financial statements of such direct Subsidiary company or Holding company shall alone be considered for evaluation.

8.2.3. Bidder and its Supporting Partner should have positive Net Worth as on last date of each of the last 03 (three) Financial Years i.e., FY2022, FY2023 and FY2024.

8.2.4. If a Bidder takes strength of the Holding company or Subsidiary company for technical or financial qualification as specified in Section 8.2.2 above, it shall submit legally binding undertaking supported by a board resolution in accordance with the formats provided in the Section 12.7 and 12.8, at the Proposal stage from its direct Subsidiary company or Holding company providing strength for technical or financial qualification that all the technical and financial obligations of the Bidder shall be deemed to be technical and financial obligations of its direct Subsidiary company or Holding company, and in the event of any default or failure to perform on the part of the Bidder the same shall be met by its Supporting partner i.e. direct Subsidiary company or Holding company..

8.2.5. In case the Bidder takes strength from any one of its direct Subsidiary company or Holding company, the Bidder shall have to submit a duly executed Joint Operating Agreement (JOA) in the format provided for in 12.11 along with its Techno-Commercial Proposal and the Company which is providing strength to the Bidder, i.e. Supporting Partner shall need to submit an additional Corporate Performance Guarantee in the form of bank guarantee for the amount as prescribed in the Draft MSA in Schedule-1 within 30 days of date of signing of MSA as defined in Section 10.14 and as per the format provided in the Draft MSA in Schedule-1, in lieu of security for compliance of performance in case the Bidder fails to fulfil its obligations.

- 8.2.6. Bidder shall have to provide a certificate from its statutory auditor confirming the relationship with the Supporting Partner including exact details about the equity shareholding and voting rights as on fifteen(15) days prior to the Bid Due Date failing which the Proposal shall be treated as non-responsive.
- 8.2.7. In case, the Supporting Partner is the Holding company, the Holding company shall hold at least 51% equity in the Bidding entity at least till achievement of Peak Rated Capacity. In case the Supporting Partner is a Subsidiary, the Bidding entity shall hold at least 51% equity in the Subsidiary at least till achievement of Peak Rated Capacity.
- 8.2.8. If the Bidder forms a Special Purpose Vehicle (SPV) to act as the MDO, it shall hold 100% of the equity in the MDO SPV till the achievement of Peak Rated Capacity and thereafter at least 51% of equity in the SPV during the Contract Period. Any change in the shareholding of the SPV, can be made only after obtaining the prior written consent of IREL. Notwithstanding the formation of the SPV, the Successful Bidder shall be jointly and severally responsible with the SPV for performance of the obligations contemplated under the Tender Document.

### **8.3. Route B: Bidding Consortium**

- 8.3.1. **A Bidding Consortium shall comprise of maximum two members.** The members can be a Company/ LLP/ LLC registered in India under relevant Applicable Laws.
- 8.3.2. The Bidding Consortium shall comprise of a Lead Member and Other Member. The Lead member shall hold a minimum of 51% of the equity; while, Other member shall hold a minimum of 26% equity interest in the Bidding Consortium.
- 8.3.3. All Consortium members shall select one of the members of the consortium as the "Lead member" who should meet Financial criteria mentioned at Section 8.5.4 on its own and shall hold minimum 51% (fifty one percent) equity in the Biding Consortium/JV Company at all times.
- 8.3.4. Bidder may be a Consortium of up to a maximum of two corporate entities. Lead member should meet the entire Financial Criteria mentioned at section 8.5.4 and the Other Members should meet the entire Technical Criteria mentioned at Section 8.5.1.
- 8.3.5. Lead member shall have to provide a certificate from its statutory auditor confirming the relationship with other consortium member including exact details about the equity share holding and voting rights as on fifteen days prior to the bid due date failing which the proposal shall be treated as non-responsive.
- 8.3.6. In case the Bidder is a Bidding Consortium, the Proposal must be submitted in the name of the Bidding Consortium signed by the Authorised Representative of the Consortium who shall be an employee/officer of the Lead Member.
- 8.3.7. In case the Bidder is a Bidding Consortium, the members are not allowed to take strength from their Subsidiary company or Holding company.
- 8.3.8. Any Bidding Entity whether by itself or through its Promoters, Affiliates, Associate Company and/ or its Subsidiary(ies) and/ or its Holding company(ies) cannot be a member of more than one Bidding Consortium.

- 8.3.9. In case the Bidder is a Bidding Consortium, each member of the Consortium should have positive Net worth during each of the last 3 financial years i.e., FY2022, FY2023 and FY2024.
- 8.3.10. In case the Bidder is a Bidding Consortium, Members will be required to furnish legally enforceable Consortium Agreement in the format as specified in Section 12.10 along with its Techno-commercial Proposal holding themselves jointly & severally responsible and liable to IREL to perform all contractual obligations as per the terms and conditions of the Draft Mining Services Agreement (provided in Schedule 1), valid for the entire Contract Period. No change in the composition of the Consortium shall be permitted without the prior written consent of the IREL. The Lead Member of the Consortium shall be responsible for coordination of all the activities of the MDO as specified in the MSA.
- 8.3.11. In case the Bidder is a Bidding Consortium and it takes strength of the Other Member for technical qualification, in accordance with the provisions of the Section 8.5.1, it shall submit legally binding undertaking supported by a board resolution at the Proposal stage from its Other Member providing technical qualification that all the obligations of the Bidder or the Lead Member of the consortium shall be deemed to be obligations of its Other Member, and in the event of any default or failure of the Bidding Consortium to perform the same shall be met by the Other Member. The draft format for such board resolution is provided in Section 12.8.
- 8.3.12. All Members in the consortium shall be severally and jointly responsible for all liabilities including operational, financial, legal, environmental and technical liabilities on behalf of the Bidding Consortium.
- 8.3.13. Change in the Other Member of the Bidding Consortium shall not be permitted, except with the prior written permission from IREL, such prior written approval of IREL shall be issued at its sole discretion.
- 8.3.14. If the Successful Bidder is a Consortium, then the Lead Member shall hold at least 51% of the equity in the JV Company/SPV throughout the Contract Period. The Other Member shall hold at least 26% of the equity in the JV Company/SPV till 10 years from the Appointed Date as mentioned in the MSA. The JV Company/SPV shall not undertake any other business during the Contract Period except for the execution of the project or in connection therewith.
- 8.3.15. In case of Bidding Consortium, Earnest Money Deposit (EMD) shall be submitted/ issued by Lead Member of the Consortium and shall be deemed enforceable on all the Other Member.

#### **8.4. Other conditions for Bidders**

- 8.4.1. Revenue of the Bidder or any of the member in the Bidding Consortium from "Trading Businesses" shall be deducted when considering financial strength. For the purpose of this clause, "**Trading Business**" shall mean business of buying and selling any commodity without any value addition in the commodity.
- 8.4.2. The Bidding Entity/ the Lead Member of Bidding Consortium should designate maximum three persons to represent the Bidder or Bidding Consortium in its dealings with the IREL. The person(s) so designated shall be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into an agreement on behalf of the Bidder.

- 8.4.3. The Bidder should submit the power of attorney(s), authorizing the signatory of their Proposal to bind the Bidder, along with submission of Proposal as per the format provided in Section 12.12 or 12.13 of this Tender Document.
- 8.4.4. A Bidder shall submit only one Proposal either as a single Bidding Company or as part of a Bidding Consortium.
- 8.4.5. Conditional bids will not be considered for opening of financial proposal.
- 8.4.6. IREL reserves its right to waive non-substantial deviations without being bound to do so.
- 8.4.7. The Bidder, the Lead Member of the Bidder, Other Member of the Bidder or their respective holding company or their subsidiaries should not have been back listed by any State or Central Government or their undertakings/agency in the past. The directors or partners or the consortium members, jointly or severally and/or individually should not have been blacklisted by any State or Central Government or their undertakings/agency.
- 8.4.8. The Bidder, the Lead Member of the Bidder and Other Member of the Bidder should have never been declared insolvent, nor any proceedings for insolvency nor bankruptcy should have ever been commenced against it/them in the past. Neither, the Bidder nor any of their directors/partners/consortium member should have been subject to any order of punishment/sentence by any court of law or any judicial/quasi-judicial body.
- 8.4.9. The Bidder, the Lead Member of the Bidder and Other Member of the Bidder should not have been debarred by any State or Central Government or their undertakings/agency in the last 03 (Three) years from the date of issuance of NIT.
- 8.4.10. The Bidder, the Lead Member of the Bidder and Other Member of the Bidder should not have any of their mining leases cancelled in the past, for being convicted of illegal mining.
- 8.4.11. The Bidder, the Lead Member of the Bidder and Other Member of the Bidder should not have any conflict of their business interest with IREL's mining and mineral processing business of Mineral Sand.
- 8.4.12. The Restrictions under Rule 144 (xi) of the General Financial Rules (GFRS), 2017 shall be prevailed for the Bidders. The certificate regarding compliance as per Schedule 10 have to be submitted by Bidder.

## **8.5. Qualification Criteria**

The Bidders shall furnish all the details as per Technical and Financial Criteria mentioned below. Bids that are not in compliance with the Technical and Financial criteria shall be rejected. In case of a Bidding Consortium, the Lead member should meet the entire Financial Criteria mentioned at section 8.5.4 and the Other Member should meet the entire Technical Criteria mentioned at Section 8.5.1.

### **8.5.1. Technical Criteria**

The Bidder shall fulfil the Technical Criteria as mentioned below. The bidder shall submit the details required for Technical Criteria in the format specified in Section 12.4.

#### **A. Technical Criteria (Development and Successful Operationalization of a Mine):**

The Bidder should have been awarded a Mining Contract for at least one **Major Mineral** mine allotted to a Government Company in India, and having extractable/

mineable reserves of at least **60 million tonnes** and annual mining capacity of at least **7.5 MTPA** of ROM, where the Bidder should have assisted or facilitated the Mine Owner in the developmental activities including but not limited to land acquisition, R&R and in obtaining statutory clearances within the last 7 Financial Years from the date of issuance of the NIT i.e., from FY2018 to FY2024. Further, the mine should have been successfully operationalized and shall be operational on the date of issuance of the NIT.

**AND**

- B. **Technical Criteria (Mine Operations):** The bidder should have been awarded a Mining Contract for operation of at least one mine allotted to a Government Company in India and the Bidder should have successfully excavated at least **6 MTPA** of ROM every year from that mine, for any 5 consecutive Financial Years out of the last 7 Financial Years from the date of issuance of the NIT i.e., from FY2018 to FY2024.

8.5.2. **Note for Technical Criteria**

- I. In order to be qualified for participation in this process, Bidder needs to fulfil the Technical Criteria as mentioned in Section 8.5.1. The Criteria A and B can be fulfilled by the Bidder in 2 separate projects as well.
- II. The term "**ROM**" shall mean total material (including both, Overburden/ Waste and unprocessed Mineral) excavated in a mine.
- III. The term "**Major Mineral**" means any mineral specified in the First Schedule and Fourth Schedule of MMDR Act, 1957.
- IV. The term "**Mining Contract**" shall mean a long-term contract (not being a mining lease) awarded for development or operation of block/deposit of Mineral. The long-term contract here means a contract with term more than 7 years.
- V. The term "**Mine Owner**" shall mean the entity who has been allotted /awarded the mine and/or who is the mining leaseholder.
- VI. The word '**operated**' or '**excavated**', in the context of a mine shall mean that the Bidder should have performed the necessary activities of excavation of OB/ Mineral, loading and transportation etc. on its own or through sub-contracting. The word '**operation**' or '**excavation**', in the context of a mine shall be construed accordingly.
- VII. The word "**developed**" means that the Bidder should have assisted or facilitated the owner in the activities of obtaining statutory clearances, land acquisition, R&R and the Bidder should have carried out "Infrastructure development" activities including construction of Temporary Shelters in a mine either on its own or through sub-contracting.
- VIII. The word '**operated**', in the context of a Wet Upgradation Plant shall mean that the Bidder should have performed the necessary activities of operating and maintaining Wet Upgradation Plant either under a service contract or under manpower deployment contract at a Wet Upgradation Plant. The word '**operation**', in the context of a Wet Upgradation Plant shall be construed accordingly.
- IX. **Overburden** means soil, rock, carbonaceous shale or any material other than mineral, which may have to be removed from the mine for the mineral to be mined and includes the *inter-burden* i.e., the material between the seams. **Waste** means soil, rock any material other than ore, which may have to be removed from the mine for the ore to be mined.

- X. In case a Bidder (whether as a single Bidding Company or as a member of the Consortium) is claiming excavation experience where it is operating as part of a consortium or a joint venture, it shall also submit a notarized copy of the Consortium agreement or joint venture agreement (as the case may be), clearly explaining the extent of its ownership in such Consortium or joint venture, as reasonable claim for its qualification.
- XI. In such a case, the experience of excavation by the Bidder shall be limited to the proportion of its ownership in such consortium or joint venture (as the case may be).

**Illustration:***If a Bidder has 50% ownership in a JV Company for an entire year and the JV Company has excavated 02 (Two) Million Tonne of aggregate volume in a Financial Year, then the Bidder can claim only up to 01 (One) Million Tonne of aggregate volume for meeting the Technical Criteria.*

However, if such consortium or joint venture has carried out development of the mine, then the Bidder can claim entire experience of development of the mine irrespective of its extent of ownership in such consortium or joint venture.

- XII. In the event of identical claims of experience for same mine and same period by the prime contractor and subcontractors, the experience of Prime contractor shall be considered.
- XIII. **Prime contractor** shall mean the contractor appointed by the mine owner.
- XIV. In case of the identical claims of development of any mine by the Lead member and Other Member, the experience of Lead Member shall be considered.
- XV. In case the Bidder, either by itself or through the support from any external agency (called the "WUP vendor") has any experience of operation and maintenance of Wet Upgradation Plant handling Mineral sand containing Total Heavy Minerals, then it may highlight the same in a separate Annexure in its Bid with document as enlisted below:
  - a) Copy of Environment Clearance and Consent to Operate for the Wet Upgradation Plant, if the Plant is owned by the Bidder or its supporting WUP vendor itself
  - b) Copy of Contract Agreement(s) or Work Order(s), if the work has been undertaken under a contract for a Plant owned by some other entity.
  - c) Certificate from owner OR statutory auditor's certificate certifying scope of services specifying the operation and maintenance activities performed, if the work has been undertaken under a contract for a Plant owned by some other entity;
  - d) Contact Details (Name of Authorised person, Address, email address) of the owner of mine from where Bidder has taken the experience.

#### 8.5.3. **Supporting documents required to meet the Technical Criteria**

Bidder is required to submit the following documents notarized from Public Notary:

- I. For the purpose of technical Criteria A of Section 8.5.1, the Bidder shall submit:
  - a) Copy of Contract Agreement(s) or Work Order(s) for the awarded contract
  - b) Certificate from owner OR statutory auditor's certificate certifying

- i. Extractable/mineable reserves of the mine;
  - ii. the Peak Rated Capacity of the mine and annual mining capacity in terms of ROM;
  - iii. scope of activities specifying the development activities performed;
- c) Contact Details (Name of Authorised person, Address, email address) of the owner of mine from where Bidder has taken the experience to meet the Technical Criteria.
  - d) In case a Bidder (whether as a single Bidding Company or as a member of the Consortium) is claiming mining experience where it is operating as part of a consortium or a joint venture, it shall also submit a notarized copy of the consortium agreement or joint venture agreement (as the case may be), clearly explaining the extent of its ownership in such consortium or joint venture, as reasonable claim for its qualification.
  - e) Certificate and LOA or work orders from the mine allottee and/or contractor for the same, in case the Bidder is claiming its experience as a subcontractor.
- II. For the purpose of technical Criteria B of Section 8.5.1, the Bidder shall submit:
- a) Copy of Contract Agreement(s) or Work Order(s) for the awarded contract.
  - b) Certificate from owner OR statutory auditor's certificate certifying the details of the quantity of ROM excavated in the time period under consideration;
  - c) Contact Details (Name of Authorised person, Address, email address) of the owner of mine from where Bidder has taken the experience to meet the Technical Criteria.
  - d) In case a Bidder (whether as a single Bidding Company / Bidding Group or as a member of the Consortium) is claiming mining experience where it is operating as part of a consortium or a joint venture, it shall also submit a notarized copy of the consortium agreement or joint venture agreement (as the case may be), clearly explaining the extent of its ownership in such consortium or joint venture, as reasonable claim for its qualification.
  - e) Certificate and LOA or work orders from the mine allottee and/or contractor for the same, in case the Bidder is claiming its experience as a subcontractor.

#### 8.5.4. Financial Criteria

The Bidder shall fulfil the Financial Criteria as mentioned below. In case of a Bidding Consortium, Lead Member must fulfil the entire Financial Criteria on its own.

- A. The Average Annual Turnover of the Bidder, after deduction of revenues from its trading businesses, should not be less than **INR 500 Crore**, in any 04 Financial Years out of the last 07 Financial Years as on date of issuance of the NIT i.e.,FY2018 to FY2024.

**AND**

- B. Net worth of the Bidder, as on the last date of the last financial year i.e., 31<sup>st</sup> March 2024 should not be less than **INR 300 Crore**. The Net worth should be equal to or more than 100% of its paid-up share capital. The Bidder should have positive Net worth on the last date of each of the last 07 Financial Years as on date of issuance of the NIT i.e.,FY2018 to FY2024.



**AND**

C. The Average Annual Cash Accrual of the Bidder should not be less than **INR 100 Crore** in any 04 FY during last 07FYs on date of issuance of the NIT i.e., FY2018 to FY2024.

**8.5.5. Note for Financial Criteria**

- I. In order to be qualified for participation in the process, Bidder needs to fulfil all the Financial Criteria(s) A, Band Cas mentioned in Section 8.5.4. For the purpose of this, only standalone financial statement shall be considered.
- II. Cash Accrual shall mean net cash flow from operations i.e., Profit after Tax (PAT) + Depreciation + Other non-cash expenses.
- III. In preparing the Proposal, Bidders are expected to examine the documents comprising this Tender Document in detail. Material deficiencies in providing the information requested may result in rejection of a Proposal of the Bidder.
- IV. In support of Financial Criteria, Bidder shall submit audited financial statements.
- V. The financial figures should be provided in INR.

**8.5.6. Supporting documents required to meet the financial criteria:**

Bidder is required to submit the following document after getting notarized from Public Notary:

- a) its audited financial statements as a standalone entity.
- b) Certificate from the current Statutory Auditor of the Bidder along with breakup of the calculations of Turnover and Net worth as per definition and requirements in this Tender Documents.
- c) Certificate from the current Statutory Auditor of the Bidder for annual Cash Accrual as per definition and requirements in this Tender Documents.

**8.5.7. Technical Scoring**

The Bids of the Bidders meeting the Technical and Financial Criteria as mentioned in Clause 8.5.1 and 8.5.3 shall be consider for assessment and assigning of Technical Scores. The Technical Score of the Bidder shall be evaluated as per Technical Score system provided hereunder.

Experience of any one of the members in the Bidding Consortium may be claimed for scoring against these criteria.

S. No.	Marking Heads	Max. Marks	Marking Scheme & Supporting Document
<b>A</b>	<b>Experience of Bidder in the last 7 years</b>	<b>40</b>	
A1	Experience in terms of number of major mineral mine / mineral processing /mineral beneficiation plants in India for which the bidder has obtained Environment clearance or Forest Clearance (Stage-I and II),	15	3 marks per assignment.  <b>Supporting Document:</b> Copy of the Environment clearance or Forest clearance, as per

S. No.	Marking Heads	Max. Marks	Marking Scheme & Supporting Document										
	<p>under the applicable acts.</p> <p>Experience as mine / plant owner as well as Experience as a Contractor for some other mine / plant owner, may be claimed by the bidder.</p>		<p>applicability.</p> <p>In case experience is being claimed as a Contractor for some other mine / plant owner, then copy of Contract Agreement(s) or Work Order(s) for the awarded work and Work Completion certificate from the owner shall also be furnished.</p>										
A2	<p>Experience in terms of number of major mineral mines in India for which the bidder has prepared a Mining Plan and obtained approval on it.</p> <p>Experience as mine owner as well as Experience as a Contractor for some other mine owner, may be claimed by the bidder.</p>	10	<p>2 marks per assignment.</p> <p><b>Supporting Document:</b> Copy of the approved Mining Plan.</p> <p>In case experience is being claimed as a Contractor for some other mine / plant owner, then copy of Contract Agreement(s) or Work Order(s) for the awarded work and Work Completion certificate from the owner shall also be furnished.</p>										
A3	<p>Experience in terms of project cost of the mine or Factory constructed/developed by the bidder in India.</p> <p>Experience as mine / factory owner as well as Experience as a Contractor for some other mine / factory owner, may be claimed by the bidder.</p> <p>Factory shall be defined as per The Factories Act, 1948</p>	15	<table border="1"> <thead> <tr> <th>Project cost of the construction / development</th> <th>Marks awarded</th> </tr> </thead> <tbody> <tr> <td>Greater than or equal to INR 200 Crore</td> <td>05</td> </tr> <tr> <td>Greater than or equal to INR 300 Crore and lesser than INR 400 Crore</td> <td>10</td> </tr> <tr> <td>Greater than or equal to INR 400 Crore and lesser than INR 500 Crore</td> <td>12</td> </tr> <tr> <td>Greater than or equal to INR 500 Crore</td> <td>15</td> </tr> </tbody> </table> <p><b>Supporting Document:</b> In case of a factory, the Bidder shall furnish the Copy of Consent to Establish (CTE), Consent to Operate (CTO) for construction/development, and the approved Detailed Project Report prepared for the Factory with</p>	Project cost of the construction / development	Marks awarded	Greater than or equal to INR 200 Crore	05	Greater than or equal to INR 300 Crore and lesser than INR 400 Crore	10	Greater than or equal to INR 400 Crore and lesser than INR 500 Crore	12	Greater than or equal to INR 500 Crore	15
Project cost of the construction / development	Marks awarded												
Greater than or equal to INR 200 Crore	05												
Greater than or equal to INR 300 Crore and lesser than INR 400 Crore	10												
Greater than or equal to INR 400 Crore and lesser than INR 500 Crore	12												
Greater than or equal to INR 500 Crore	15												

S. No.	Marking Heads	Max. Marks	Marking Scheme & Supporting Document
			<p>certification from Statutory Auditor on Project Cost.</p> <p>In case of amine, the Bidder shall furnish the Copy of Consent to Establish (CTE), Consent to Operate (CTO) for construction/development, and the approved Mine Plan prepared for the mine with certification from Statutory Auditor on Project Cost.</p> <p>In case experience is being claimed as a Contractor for some other mine / factory owner, then copy of Contract Agreement(s) or Work Order(s) for the awarded work and Work Completion certificate from the owner shall also be furnished.</p>
<b>B</b>	<b>Tentative Project Team members</b>	<b>35</b>	
B1	<p><b>FC Expert</b></p> <p>The Bidder should have at least one experienced personnel who has successfully completed process of preparation of Forest Diversion Proposal (FDP) and obtained Forest Clearance (Stage-I and II) for a mine of any mineral specified in the First Schedule of MMDR Act 1957 within last seven (7) years, reckoned from the date of issuance of NIT</p>	12	<p><b>06 marks</b> for each mine of any mineral specified in the First Schedule of MMDR Act 1957</p> <p><b>Supporting Document:</b> Curriculum Vitae of the proposed personnel in the format provided in Section 12.17 of the RFP</p>
B2	<p><b>EC Expert</b></p> <p>The Bidder should have at least one experienced personnel who has successfully carried out EIA/ EMP studies and obtained Environmental Clearance for a mine of any mineral specified in the First Schedule of MMDR Act 1957 within last seven (7) years, reckoned from the date of issuance of NIT</p>	12	<p><b>06 marks</b> for each mine of any mineral specified in First Schedule of MMDR Act 1957</p> <p><b>Supporting Document:</b> Curriculum Vitae of the proposed personnel in the format provided in Section 12.17 of the RFP</p>
B3	<p><b>Mining Expert</b></p> <p>Should have at-least 5 qualified Mining Engineer (B.E / B. Tech) or Geologist (MSc. / MTech) on its payroll with post-qualification experience of at least 5 in</p>	06	<p><b>1 mark</b> for each personnel</p> <p><b>Supporting Document:</b> Curriculum Vitae of the proposed personnel in the format provided in Section 12.17 of the RFP</p>

S. No.	Marking Heads	Max. Marks	Marking Scheme & Supporting Document
	mining industry.		
B4	<b>Mineral Processing Expert</b> Should have at-least 5 qualified Mineral Processing Engineer (B.E / B. Tech) or Chemical Engineer (B.E / B. Tech) on its payroll with post-qualification experience of at least 5 years in mineral processing/mineral beneficiation/metallurgy.	05	<b>1 mark</b> for each personnel  <b>Supporting Document:</b> Curriculum Vitae of the proposed personnel in the format provided in Section 12.17 of the RFP
<b>C</b>	<b>Approach &amp; Methodology</b>	<b>25</b>	Presentation by and discussion with the key team members (inclusive of the expert specified at serial no B1, B2, B3 and B4 above) shall be conducted for evaluation.
	<b>Total Marks</b>	<b>100</b>	
	<b>Qualifying Marks</b>	<b>60</b>	

**Only those bidders scoring a minimum of 60 as their Technical Score shall be considered as qualified (“Qualified Bidders”) and would be considered for opening of Financial Proposal.**

In case the Bidder gets appointed as the MDO, the personnel proposed in the Bid for the expert specified at serial no B1, B2, B3 and B4 in the table above shall not be replaced until all the clearances have been obtained by the MDO. However, the appointed MDO may be allowed to replace such personnel under extraordinary circumstances only with prior approval of IREL in writing and shall be substituted with a person of equal or better qualification and experience only.

## 9. Instructions to Bidders

Bidder can download the NIT free of cost from the tender website of IREL (<http://irel.co.in>) or from the e-tendering portal <https://etenders.gov.in/>.

The Bidder shall submit the following in their proposal, in online mode on the e-tendering portal:

Part 1: Techno-Commercial Proposal

Part 2: Financial Proposal

### 9.1. Part 1: Techno-commercial Proposal

9.1.1. The Techno-commercial Proposal shall comprise of the following:

- a) Copy of proof for submission of Earnest Money Deposit (EMD)
- b) Covering letter for techno-commercial proposal as per Section 12.1.
- c) Affidavit for Bid submission as per Section 12.2.
- d) Summary of Techno-commercial proposal as per the format provided in Section 12.3.
- e) Details to meet technical criteria for qualifying requirements as per Section 12.4 and required supporting documents.

- f) Details to meet financial criteria for qualifying requirements as per Section 12.5 and required supporting documents.
- g) Board resolution of the Bidder as per format provided in Section 12.6.
- h) In case the Lead Member/Supporting Partner providing financial strength to the Bidder, board resolution as per format provided in Section 12.7.
- i) In case the Other Members/Supporting Partners providing technical strength to the Bidder, board resolution as per format provided in Section 12.8.
- j) If applicable, certificate from its statutory auditor confirming the relationship of the Bidder with the Supporting Partner including exact details about the equity shareholding and voting rights as on fifteen(15) days prior to the Bid Due Date as per Section 8.2.6.
- k) Signed copy of unpriced Financial Proposal marking the space for price input as "XXX" as per format given in Section 12.9.
- l) In case of Bidding Consortium, Consortium Agreement as per format provided in Proforma for Consortium Agreement as per Section 12.10.
- m) In case of Sole Bidding (Route A), the Bidding Company taking strength from its Supporting Partner, Joint Operating Agreement as per format provided in Proforma for Joint Operating Agreement as per Section 12.10A
- n) Applicable Power of Attorneys as per the format specified in Section 12.12 and 12.13.
- o) Format for certificate of total compliance as per Section 12.14.
- p) Pe-contract Integrity Pact as per the format specified in Section 12.15
- q) Declaration by Bidder for relationship with key managerial personnel of IREL as per format specified in Section 12.16
- r) Declaration from Bidder in compliance of Company Law as per Section 11.11.
- s) Signed copy of the Tender Documents comprising of RFP document, Draft MSA and all corrigendum, amendment and clarifications issued from time to time, as a proof of acceptance of terms and conditions mentioned therein.
- t) Bidder profile comprising of proof on being a legal business entity, copy PAN card, copy of GST certificate and banker details of the Bidder(s).
- u) CVs of resources proposed by the Bidder for scoring as per clause 8.5.7. The CV shall be submitted in the format as provided in Section 12.17
- v) Bidder profile comprising of proof on being a legal business entity:
  - a. In case the bidder is a Company, certificate of incorporation, Memorandum and Article of Association of the Bidder or any of the constitutional document has to be furnished by the Bidder, along with the copy of PAN, TAN card, GSTIN registration certificate and bankers details of the Bidders.
  - b. In case the Bidder is an LLP, the constituent documents, a certified true copy of limited liability partnership agreement along with particulars of all the members of the firm has to be furnished by the Bidder. In such case, the designated partners of the LLP will be responsible to ensure compliance by the LLP of the requirements prescribed in the Tender Documents with respect to submission of documents. Also, a copy of PAN card and GSTIN registration certificate have to be submitted;

- c. In case the Bidder is a Consortium, the Consortium Agreement along with constitutional documents of Consortium members have to be submitted

## **9.2. Part 2: Financial Proposal**

- 9.2.1. The Financial Bid will be comprising of the Initial Offer. The Initial Offer is required to be submitted in accordance with the provisions and format provided in Section 12.9.

## **9.3. Manner of Submission**

- 9.3.1. The Proposal in the prescribed formats as specified in Section 9.1 duly filled up with the information, along with supporting documents (wherever applicable) shall be submitted in online mode on the e-tendering portal <https://etenders.gov.in/>.
- 9.3.2. All the documents which are to be submitted online shall be prepared in indelible ink and should be easily readable. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the Bidder itself. Any such corrections must be signed by the Authorized Signatory of the Bidder on each page.
- 9.3.3. Authorized Representative/Authorized Signatory initials on all pages of the Proposals is required. The authorization must be confirmed by a written Power of Attorney (POA) accompanying the Proposals as provided in Section 12.12 and Section 12.13.
- 9.3.4. The Bidder should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms is insufficient. Alternatively, Bidders may format the prescribed forms making due-provisions for incorporation of the requested information.
- 9.3.5. Techno-commercial Proposal and Financial Proposal shall be submitted in the prescribed method as per the bidding process provided in Section 10 on or before the time mentioned in the bidding sheet.
- 9.3.6. The Techno-commercial proposal shall be opened as per bidding schedule provided in Section 3 of the Tender and in front of the bidders who choose to be present.
- 9.3.7. Unless extended by the IREL, the last date and time for the submission of the Proposal shall be as per the Bid Schedule mentioned in Section 3.
- 9.3.8. No submissions shall be allowed after the above timeline specified for submission of Proposals. IREL shall not be responsible for any delay in the online uploads of the Proposals.
- 9.3.9. Bidders shall mention their contact details including communication office address, official email address, phone number and mobile number of the Authorized Signatory of the Bidder, etc. in their Proposals.
- 9.3.10. The following may please be noted by the bidders:
  - i. Bidders already having DSC or already registered in e-tendering portal for tendering in any other organization, can use the same for IREL.
  - ii. Bidder has to check Corrigendum uploaded against the tender from time to time on e-tendering portal as well as IREL's website and resubmit their Bids in case of any

change in their offer due to the corrigendum, before the final bid submission date/time.

- iii. For bidders registration or Bid submission Procedure is also available in the e-tendering website and the detailed process of registration and bid proposal submission is at Schedule 4.

#### **9.4. Proposal Preparation Cost**

- 9.4.1. The Bidder shall be solely responsible and shall pay for all of the costs associated with the preparation of its proposal and its participation in the Bidding Process.
- 9.4.2. IREL shall not be responsible in any way for such costs, regardless of the conduct or outcome of the Bidding Process.

#### **9.5. Examination of Tender Document by the Bidder**

- 9.5.1. The Bidder shall carefully examine the Tender Document including all amendments/addendum and corrigendum, if issued, and other details relating to the work and acquaint himself fully with all the conditions and matters therein, which may, in any manner, affect the work and the cost thereof.
- 9.5.2. The Bidder shall be deemed to have obtained all information regarding risks, contingencies, responsibilities and other circumstances which might influence or affect his Proposal, the progress and to have taken into account all conditions and matters that may affect his works under this Bidding Process and cost thereof.
- 9.5.3. The Bidder shall be deemed to have visited the mining site and its surroundings, carefully examined and satisfied himself about the existing site conditions, availability of local facilities, land requirement etc. and to have quoted rates, taking into consideration all such conditions and matters, which may, in any manner, affect the work and the cost thereof.
- 9.5.4. The Bidder shall be deemed to have acquainted himself with all Government, and Labor laws, statutes, regulations, rules or notifications relating to taxes, levies and other charges relating to the work at the site or otherwise as applicable from time to time.
- 9.5.5. Any neglect or omission or failure on the part of the Bidder in obtaining necessary and reliable information upon the foregoing or any other matter affecting this Bidding Process, shall not absolve him of any risk or liabilities or responsibilities for completion of the entire work in accordance with the terms and conditions of the Draft Mining Services Agreement or MSA, provided in Schedule 1.
- 9.5.6. Any conditional bid will be rejected outright and no claim whatsoever in respect thereof shall be entertained. The management of IREL reserves the right to reject / cancel any or all bids without assigning reasons.
- 9.5.7. Every document forming part of the Proposal shall be signed by the Authorized Representative of the Bidder. All signatures should be dated, and Company's seal shall be affixed below it.
- 9.5.8. The Bidder must submit the documentary evidence/ authorization provided by IREL/ acknowledgement receipt generated online against purchase of this Tender Document

along with the techno-commercial proposal. The Bidder must also keep/ provide such documentary evidence to attend the pre-bid meeting and Site visit.

## **10. Description of Bidding Process**

### **10.1. Publication of the Tender Document**

The Press Information notice and Notice Inviting Tenders (NIT) shall be freely available on the tender website of IREL and on the e-tendering portal – <https://etenders.gov.in/>.

### **10.2. Site Visit**

10.2.1. To obtain firsthand information on the proposed assignment and on the local conditions, Bidders are encouraged to pay a visit to the mine site before submitting a Proposal as per the dates specified in the Bidding Schedule specified in Section 3;

10.2.2. The Bidders are encouraged to familiarize themselves with site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them before submission of bid. Bidders are encouraged to take site conditions into account in preparing their Proposals;

10.2.3. Interested Bidders shall be allowed to make a Site visit and the Bidder must carry documentary evidence/ authorization provided by IREL on the day of Site visit, failing which the Bidder shall not be allowed to perform Site visit;

10.2.4. For this purpose, Bidders shall communicate to IREL via letter/e-mail indicating their intention to visit the site along with the intended date of visit and the details of their visiting representatives at least 7 (seven) days before their intended visit.

IREL shall communicate its response to the interested bidders who are planning to visit the work site at the earliest approving the date of visit or may specify another date as it may consider suitable.

10.2.5. It shall be further noted that a maximum of 5 members from each Bidder shall be allowed for the Site visit;

10.2.6. Considering Site being a restricted area, IREL have right but not obligation to accompany the Bidder for such Site visit by the Bidders;

### **10.3. Pre-Bid Meeting**

10.3.1. A pre-bid meeting would be held to clarify and discuss issues with respect to the Bidding Process and the Tender Documents. The pre-bid meeting shall be held as per the details given in the Bid Data Sheet and Bidding Schedule mentioned in Section 2 and Section 3 hereof.

10.3.2. A Bidder may raise their queries and suggestions during pre-bid meeting. IREL in its sole discretion but under no obligation, may amend the RFP or respond to any such queries submitted by any Bidder.

10.3.3. Attendance of the Bidders at the pre-bid meeting is not mandatory.



- 10.3.4. Bidders who are interested to attend the pre-bid meeting shall inform the Contact Person of IREL at least 3 (three) calendar days before the date of the pre-bid meeting, along with the number of representatives who would be attending the pre-bid meeting. This is required to ensure that IREL can make adequate arrangement for hosting the pre-bid meeting, depending upon the total number of attendees.
- 10.3.5. A maximum of 03 (three) members shall be allowed from each of the Bidder for attending the Pre-Bid meeting who shall carry their authorization letter issued by the Bidder. Bidders interested to join the Pre-Bid Conference through CISCO Webex, should send their email id to purchase-os@irel.co.in. Meeting id and password will be mailed to the interested bidder(s) on the day prior to the date of scheduled Pre-Bid Meeting.

#### **10.4. Issuance of Clarifications, Corrigendum and Amendment**

- 10.4.1. Bidders may send their queries on the Tender Documents or the Bidding Process through email to the Contact person strictly in excel (.xls) format as per the proforma attached in Schedule 2 under Section 14.
- 10.4.2. The last date for receipt of queries by IREL is indicated in the Bidding Schedule mentioned in Section 3. Queries received after this date will not be entertained.
- 10.4.3. At any time prior to the Bid Due Date, IREL may at its own initiative or in response to a clarification requested by a Bidder, amend the provisions of RFP Documents and Draft MSA by issuing Corrigendum (s) / Amendment(s) to the RFP.
- 10.4.4. Any clarifications/ corrigendum/ addendum shall be issued to all the interested Bidders who have purchased the Tender Documents. The source of the query or suggestion shall not be revealed. Further, IREL may further seek clarification from Bidders through email.
- 10.4.5. Bidders are also advised to regularly check the tender website of IREL and e-tendering web site regarding posting of Amendment(s)/ Corrigendum(s)/ Clarification(s), if any.
- 10.4.6. The Clarification(s)/ Corrigendum(s)/ Amendment(s) issued by IREL will be binding on the bidders and it will be assumed that the information contained therein have been considered by the bidder in their bid.
- 10.4.7. Any Clarification(s)/ Corrigendum(s)/ Amendment(s) issued by IREL after the date of issuance of the Tender Documents will also be considered an integral part of the Tender/Document and any reference to the Tender Document in the draft MSA shall include such Clarification(s)/ Corrigendum(s)/ Amendment(s) also.
- 10.4.8. No verbal clarifications and information provided by IREL or its employee(s) or its representative(s) or its consultant(s) shall in any way be binding on IREL unless subsequently confirmed through the issuance of Clarification(s)/ Corrigendum(s)/ Amendment(s).
- 10.4.9. To afford prospective Bidders reasonable time in which to take the Clarification(s)/ Corrigendum(s)/ Amendment(s) into account, IREL may, at its discretion, extend the last date for Bid submission i.e., the Bid Due Date.

#### **10.5. Selection Process: Two Part Bidding**

- 10.5.1. The objective of IREL is to select an MDO through competitive bidding who has the appropriate experience in Mining and beneficiation operations and financial strength to

ensure timely development and continuous operations of the Brahmagiri mine in accordance with the requirements of IREL, stipulated in Draft MSA.

- 10.5.2. Bidders are invited to submit their Proposals against this RFP.
- 10.5.3. Notwithstanding anything contained in this Tender Document, IREL reserves the right to accept or reject any Proposal / Bid and reject all Proposals / Bids, at any time without any liability or any obligation for such acceptance, rejection and without assigning any reasons thereof.
- 10.5.4. The costs of preparing the Proposal and other requirement related to Proposal submission including visit to project site and IREL office are to be borne by the Bidder itself and shall not be reimbursed in any condition.
- 10.5.5. The Bidders shall be required to submit a two-part proposal which includes, Part 1: Techno-commercial Proposal and Part 2: Financial Proposal as specified in this RFP/ Tender document.

#### **10.6. Submission of Proposal**

- 10.6.1. The Bidder shall be required to submit following documents.
  - i. Earnest Money Deposit in the format specified in Section 10.7
  - ii. Techno-commercial Proposal as per the formats provided in the RFP and requirements stated in Section 9.1
  - iii. Financial Proposal as per the format specified in Section 12.9
- 10.6.2. Techno-commercial Proposal and Financial Proposal shall be submitted in online mode on the e-tendering portal. EMD, if being submitted as demand draft/ banker's cheque/ pay order or as Bank Guarantee shall be submitted in original.
- 10.6.3. All the queries related to document submission need to be resolved well in advance of the Bid Due Date. Any issues of the Bidders, after submission deadline as mentioned in data sheet in Section 3, on submission of documents shall not be entertained;

#### **10.7. Earnest Money Deposit (EMD)**

- 10.7.1. The Earnest Money Deposit (EMD) may be submitted in any of the following forms:
  - a) a bank demand draft/ banker's cheque/ pay order from any Nationalized Bank or Scheduled Commercial Bank (except Co-operative Bank) shall be submitted to IREL in original, or
  - b) a Bank Guarantee issued from any Nationalized Bank or Scheduled Commercial Bank (except Co-operative Bank) as per the format given in Section 12.11 shall be submitted to IREL in original, or
  - c) Online transfer – NEFT, RTGS, SWIFT (i.e., electronic mode of payment is allowed).
- 10.7.2. In case of Bidding Consortium, EMD shall be submitted by Lead member of the Bidding Consortium.
- 10.7.3. The EMD of the Bidders who are not declared as the Successful Bidder shall be returned within 30 (thirty) days from the date of issue of LOA.
- 10.7.4. The EMD of the Successful Bidder may be adjusted with the requirement of Performance Security, if the Successful Bidder so desires.

- 10.7.5. Bidders may be required to extend the validity of EMD till such time as IREL may reasonably require. In the event the validity period of the Bid is extended, the Bidder shall ensure that the bank guarantee if any issued towards EMD is renewed for such extended timelines, failing which IREL shall have the right to forfeit the EMD.
- 10.7.6. EMD of the Successful Bidder shall be returned upon IREL receiving the Performance Security which shall be required to be provided within 30(thirty) days from the date of signing the Agreement. If IREL has not received the Performance Security within the said period, it shall be entitled to forfeit the EMD.
- 10.7.7. The EMD may be forfeited if the Bidder fails to comply with the requirements under the Tender Documents or the Successful Bidder fails to furnish the Performance Security within 30(thirty) days from date of signing the Agreement.

#### **10.8. Evaluation of Techno-commercial Proposal**

- 10.8.1. The Techno-commercial Proposal shall be evaluated to ascertain compliance of the Bidder with the eligibility conditions and requirements under this RFP/ Tender document. While examining the Techno-commercial Proposal, IREL will consider that the Techno-commercial Proposal:
- i. is submitted as per the prescribed formats as given in Section 9 of this tender document along with all required documents and information, meeting all general conditions and timelines stipulated in this tender document;
  - ii. is submitted by the Bid Due Date including any extension thereof;
  - iii. contains all the information (complete in all respects) including the EMD as requested in this Tender Document;
  - iv. does not contain any conditions or qualification deviation;
  - v. only one Techno-commercial Proposal has been submitted by the Bidder (in case of Bidding Consortium, no Consortium member/ its Associate/ its subsidiary /holding company or Promoter shall submit another Proposal individually or with any other Consortium). Similarly, in case of a Bidding Company, the Supporting Partner or the Promoter, Associate Company or Affiliate of the Bidding Company shall not submit another Proposal individually or jointly with any other Person;
  - vi. is generally considered to comply in terms of any other parameters as may be considered relevant by the IREL;
  - vii. The Bidder meets the Qualification requirements mentioned in Section 8 of this Tender Document; If the Bidder does not satisfy the Qualification requirements, IREL has the right to reject such Proposals;
  - viii. IREL shall open the Techno Commercial Bid (Part 1) as per Schedule mentioned in Section 3 in the presence of the Bidders who choose to attend. However, in the eventuality that the day of opening of the bids becomes a non-working day due to a force majeure event or public holiday, the date of opening of the bids will shift to the next working day at the same time.
- Part 2: Financial Proposal of the bid shall be opened only for those Bidders who qualify techno-commercially as per the qualifying criteria of the tender. The date and time of opening of the Financial Proposal (Part 2) shall be communicated in due course of time;

- ix. Only those Bidders who are found to be eligible in accordance with the prescribed eligibility conditions in Section 8 and have submitted all documents as listed in this Tender Document to be provided as part of Proposal and additionally, whose Proposals meet the qualification requirements under this Tender Document and are eligible for opening of Financial Proposal shall be declared as the “**Qualified Bidders**”.

#### **10.9. Clarifications sought by IREL on Proposals submitted by the Bidders**

- 10.9.1. During Techno-commercial evaluation of proposals, IREL may, at its discretion, ask the Bidder for a clarification on any information provided in the Bid, to be responded to within a stipulated number of days to be specified by the IREL.
- 10.9.2. The request for clarification and the response shall be in writing, to be communicated either through e-mail or through a paper-based communication, and no change in the price or substance of the Proposal shall be sought, offered or permitted except to confirm the correction of arithmetical errors discovered by IREL in the evaluation of the Proposals, in accordance with the Tender Document.
- 10.9.3. In case Bidder, from which such clarification is sought, does not respond within time provided by IREL, its proposal shall be liable for disqualification or be evaluated based on information available with IREL.
- 10.9.4. IREL may hold clarification meetings with any or all the bidders on Tender document/ Techno-commercial proposal submitted by Bidder.
- 10.9.5. IREL at its own discretion may ask the bidder to submit additional information/documents for the evaluation of their technical proposal.

#### **10.10. Financial Proposal and Qualified Bidders**

- 10.10.1. After evaluation of the Techno-commercial Bids as per Section 8 of this RFP, only the Qualified Bidders shall be considered for the opening of Financial Proposal (Part-2).

#### **10.11. Declaration of Successful Bidder**

- 10.11.1. The Eligible Bidder who submits the lowest Price Offer in Financial Proposal, shall be declared as the “**L1 Bidder**” and such price offered by the L1 Bidder shall be termed as “**L1 Price Offer**”.
- 10.11.2. IREL at its sole discretion may discuss with the L1 Bidder, prior to declaring it as the “**Successful Bidder**” or “**Selected Bidder**”. The price offer accepted by IREL after discussion (if any) with the Bidder shall be termed as “**Final Price Offer**”. The Final Price Offer so arrived be equal to the MDO Fee, it shall remain fixed till the date of signing of Service Agreement and will be escalated thereafter as per the provisions of the Agreement.

#### **10.12. Due Diligence**

- 10.12.1. Before issue of the Letter of Award, IREL reserves the right to conduct due diligence on the Bidder including right to visit the mines being owned/ operated by the Bidder and whose experience it had showcased for meeting the qualification requirements.
- 10.12.2. IREL reserves the right to conduct due diligence on the Bidder on the following:

- i. Extractable reserves of the mines, Peak Rated Capacity of the mines and annual mining capacity in terms of ROM.
  - ii. Total production quantity of mineral(s) in the mines and plant.
  - iii. Development activities undertaken by the Bidder in the mines.
  - iv. Development activities undertaken by the Bidder/Vendor for Beneficiation plant.
  - v. Operations and maintenance of the mines and plant.
  - vi. Any other relevant information.
- 10.12.3. IREL may also involve its consultants and advisors in conducting the due diligence and the Successful Bidder is required to cooperate with IREL in the above exercise.
- 10.12.4. It is to be clarified that IREL reserves the right to verify any certificate submitted by the Mine Owner or Bidder and in case any of the certificate is found falsified/forged, IREL reserves the right to disqualify such Bidder and/or blacklist from any future tender.

**10.13. Issuance of Letter of Award (LOA)**

- 10.13.1. IREL shall determine the Successful Bidder through the Bidding Process outlined above. IREL shall issue LOA to the Successful Bidder confirming that its Proposal has been accepted by IREL.
- 10.13.2. The Successful Bidder shall be required to carry out the following duties:
- i. In case of a Bidding Company becomes the Successful Bidder: -
    - a. such Successful Bidder shall be issued Letter of Award (“LOA”) by IREL for executing the scope against the Draft MSA (provided in Schedule 1), written acknowledgment of which shall be provided within 30 (thirty) days of issuance of such LOA.
    - b. In case the Successful Bidder intends to form a special purpose vehicle to act as the MDO, such SPV shall be formed within 30 (thirty) days from the date of issue of the LOA by IREL. The Successful Bidder and the SPV as MDO shall enter into the Mining Services Agreement with IREL.
    - c. The Successful Bidder along with the SPV (where an SPV has been constituted to act as MDO) shall be jointly and severally be responsible for performance of the obligations required to be performed by the MDO in the Mining Services Agreement.
  - ii. In case a Bidding Consortium becomes the Successful Bidder,
    - a. the Successful Bidder shall be issued the Letter of Award (“LOA”) by IREL for executing the scope provided in the Mining Services Agreement, written acknowledgment of which shall be provided within 30 (thirty) days of issuance of such LOA by both the Members/ Authorized representatives of each members of the Bidding Consortium.
    - b. The Successful Bidder shall form a joint venture company (“**Joint Venture Company**” or “**JV Company**”) as per the Companies Act 2013 within 30(thirty) days from the date of issuance of LOA, which will act as MDO and the agreement shall be signed between IREL and JV Company with the Consortium members also being parties thereof.
    - c. Notwithstanding the formation of Joint Venture Company, the Consortium members shall be jointly and severally responsible for fulfilment of the obligations contemplated in the draft MSA to be performed by the MDO. In case the joint venture fails to fulfil its

obligations, the responsibility for fulfilment of the obligations contemplated in the MSA shall lie with the Lead Member of the consortium.

#### **10.14. Execution of MSA**

10.14.1. Execution of the MSA shall be subject, inter alia, to the following conditions precedent having been fulfilled by the Successful Bidder:

1. In case the Successful Bidder, is a Bidding Consortium, the Successful Bidder shall form a Joint Venture Company registered in India, which shall act as the MDO.
2. In case the Successful Bidder, is a Bidding Company, the Successful Bidder may act as the MDO itself, or it may form a SPV to act as the MDO.
3. The Successful Bidder/members of the Bidding Consortium have submitted to IREL, the written acceptance and acknowledgment of the LOA in the manner provided in Section 10.13.2 above.
4. Successful Bidder shall submit the Performance Security and the Corporate Performance Guarantee within 30 (thirty) days from the date of issue of the LOA by IREL as per the provisions of Mining Services Agreement (Schedule -1).
5. Mining Service Agreement shall be signed and executed between IREL and MDO within 90(ninety) days of issuance of LOA by IREL or within such period up till which IREL allows an extension for signing of the Mining Service Agreement.

Note: The Successful Bidder (whether a single entity or a Consortium) shall be required to promote and incorporate a company limited by shares under the provisions of the (Indian) Companies Act, 2013 as a special purpose vehicle (the SPV”) to execute the Contract Agreement with the Authority for development and operation of the Project. The subscribed and paid-up equity share capital of the SPV shall be at least 15% (fifteen per cent) of the Assessed Project Cost. The Board of Directors of the SPV so incorporated shall have at least 1 (one) Director representing: (a) the Bidder (where the Bidder is a single entity); or (b) Other Member of the Consortium (where the Bidder is a Consortium).

In the event the Bidder is a single entity (and not a Consortium), subject to the provision of the Contract Agreement, the Bidder shall hold not less than 100% (one hundred percent) of the subscribed and paid-up equity share capital of the SPV at all times during the tenure of the Project.

#### **10.15. Suspension**

10.15.1. IREL without prejudice to any other right or remedy that may be available to IREL hereunder, or otherwise, may suspend any Bidder for a period of 2 (two) years for submission of Bids for any tender from IREL Limited, under the following conditions:

- (a) if the Bidder withdraws or alters or modifies or revokes its Bid, partially or fully, during the Bid Validity Period or any extension granted thereof as per terms of this RFP document, except in accordance with Section 11.6 hereof;
- (b) if any of the claims, confirmations, statements or declarations of the Bidder is found to be incorrect or inconsistent or in case of any material misrepresentation of facts;

- (c) if a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice, collusive bidding or bid rigging as specified in this RFP document;
- (d) if the Successful Bidder fails to sign the MSA within 90(ninety) days from the date of issue of the Letter of Award (LOA) unless such delay is on account of IREL;
- (e) if the Successful Bidder/ MDO fails to furnish the Performance Security within 30 (thirty) days from the date of signing the Service Agreement unless approved by IREL in writing;
- (f) In case the Supporting Partner fails to submit the Corporate Performance Guarantee if applicable to IREL within 30 (thirty) days from the date of signing the Service Agreement unless approved by IREL in writing;
- (g) if the Bidder is otherwise in breach of the terms of this document;
- (h) if any company/ Bidder submits more than one Bid, either as a single Bidder or as part of a Consortium, all such Bidder and/or Bidding Consortium shall be disqualified.

## **11. General terms and Condition of the Bid**

### **11.1. Acknowledgement by the Bidder**

11.1.1. It shall be deemed that by submitting the Bid, the Bidder has:

- i. made a complete and careful examination of the RFP/ Tender Documents;
- ii. received all relevant information requested from IREL;
- iii. 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 the Tender Documents including statutory and legal obligations;
- iv. satisfied itself about all matters, things and information necessary and required for submitting an informed bid, execution of the Project in accordance with the Tender Documents and performance of all its obligations there under;
- v. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Tender Documents or ignorance of any of the matters shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the IREL; and
- vi. agreed to be bound by the undertakings provided by it under and in terms hereof.

11.1.2. 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.

### **11.2. Fraud and corrupt practices:**

11.2.1. The Bidders and their respective officers, employees, agents, consultants and advisers shall observe the highest standard of ethics during the Bidding Process. 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, fraudulent, coercive, undesirable or restrictive practices in the Bidding Process.

11.2.2. Without prejudice to the rights of IREL under Section 11.8 and Section 11.9 herein, 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 restrictive practice or collusive bidding or bid rigging during the Bidding Process, such a 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 or restrictive practice, as the case may be. IREL may also take remedial measures against such Bidder available to it under the provisions of the Competition Act, 2002 in case of collusive bidding or bid rigging.

11.2.3. For this Section i.e.11.2, the terms set forth are defined as follows:

- i. "collusive bidding" or "bid rigging" means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.
- ii. "corrupt practice" means (a) 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 Letter of Award or has dealt with matters concerning the Mining Services Agreement or arising there from, 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 (b) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the Letter of Award or after the signing of the Mining Services Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of Award or the Mining Services 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;
- iii. "fraudulent practice" means a material misrepresentation or omission of facts in order to influence the Bidding Process;
- iv. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their involvement in the Bidding Process;
- v. "undesirable practice" means establishing contact with any person connected with or employed by IREL/ IREL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; and
- vi. "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.

### **11.3. Conflict of Interest**

11.3.1. A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. A Bidder(s) found to have a Conflict of Interest shall be disqualified. Without prejudice to the generality of the aforesaid, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- i. the Bidder, its Subsidiary/ Subsidiaries and/or Holding Company and any other Bidder, Subsidiary/ Subsidiaries and/or Holding Company directly or indirectly have



common controlling shareholders or other ownership interest; provided that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 4A of the Companies Act, 2013. For the purposes of this Section 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-Section (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-Section (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

- ii. a constituent of such Bidder is also a constituent of another Bidder; or
  - iii. such Bidder, or its Subsidiary/ Subsidiaries and/or Holding Company receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Subsidiary/ Subsidiaries and/or Holding Company; or
  - iv. such Bidder has the same legal representative for purposes of this Bidding Process as any other Bidder; or
  - v. such Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company has a relationship with another Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company, 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 such Bidder, or any Subsidiary/ Subsidiaries and/or Holding Company has participated as a consultant to IREL in the preparation of any documents, design or technical specifications of the Project.
  - vi. A Bidder shall be liable for disqualification, if any of the key managerial personnel of IREL is/are related to the Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium, its Subsidiary/Holding Company/Affiliate. Key managerial personnel shall have the meaning provided to it in Section 2(51) of the Companies Act, 2013. For the purpose of this clause, Bidder shall submit a declaration of any relationship as per this clause in the format provided in section 12.16
- 11.3.2. The above instances are illustrative and not exhaustive. "Conflict of interest" shall include all instances/ situations/relationships which may impact or may be perceived as likely to impact the Bidder's capacity to serve the best interest of IREL. The Bidder shall have an obligation to disclose any situation of actual or potential conflict. Any such disclosure shall be made at the time of submission of the Proposal. If the Bidder fails to disclose the Conflict of Interest and if IREL comes to know about any such situation at any time, it may lead to the disqualification of the said Bidder during Bidding Process or the termination of its contract during contract execution.

#### **11.4. Disqualifications**

- 11.4.1. Notwithstanding anything to the contrary contained herein and without prejudice to any of the rights or remedies of IREL and in addition to the grounds for

disqualification mentioned elsewhere in the Tender Document, a Bidder shall be disqualified, and its Proposal shall be rejected from further consideration and evaluation for any of the reasons listed below:

- (a) Material Misrepresentation by any Bidder (Bidding Company/ LLC/ LLP or Member of the Bidding Consortium) in the Proposal.
- (b) Failure of the Bidder (Bidding Company/ LLC/ LLP and/ or Member of the Bidding Consortium) to provide the information required to be submitted / asked for in the Tender Document.
- (c) A winding up, insolvency or other similar proceedings is pending against the Bidder (Bidding Company/ LLC/ LLP or Member of the Bidding Consortium).
- (d) The Bidding Company or any member of the Bidding Consortium is shown as a member of another participating Bidding Consortium.
- (e) The Bidding Company or the Bidding Consortium ceases to fulfil the prescribed Financial and/or Technical Criteria and/or any other Qualification Requirement mentioned in the Tender Document during the Bidding Process and as per the terms of RFP.
- (f) In the last 3 (three) years, reckoned from the last date of submission of Proposal as declared in the Section 2 Bidding Schedule, with respect to any tender related to mining issued by, or mining contract entered with, any State / Central Government or Public Sector Undertakings, the Bidder itself, or its direct or indirect Subsidiary or Holding Company or Subsidiary of Holding Company, Promoter or Affiliate:
  - i. has suffered forfeiture of the earnest money deposit;
  - ii. has suffered forfeiture of the performance security for that contract, or
  - iii. has suffered termination/ cancellation/ foreclosure of any contracts due to its/their default.

Note:

- i. The reasons specified in the termination /cancellation/ foreclosure order shall form the basis to decide whether mining contract has been terminated/ cancelled/ foreclosed due to bidder's default.
  - ii. If forfeiture of earnest money deposit/ performance security or termination/ cancellation/ foreclosure of mining contract has been revoked or set aside/ stayed by a Court of Law, this disqualification shall not apply.
- (g) The Bidder (its holding company or direct subsidiary) or its Promoter has been debarred by any State/ Central Government or Public Sector Undertakings from participating in tender for MDO or mining related services and such blacklisting is enforced as on date of submission of Proposal by the Bidder.
  - (h) Any of the Bidder's director(s) /Promoter(s)/ Partners have been convicted by any court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to the business dealing with Government of India or any other government and such conviction is enforcing as on the date of submission of the Proposal by the Bidder.
  - (i) Where Bidder or any of its director(s)/ Promotor(s)/ Partners has been convicted in any criminal proceedings and such conviction is still subsisting on the date of submission of Proposal by the Bidder.

- (j) Any entity (consortium or individual members of consortium in case of consortium) which has been barred by IREL and the bar subsists as on the date of the tender by IREL, would not be eligible to submit an offer.
- (k) A bidder (consortium or individual members of consortium in case of consortium), in the last 3 (three) years, should have neither failed to perform on any contract related to IREL, as evidenced by a judicial pronouncement or arbitration award against the bidder by an arbitral or judicial authority, or forfeiture of Security Deposit / EMD of the bidder by IREL.

11.4.2. In case any specific adverse report is received against a Bidder, as an information or upon enquiry made by IREL, in respect of capabilities and performance of the Bidder, after receipt of tender but before the opening of the Financial proposal i.e. price bids, the quotation / tender submitted by such Bidder shall be rejected based on recorded reasons. If such report is received after opening of the price bids, then also the quotation / tender of that Bidder shall be rejected after recording the reasons.

11.4.3. If at any time during the evaluation process, IREL requires any clarification, IREL shall have the right to request such information from any Bidder or its direct or indirect subsidiary or holding company or member of bidding consortium which shall be obliged to provide the same within a reasonable time frame. In case Bidder does not respond within time provided by IREL, IREL may at its discretion disqualify such bidder or may evaluate based on information available with IREL.

11.4.4. If any of the disqualifications are attracted at any stage post the submission of the Bid by a Bidder, IREL shall reserve the right to reject such Bid and disqualify such a Bidder, notwithstanding the fact that such Bidder is the Successful Bidder and notwithstanding the execution of the draft MSA by such Bidder.

The grounds for disqualification in Section 11.4 are in addition to the grounds for disqualification contained elsewhere in the Tender Document.

### **11.5. Language of the Bid**

11.5.1. The proposal and the entire supporting document shall be in English Language. Non-adherence to this Section may be treated as "Non-Responsive Bid".

11.5.2. The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language.

11.5.3. Supporting documents and printed literature furnished by the Bidder with the Bid may be submitted 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 the Bid, the English language translation shall prevail.

11.5.4. The Bidders shall submit a true certified copy of those documents translated in English for all the documents originally prepared in language other than English.

11.5.5. The English translation of the documents shall be carried out by professional translators and the translator shall certify that he/she is proficient in both languages in order to translate the document and that the translation is complete and accurate.

## **11.6. Modification and Withdrawal of Bids**

- 11.6.1. Except where expressly permitted by these instructions, the Bidder shall not make or cause to be made any alteration, erasure or obliteration to the text of the documents prepared by IREL and submitted by the Bidder with or as part of his Bid.
- 11.6.2. No bid shall be modified, substituted or withdrawn by the Bidder on its submission on the Bid due date as provided in the Bidding Schedule attached as Section 3.
- 11.6.3. No modification or withdrawal shall be allowed after the last date of Bid Submission i.e. Bid Due Date.

## **11.7. Bid Validity Period**

- 11.7.1. The Bid shall initially remain valid and binding on the Bidder for at least 180 (one hundred and eighty) days from the Bid Due Date ("**Bid Validity Period**"). Any Bid with a shorter validity period shall be rejected by IREL.
- 11.7.2. Under exceptional circumstances, IREL may in writing request the Bidders to extend the Bid Validity Period of their Bids. Along with the extension of the Bid Validity Period, the Bidder shall also extend the EMD security declaration by an equivalent period of time, failing which, the agreement to extend the Bid Validity Period shall be invalid.
- 11.7.3. A Bidder may refuse the request to extend the Bid Validity and EMD security declaration. However, such Bids will not be evaluated further.

## **11.8. Right to Accept or Reject Any/All Bids**

- 11.8.1. Notwithstanding anything contained in this RFP, IREL reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for.
- 11.8.2. IREL reserves the right to reject any Bid if:
  - i. at any time, a material misrepresentation is made or uncovered, or
  - ii. the Bidder does not provide, within the time specified by IREL, the supplemental information sought by IREL for evaluation of the Application, or
  - iii. the Bid is conditional, or
  - iv. the Bidder withdraws or alters or modifies or revokes its Bid, partially or fully, during the Bid Validity Period or any extension granted thereof as per terms of the Tender Documents, except in accordance with Section 11.6 hereof, or
  - v. the Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice, collusive bidding or bid rigging as specified in the Tender Documents, or
  - vi. the Bidder is otherwise in breach of the terms of this document, or
  - vii. any company/Bidder submits more than one Bid, either as a single Bidder or as part of a Consortium. In this case, all such Bids submitted by that Bidder shall be rejected;

- 11.8.3. If the Bidder is a Bidding Consortium, then the entire Bidding Consortium may be disqualified/ rejected in case of any of the event mentioned in Section 11.8.2 is applicable for any member of Consortium.
- 11.8.4. If such disqualification/ rejection occurs after the Bids have been opened and the L1 Bidder gets disqualified/ rejected, then IREL reserves the right to take any such measure as may be deemed fit in the sole discretion of IREL, including annulment of the Bidding Process.
- 11.8.5. In case it is found during the evaluation or at any time before signing of the Mining Services Agreement or after its execution and during the period of subsistence thereof, that one or more of the qualification requirements have not been met by the Bidder, or that the Bidder has made Material Misrepresentation or has given any materially incorrect or false information the Bidder shall be disqualified forthwith if not yet appointed as the MDO either by issue of the LOA or entering into of the Mining Services Agreement, and if the MDO has already been issued the LOA or has entered into the Mining Services Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by IREL to the Bidder, without IREL being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which IREL may have under this RFP document, the Tender Documents, the Mining Services Agreement or under Applicable Laws.
- 11.8.6. IREL reserves the right to verify all statements, information and documents submitted by the Bidder as part of its Proposals. 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 there under.

#### **11.9. Right to Annul Bidding Process**

- 11.9.1. IREL reserves the right to annul the Bidding Process at any point in time and not provide any explanation to the Bidders.
- 11.9.2. In case the Bid is annulled by IREL without any default on account of Bidder, any cost towards preparation and submission of the bids shall not be refunded to the Bidder.

#### **11.10. Intellectual Property Rights**

The Bidder should consider the Tender Documents shared by IREL including the documents mentioned and provided as per Schedule 3 as confidential in nature and must not share such documents with any third party without prior consent from IREL.

Further, information relating to the examination, clarification, recommendation and evaluation of 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.

**11.11. Compliance of Company Law**

The Bidder must declare whether the Directors/Partners of the Bidding Entity has any relation with any employee working in IREL or Directors of IREL including its subsidiaries and if so, the details and the relationship thereof must be furnished.

Declaration of any relationship of the Bidder with key managerial personnel of IREL shall be mentioned as per format provided in Section 12.16.

**11.12. Backing out by L1 Bidder**

In the event of L1 Bidder backing out prior to issue of LOA, the Bidder shall be suspended for a period of 2 (two) years from the date of issue of suspension order. The suspension will apply prospectively and during suspension period, enquiry shall not be issued to the firm and bid submitted in open tender shall be rejected along with the forfeit of EMD amount.

In the event of backing out of L1 Bidder, IREL at its sole discretion may annul the Bidding Process.

**11.13. Integrity Pact**

11.13.1. The Bidder shall sign an integrity pact and attach the same with his Bid. The format for the integrity pact is provided in Section 12.15.of this Tender Document. The Integrity Pact has to be signed by the Director or by their duly Authorized signatory and in case of Consortium all the members. In case of failure to return the Integrity Pact along with Part 1 of the bid, duly signed by the authority as mentioned above, will disqualify the bid.

11.13.2. The Bidder (s)/Contractor (s), if feel aggrieved, may raise complaint/pass on, information, if any, to the Competent Authority/Operating Authority of the Bid/ Contract or to the ..... or to the Independent External Monitors (IEMs) of Integrity Pact through .....

11.13.3. The current Independent External Monitor of Integrity Pact in IREL are:

Sh.A.VijayAnand

MailID:[vijay\\_anand45@hotmail.com](mailto:vijay_anand45@hotmail.com)

Ph 9686575664

&

ShriRaisAhmed

M.No.9910007239

MailId:[ahmadrais1959@gmail.com](mailto:ahmadrais1959@gmail.com)

**11.14. Banning of Business Dealings**

In case of default, bad performance, fraud, deception and misconduct etc. by the Bidder, action may be taken as per the instruction issued by IREL from time to time with respect to "Guidelines on banning of suppliers/contractor" as available in Schedule 6.

**11.15. Miscellaneous**

11.15.1. IREL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- i. 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;
- ii. pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder to receive clarification or further information;
- iii. retain any information and/ or evidence submitted to IREL by, on behalf of, and/ or in relation to any Bidder; and/ or
- iv. Independently verify, disqualify, reject and/ or accept all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting its 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 Tender 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.

### **Damages**

11.15.2. The MDO shall be liable to pay Liquidated Damages (LD) in case of the following cases:

- Shortfall in yearly raw sand quantity mined.
- Slippage in Quality i.e., Heavy Mineral concentration in Output of Wet Upgradation Plant delivered to IREL.

Details of the damages to be imposed, has been provided in draft Mining Services Agreement (Schedule 1).

**12. Bid Forms & Annexures**

**12.1. Format for Cover Letter**

(On letter head of the Bidding Company/Lead Member of Bidding Consortium)

Proposal Ref. No. and Date:

From:

Bidder's Name and Address:

Route for Qualification: Route A/ Route B *(please mention whichever is applicable)*

Authorized Representative

Name:

Designation:

Tel. Nos:

Mobile No.:

Fax No.:

Email Address:

To,

.....

.....

.....

**Sub: Techno-Commercial Proposal for Appointment of Mine Developer and Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha**

Dear Sir,

We, the undersigned Bidder having read and examined in detail the Proposal requirements provided in the Tender Documents for "Appointment of Mine Developer and Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha", hereby offer to submit our Proposal for the same.

Our Techno-Commercial Proposal in response to the Tender Document issued by IREL vide Tender no. \_\_\_\_\_ dated \_\_\_\_\_ (Bidder to specify date of issue of Tender Document by IREL) and its subsequent corrigendum no(s) \_\_\_\_\_ (Bidder to insert corrigendum number issued, if any by IREL subsequent to issue of Document) is enclosed.

We are herewith enclosing the information with duly signed formats, containing all the information submitted, as desired by you, for your consideration. Further, we hereby are submitting the Earnest Money Deposit for the sum of Rs. .... in the form ..... as instructed by you.

We believe that we/ our proposed Company / Consortium satisfies all the Qualification Requirements as specified in the Tender Documents and is qualified to submit a Bid. Shall this Bid be accepted, we hereby agree to abide by and fulfil all terms and conditions of Tender Document. We agree that if I/We are found to be in default of the terms and conditions provided in the Tender Documents, IREL shall have the absolute right to forfeit the EMD and such other sums, if any deposited with IREL



and/or pay to IREL or IREL's successors, assigns or authorised nominees such sums of money as are stipulated in terms and conditions contained in Tender Documents.

We declare that we are not banned/suspended to do business dealing in IREL or any PSU/Govt organization.

We understand and accept that IREL reserves the right to cancel the process of tendering, accept or reject any or all the tenders/Bid without assigning any reasons thereof. We also understand and accept that that IREL reserves the right for supersession of any of the conditions of Tender Documents

Our offer is valid for 180 days from the Bid Due Date or any extension thereof as maybe requested by IREL.

Yours sincerely,

Name of Authorized Representative / Authorized Signatory:

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

## 12.2. Format of Affidavit

*(To be executed on non-Judicial stamp paper of appropriate value and duly notarized)  
(To be provided by the Bidding Entity or, Lead Member of Bidding Consortium)*

I, \_\_\_\_\_ son/ daughter of \_\_\_\_\_ resident of \_\_\_\_\_ do solemnly declare and affirm as follows.

1. That I am employed at the designation of \_\_\_\_\_ in the company/LLP/LLC operating in the name and form as M/s \_\_\_\_\_ having its Headquarters at \_\_\_\_\_.
2. That I am competent to sign this affidavit on behalf of the company/LLP/LLC mentioned at serial one above.
3. We \_\_\_\_\_ (Name of the Bidding Entity / LLC/ LLP/Lead Member of Consortium), [a company duly incorporated under the Companies Act, 2013, having its registered office at \_\_\_\_\_/a LLP registered under the Limited Liability Partnership Act, 2008, having its registered office at \_\_\_\_\_] having examined in detail and understood the terms and conditions stipulated in Tender Documents and subsequent corrigendum / corrigenda, if any, issued by IREL confirm that our Techno-Commercial Proposal is in full conformity with the Tender Document.
4. This statement is made for the express purpose of qualifying as a Successful Bidder for the implementation of the Project provided for in the Tender Documents.
5. We acknowledge that IREL will be relying on the information provided in the Techno-Commercial Proposal and the documents accompanying the Techno-Commercial Proposal for qualification of the Bidders, and we certify that all information provided in the Techno-Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Techno-Commercial Proposal are true copies of their respective originals.
6. We shall make available to IREL any additional information it may find necessary or require supplementing or authenticate our Techno-Commercial Proposal.
7. We have examined and have no reservations to the Bidding Documents, including any addendum issued by IREL.
8. We acknowledge the right of IREL to reject our Techno-Commercial Proposal/ Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
9. With respect to any tender related to mining issued by, or mining contract entered with, any State / Central Government or Public Sector Undertakings by us or any of our, direct or indirect, Subsidiary or Holding Company or Subsidiary of Holding Company, Promoter or Affiliate, we hereby certify that in the last 03 (Three) years reckoned from the date of issuance of NIT:
  - I. we have not suffered any forfeiture of earnest money deposit
  - II. our performance security has not been forfeited due to our default;
  - III. none of the contracts have been cancelled, terminated or foreclosed due to our default;
10. We certify that we are not debarred or blacklisted by any State / Central Government or Public Sector Undertakings from participation in tender for MDO or Mining and Mineral beneficiation related services in the last 03 (Three) years reckoned from the date of issuance of NIT.

11. We certify that in regard to matters other than security and integrity of the country, have not been convicted or indicted by a court of law and no adverse orders have been 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.
12. 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.
13. 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/Partners.
14. We undertake that in case due to any change in facts or circumstances during the Bidding Process the provisions of disqualification provided in the Tender Document are attracted, we shall intimate IREL of the same immediately.
15. We further agree and acknowledge that the aforesaid obligations shall be in addition to the obligations contained in the Tender Document including the Mining Service Agreement.
16. We hereby irrevocably waive any right or remedy 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 Project and the terms and implementation thereof.
17. In the event of my/our being declared as the Successful Bidder, I/We agree to enter into a Mining Service Agreement. We agree not to seek any changes in the Mining Service Agreement and agree to abide by the same.
18. We have studied all the Tender Documents carefully and have also surveyed the Site. We understand that except to the extent as expressly set forth in the Tender Document and/or Mining Service 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 the contract.
19. The Financial Proposal has been quoted by me/us after taking into consideration all the terms and conditions stated in the Tender Documents, Mining Service Agreement, our own estimates of costs and after a careful assessment of the Site and all the conditions that may affect the work cost and implementation of the Project.
20. We certify that, our Director(s)/Partners are not convicted by any court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to the business dealing with Government of India or any other government during last 3(three) years.
21. We affirm that:
  - a. We have examined and have no reservations to the Tender Document, including any Corrigendum/ Addendum issued by IREL;
  - b. We do not have any conflict of interest in accordance with Section 11.3 of the Tender Document;
  - c. 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 Section 11.2 of the Tender Document, in respect of any tender or request for proposal issued by or any agreement entered into with IREL or any other public sector enterprise or any government, Central or State; and
  - d. We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 11.2 of the Tender Documents, 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.

- e. We are not affected by any of the disqualifications stated in Section 11.4
22. We understand that IREL may cancel the Bidding Process at any time and that IREL is neither bound to accept any Techno-Commercial Proposal/ Bid or any Bid that IREL may receive nor to invite the Bidders to participate for the Project, without incurring any liability to the Bidders, in accordance with Section 11.8 of the Tender Document.
  23. We believe that we/our proposed consortium satisfy(ies) all the qualification requirements as specified in the Tender Document and are/is qualified to submit this Proposal.
  24. We declare that we/ any member of the Consortium, are not another Bidder/ or a member of a/any other Consortium submitting a Techno-Commercial Proposal/ Bid for Appointment of Mine Developer and Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha.
  25. We certify that in regard to matters other than security and integrity of the country, we/ any member of the Consortium or any of our Holding Company, Subsidiaries, Affiliates, Associates or Promoter 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.
  26. We further certify that regarding matters relating to security and integrity of the country, we/ any member of the Consortium or any of our Holding Company, Subsidiaries, Associates, Affiliates or Promoter have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
  27. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Tender Document, we shall intimate IREL of the same immediately.
  28. We undertake that, we, including the Lead Member of the Bidder, Other Member of the Bidder or their respective holding company or their subsidiaries have been back listed by any State or Central Government or their undertakings/agency in the last 03 (Three) years reckoned from the date of issuance of NIT. The directors or partners or the consortium members, jointly or severally and/or individually not have been blacklisted by any State or Central Government or their undertakings/agency in the last 03 (Three) years reckoned from the date of issuance of NIT.
  29. We undertake that, we, including the Lead Member of the Bidder, Other Member of the Bidder have never been declared insolvent, nor any proceedings for insolvency nor bankruptcy have ever been commenced against us in the last 03 (Three) years reckoned from the date of issuance of NIT. None of our directors/partners/consortium member have been subject to any order of punishment/sentence by any court of law or any judicial/quasi-judicial body in the last 03 (Three) years reckoned from the date of issuance of NIT.
  30. We undertake that, we, including the Lead Member of the Bidder, Other Member of the Bidder have not been debarred by any State or Central Government or their undertakings/agency in the last 03 (Three) years reckoned from the date of issuance of NIT.
  31. We undertake that, we, including the Lead Member of the Bidder, Other Member of the Bidder have none their mining leases cancelled in the past, for being convicted of illegal mining.
  32. We undertake that, we, including the Lead Member of the Bidder, Other Member of the Bidder do have any conflict of their business interest with IREL's mining and mineral processing business of Mineral Sand.
  33. The Proposal submitted by us shall be valid for a minimum period of 180 (one hundred and eighty) days from the Bid Due Date or any extension thereof as requested by IREL.

34. We declare that by submitting this Proposal, we agree to be bound and comply with the Applicable Law.

35. We further declare that by submitting this Proposal, we agree to be bound by the terms and conditions of the Tender Document.

We understand IREL reserves the right in its sole discretion, without any obligation or liability whatsoever, to accept or reject any or all the Proposals at any stage of the Bidding Process without assigning any reasons to us.

The undersigned declare that the statements made, and the information provided in the duly completed Proposal are complete, true and correct in every detail.

**[Deponent]**

Witness:

1. ....

2. ....

**VERIFICATION**

Verified this \_\_\_\_\_ day of \_\_\_\_\_ year 20\_\_ that the contents of my above affidavit are true to the best of my knowledge and belief and nothing untrue has been stated not any facts has been concealed.

### 12.3. Format for Summary of Techno-commercial Proposal

(On letter head of the Bidder i.e. Bidding Company/LLC/LLP or, Lead Member of Bidding Consortium)

Sr. No.	Particulars	Brief Details /Documentary Evidence in Support of the Particulars, If Any  (To be Attached in The Form of Annexure)
(a)	(b)	(c)
1.	Brief Profile of the Bidding Entity (Company/ LLP/ LLC/ Bidding Consortium):  <i>(comprising of proof on being a legal business entity, copy PAN card, copy of GST certificate and banker details of Bidder) and other documents as described in Section 9.1.1(v).</i>	Annexure ____
2.	(strike out whichever is not applicable)  1. Name of the Bidder (Bidding Company/ LLP/ LLC/ Bidding Consortium)  2. Name of Supporting Partner, if any (in case of Route A)  3. Name of the Lead Member in the Bidding Consortium (in case of Route B)  4. Name of the Other Member in the Bidding Consortium (in case of Route B)  5. Contact Details: (of Bidder, Supporting Partner or Lead Member along with consortium members) a. Name of the Contact Persons b. Address for communication c. Phone/ Fax/ Email:  6. Signature of Authorized Signatory  Round Rubber Seal of the Bidder	Annexure ____
3.	Complete set of Tender Document along with clarifications / corrigenda, if any, duly signed/Stamped by the Bidder as token of acceptance and acknowledgement	Annexure ____
4.	Declaration by the Bidder in the form of Affidavit on stamp paper as per format specified in Section 12.2	Annexure ____
5.	Submission of technical criteria and financial criteria as per format prescribed in Section 12.4 and 12.5	Annexure ____

6.	Board Resolutions for submission of Bid as per format prescribed in Section 12.6, 12.7 and 12.8	Annexure ____
7.	If applicable, certificate from its statutory auditor confirming the relationship of the Bidder with the Supporting Partner including exact details about the equity shareholding and voting rights as on fifteen (15) days prior to the Bid Due Date as per Section 8.2.6	Annexure ____
8.	In case of Bidding Consortium, Consortium Agreement as per Format attached in Section 12.10	Annexure ____
9.	In case of the Bidding Company taking strength from its Supporting Partner, Joint Operating Agreement as per format prescribed in Section 12.10A	Annexure ____
10.	Earnest Money Deposit (EMD) bank guarantee declaration as per the format prescribed in Section 12.11	Annexure ____
11.	Authority letter (POA) from the Bidder in favour of the person who has been authorized to submit this Tender Document as per the format specified in Section 12.12	Annexure ____
12.	In case of Bidding Consortium, Power of Attorney (POA) by Other Members authorizing signing of the Bid by the Lead Member, in the format specified in Section 12.13.	Annexure ____
13.	Certificate of total compliance as per the Proforma provided in Section 12.14	Annexure ____
14.	Integrity Pact as per format provided in Section 12.15	Annexure ____
15.	Declaration by Bidder for relationship with key managerial personnel of IREL in Section 12.16	Annexure ____
16.	CVs of resources proposed by the Bidder for scoring as per clause 8.5.7. The CV shall be submitted in the format as provided in Section 12.17	Annexure ____
17.	Compliance of Company Law as per section 11.11	Annexure ____
18.	Signed copy of unpriced financial proposal as per format provided in section 12.9 marking "xxx" in the place of price.	Annexure ____

**12.4. Format for submission of details as per Technical Criteria**

(On letter head of the Bidder i.e., Bidding Company/LLC/LLP or, Lead Member of Bidding Consortium)

To,

.....  
 .....  
 .....

Dear Sir,

**Sub: Eligibility towards Technical Criteria**

(Strike out whichever is not applicable)

1. For the companies qualifying as per Criterion A of 8.5.1

We \_\_\_\_\_ (The legal name of the Bidding Entity) / \_\_\_\_\_ (Supporting Partner of the Bidding Entity), confirm that we qualify the technical criteria as per Criterion A of 8.5.1 as per following details: -

OR,

We, the Bidding Consortium (if applicable), consisting of one Other Member, being \_\_\_\_\_ and one Lead Member, being \_\_\_\_\_,

confirm that \_\_\_\_\_(Other Member), qualify the technical criteria as per Criterion A of 8.5.1 as per following details: -

1.1. Details of the mines:

<b>S. No.</b>	<b>Particulars of Mine</b>	<b>Relevant Details</b>
1	Name of mine with location and other details	
2	Owner / Lease holder of the mine	
3	Name of the Major mineral	
4	Activities undertaken as per the Scope of Work in terms of development of mine	
5	Years during which such development activities had been undertaken	
6	Extractable/mineable Reserves of the mine	
7	Peak Rated capacity of the mine	
8	Stripping Ratio of the mine	
9	Average specific gravity of Overburden/Waste excavated along with the Mineral	



10	Annual mining capacity of the mine in terms of ROM	
11	Operational status of the mine as on date of issuance of NIT	

1. For the companies qualifying as per Criterion B of 8.5.1

(Strike out whichever is not applicable)

We \_\_\_\_\_ (The legal name of the Bidding Entity) / \_\_\_\_\_ (Supporting Partner of the Bidding Entity), confirm that we qualify the technical criteria as per Criterion B of 8.5.1 as per following details: -

OR,

We, the Bidding Consortium (if applicable), consisting of one Other Member, being \_\_\_\_\_ and one Lead Member, being \_\_\_\_\_,

confirm that \_\_\_\_\_ (Other Member), qualify the technical criteria as per Criterion B of 8.5.1 as per following details: -

1.1. Details of the mines:

S. No.	Particulars of Mine	Relevant Details
1	Name of mine with location and other details	
2	Owner / Lease holder of the mine	
3	Name of the mineral	

1.2. Annual production of ROM from mine

Name of the mine	[Name of Mine]
FYs	Quantity of ROM production (in MT)
FY _____	
FY _____	
FY _____	
FY _____	
FY _____	

**Note:** Supporting evidence for qualification of technical Criteria in the form of attachments as follow: -

- I. Copy of the contract agreement(s) or work order(s) by the owner of the mine placed at Annexure \_\_\_\_\_
- II. Certificate from the owner of the mine(s), clearly detailing the extractable reserves of the mine(s), Peak Rated Capacity of the mine(s), annual mining capacity of the mine(s) in terms of ROM, the details of the quantity of ROM excavated in the time period under consideration and

also scope of activities specifying development activities performed by the Bidder, placed at Annexure \_\_\_\_\_

- III. Certificate(s) from Statutory Auditor, clearly detailing the extractable reserves of the mine(s), Peak Rated Capacity of the mine(s), annual mining capacity of the mine(s) in terms of ROM, the details of the quantity of ROM excavated in the time period under consideration and also scope of activities specifying development activities performed by the Bidder, placed at Annexure \_\_\_\_\_
- IV. Contact details of relevant official at Annexure \_\_\_\_\_.
- V. Notarized copy of the consortium agreement or joint venture agreement (as the case maybe), clearly explaining the extent of its ownership in such consortium or joint venture (If applicable) at Annexure \_\_\_\_\_

*(\*strike out whichever is not applicable / not submitted)*

(The above list is only representative; Bidders can add any number of supporting documents which they think help in substantiating their qualifications as per the requirements in the tender)

Thanking you,

Yours faithfully,

Name:

Designation:

Signature & Company's Round Seal

**12.5. Format for Submission of details as per Financial Criteria**

(On letter head of the Bidder i.e., Bidding Company/LLC/LLP or, Lead Member of Bidding Consortium)

To,

.....  
 .....  
 .....

Dear Sir,

**Sub: Eligibility towards Financial Qualification requirements**

For the companies qualifying the criterion mention in Section 8.5.4

(Strike out whichever is not applicable)

We ----- (The legal name of the Bidding Entity) / \_\_\_\_\_ (Supporting Partner of the Bidding Entity), confirm that we qualify the financial criteria as per Section 8.5.4 as per following details: -

OR

We, the Bidding Consortium (if applicable), consisting of one Other Member, being ----- and one Lead Member, being -----,

confirm that ----- (Lead Member), qualify the financial criteria as per Section 8.5.4 as per following details: -

Turnover and Cash Accrual for qualification of Criterion A and C of 8.5.4:

Financial Years	Turnover (In INR Crore)	Financial Years	Cash Accrual (In INR Crore)
(a)	(b)	(c)	(d)
FY__		FY__	
FY__		FY__	
FY__		FY__	
FY__		FY__	

Details of Net Worth and Paid-up share capital for qualification of Criterion B of 8.5.4:

Paid-up share capital (INR Crore)	Net Worth (As on last date of the last Financial year) (INR Crore)	Net Worth as percentage of Paid-up share capital

Details of Net Worth of the Bidder for last 7 FYs for qualification of Criterion B of 8.5.4:

Financial year	Net Worth (INR Crore) as on Last date of the Financial Year
FY 2018	
FY 2019	
FY 2020	
FY 2021	
FY 2022	
FY 2023	
FY 2024	

Details of Net Worth of M/s \_\_\_\_\_ acting as Supporting Partner to the sole Bidder or Other Member of the Bidding Consortium in compliance with conditions mentioned in Section 8.2.3 and 8.3.9 are as follows:

Name of Supporting Partner or Other Member as per applicability	<i>[Name of Supporting Partner/Other Member]</i>
<b>Financial year</b>	<b>Net Worth (INR Crore) as on Last date of</b>
FY 2022	
FY 2023	
FY 2024	

**Note:** Supporting evidence for qualification of technical Criteria in the form of attachments as follow: -

- a) Audited financial statements as a standalone entity, placed at Annexure\_\_\_\_\_.
- b) Statutory Auditor certificate clearly certifying Turnover, Net worth and Cash Accrual, placed at Annexure\_\_\_\_\_.

Name:

Designation:

Signature & Company's Round Seal

## 12.6. Format for Board Resolution by the Bidder

(On letter head of the Bidding Entity/Lead Member and Other Member of Bidding Consortium)

The Board, after discussion, at the duly convened Meeting on \_\_\_\_\_ [insert date], with the consent of all the Directors/Partners present and in compliance of the provisions of the Companies Act, 2013/Limited Liability Partnership Act, 2008, passed the following Resolution:

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013/Limited Liability Partnership Act, 2008 and compliance thereof and as permitted under the Constitutional Documents of the Company/LLP, approval of the Board be and is hereby accorded for [forming a consortium with \_\_\_\_\_ and participating as the Lead Member/Other member in the consortium with \_\_\_\_\_ and] placing the Bid [through \_\_\_\_\_ Lead Member] against the tender no \_\_\_\_\_ dated \_\_\_\_\_, as amended from time to time, issued by IREL (India) Limited ("IREL") for the Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha ("the **Project**").

\*[RESOLVED THAT the Board hereby acknowledges the Board Resolution dated \_\_\_\_\_ passed by the \_\_\_\_\_ (Name of the Other Member/Supporting Affiliate) for providing the Technical / Financial (Strike out whichever is not applicable) support to the \_\_\_\_\_ (Name of the Bidder) to meet the Qualification Requirements as per the provisions of the tender and undertaking to provide technical/ financial support to \_\_\_\_\_ (Name of the Bidder) in case it is unable to meet its obligations.]

#[FURTHER RESOLVED THAT the Board hereby acknowledges that the \_\_\_\_\_ (Name of the Other Member(s)) is required to provide the technical support for the Project so that the consortium is able to meet the qualification requirements as per the provisions of the tender.

FURTHER RESOLVED THAT the \_\_\_\_\_ (Name of the Other Member(s)) do provide necessary support to execute the scope of work in the tender and in the event of any default by the Consortium/Lead Member such obligation shall be fulfilled by the Entity.]

FURTHER RESOLVED THAT \_\_\_\_\_ shall act as the Lead Member of the Consortium and perform all acts and deeds as may be required to be performed on behalf of the consortium and the Other Member(s) in relation to submission of the bid for the Project.]

FURTHER RESOLVED THAT \_\_\_\_\_, (Name of the Person) [the Lead Member and such person as may be authorized by the Lead Member in this behalf] be and is hereby authorized to take all the steps required to be taken by the Bidding Entity/[Consortium] in this regard, including in particular, signing of the Bid, making changes thereto and submitting amended Bid, all the related documents, certified copy of this Board Resolution or letter, undertakings etc., required to be submitted to IREL or such other documents as may be necessary in this regard.

\$(Further Resolved that \_\_\_\_\_ be and is hereby authorized to sign on behalf of the \_\_\_\_\_ (Name of the Other Member(s)), the Consortium Agreement and such other document as may be required to be signed individually by the \_\_\_\_\_ (Name of the Other Member(s)).]

Certified True Copy

### Notes:

1. This certified true copy should be submitted on the letterhead of the Bidding Entity, signed by authorized Directors/Partner of the Bidding Entity and the rubber stamp for the Bidding Entity shall be affixed.
2. \*Applicable in case of Bidding Entity participating through Route B: Bidding Consortium or Lead Member of the Bidding Consortium.

3. # paragraphs in square brackets are applicable only if the Bidding Entity is a consortium and the Other Members is providing technical support.
4. \$Applicable in case of Other Members in the Bidding Consortium.

**12.7. Format of the Board Resolution for providing financial support**

**(If Applicable, to be submitted with the Proposal)**

(To be executed by the Company providing Financial Strength to the Bidder)

The Board, after discussion, at the duly convened Meeting on \_\_\_\_\_ [insert date], with the consent of all the Directors/Partners present and in compliance of the provisions of the Companies Act, 2013/ Limited Liability Partnership Act, 2008, passed the following Resolution:

RESOLVED THAT the Board hereby acknowledges that \_\_\_\_\_ (Name of the Bidder) is desirous of submitting a Bid against the tender no..... dated \_\_\_\_\_, as amended from time to time, issued by IREL (India) Limited ("IREL") for the Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha ("the **Project**").

FURTHER RESOLVED THAT the Board hereby acknowledges that \_\_\_\_\_ (Name of the Bidder) has requested the Company/LLP to provide the financial support to the \_\_\_\_\_ (Name of the Bidder) to meet the Qualification Requirements as per the provisions of the tender.

FURTHER RESOLVED THAT the Board hereby acknowledges that all the investment/financial obligations of the \_\_\_\_\_ (Name of the Bidder) shall be deemed to be investment/financial obligations of the Company and/or shall be met by the Company in the event of any default of \_\_\_\_\_ (Name of the Bidder).

FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorized to enter into and take all the steps required to be taken by the Company/LLP in this regard, including in particular, signing the said Undertaking, issuing the same to the IREL of all the related documents, certified copy of this Board resolution or letter, undertakings, certificate confirming relationship with \_\_\_\_\_ (Name of Bidder), etc., required by IREL or such other documents as may be necessary in this regard.

# [FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorised to provide a Corporate Performance Security Guarantee in the form of a bank guarantee, in the format as required under the Draft MSA].

# Applicable only in case of Bidder taking financial support from Supporting Partner. The Supporting Partner shall provide Corporate Performance Guarantee.

Certified True Copy

Notes:

1. In case of Bidding Company/ LLC/ LLP firm, this Board Resolution to be provided by the Supporting Partner providing financial strength as per Section 8.2.2, if applicable
2. In case of Bidding Consortium, this Board Resolution to be provided by the Lead Member of the Bidding Consortium.
3. This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary or any of the authorized Directors of the Company and the rubber stamp for the Company shall be affixed.



**12.8. Format of the Board Resolution for providing technical support**

**(If Applicable, to be submitted with the Proposal)**

(To be executed by the Company providing technical strength to the Bidder)

The Board, after discussion, at the duly convened Meeting on \_\_\_\_\_ [insert date], with the consent of all the Directors/Partners present and in compliance of the provisions of the Companies Act, 2013, passed the following Resolution:

RESOLVED THAT the Board hereby acknowledges that the \_\_\_\_\_ (Name of the Bidder) is desirous of submitting the Bid against the tender no... .. dated \_\_\_\_\_, as amended from time to time, issued by IREL (India) Limited("IREL") for the Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha ("the **Project**").

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and compliance thereof and as permitted under the Constitutional Documents , approval of the Board be and is hereby accorded for *[forming a Consortium with \_\_\_\_\_ and participating as the Other Member in the Consortium with \_\_\_\_\_and]* placing the Bid *[through \_\_\_\_\_the Lead Member]* for the Project.

FURTHER RESOLVED THAT the Board hereby acknowledges that \_\_\_\_\_ (Name of the Bidder) has requested the Company to provide the technical support to the \_\_\_\_\_ (Name of the Bidder) to meet the Qualification Requirements as per the provisions of the tender.

FURTHER RESOLVED THAT the Board hereby acknowledges that the Company shall be required to provide necessary support to execute the scope of work of \_\_\_\_\_(Name of the Bidder) in the tender and in the event of any default by the (Name of the Bidder) such obligation shall be fulfilled by the Company.

FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorized to enter into and take all the steps required to be taken by the Company in this regard, including in particular, signing the said Undertaking, issuing the same to the IREL of all the related documents, certified copy of this Board resolution or letter, undertakings, certificate confirming relationship with \_\_\_\_\_ (Name of Bidder), etc., required by IREL or such other documents as may be necessary in this regard.

# [FURTHER RESOLVED THAT \_\_\_\_\_, be and is hereby authorised to provide a Corporate Performance Guarantee in the form of a bank guarantee, in the format as required under the Draft MSA].

# Applicable only in case of Bidder taking technical support from Supporting Partner. The Supporting Partner shall provide Corporate Performance Guarantee.

Certified True Copy

Notes:

1. In case of Bidding Company/ LLC/ LLP firm, this Board Resolution to be provided by the Supporting Partner providing technical strength as per Section 8.2.2, if applicable
2. In case of Bidding Consortium, this Board Resolution to be provided by the Other Member of the Bidding Consortium.
3. This certified true copy should be submitted on the letterhead of the Company, signed by any of the authorized Directors/Partners of the Company/LLP and the rubber stamp for the Company/LLP shall be affixed.

**12.9. Financial Proposal**

(On letter head of the Bidding Company/ LLC/ LLP or, Lead Member of Bidding Consortium)

Proposal Ref. No. and Date:

From:

Bidder's Name and Address:

Authorized Representative

Name:

Designation:

Tel. Nos:

Mobile No.:

Fax No.:

Email Address:

To,

.....  
 .....  
 .....

Dear Sir,

**Sub: Financial Proposal for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha**

We \_\_\_\_\_ (Name of the Bidder/Lead Member of Consortium) having its registered office at \_\_\_\_\_ having examined in detail and understood the terms and conditions stipulated in the aforesaid Documents and subsequent corrigendum, if any, issued by IREL and confirm that our Financial Proposal is in full conformity the Tender Documents.

Our Financial Proposal for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha ("the **Project**")and performing the scope of work as stipulated in the Draft Mining Services Agreement, in response to the Tender Documents issued by IREL vide Tender no. \_\_\_\_\_ dated \_\_\_\_\_ (Bidder to specify date of issue of Documents by IREL) and its subsequent corrigendum No(s) \_\_\_\_\_ (Bidder to insert corrigendum number issued, if any by IREL subsequent to issue of Document).

Our Financial Proposal is presented below:

S No.	Particulars	Remarks	Amount (in INR)	Amount (in words)
1	MDO Fee	<b>MDO Fee</b> (in INR per tonne of HM Concentrate produced from WUP and delivered to IREL at the delivery point)	_____ (To be quoted by MDO)	_____ (To be quoted by MDO)

Yours sincerely,

Name of Authorized Representative / Authorized Signatory:

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

**Note: -**

1. All the duties, taxes and levies above including that of income tax of MDO, duties etc. shall be borne by the MDO and shall be assumed to be included. No additional amount shall be reimbursed/paid by IREL.

## 12.10. Proforma for Consortium Agreement

(To be executed on the Non-Judicial Stamp Paper of Appropriate Value)  
(To be executed between Members of the Bidding Consortium)

This Consortium Agreement made and entered into on \_\_\_\_\_ day of 20\_\_.

BY AND BETWEEN

\_\_\_\_\_ (Name of the Lead Member), a Company registered under the laws of \_\_\_\_\_ (Name of the Country) with its Head/Registered Office at \_\_\_\_\_ (Address of the Head/Registered Office) and a place of business in \_\_\_\_\_ (Address of place of business) (hereinafter referred to as "The Lead Member") and represented by Mr/Mrs/Ms. \_\_\_\_\_ (Name of Authorized Signatory) of the FIRST PART.

AND

\_\_\_\_\_ (Name of the Other Member), a Company registered under the laws of \_\_\_\_\_ (Name of the Country) with its Head/Registered Office at \_\_\_\_\_ (Address of the Head/Registered Office) and a place of business in \_\_\_\_\_ (Address of place of business) (hereinafter referred to as "The Other Member") and represented by Mr/Mrs/Ms. \_\_\_\_\_ (Name of Authorized Signatory) of the SECOND PART;

The Party of the FIRST PART, the Party of the SECOND PART, and the Party of the THIRD PART are collectively known as "**Parties**". The Party of the First Part is hereinafter referred to as "The Lead Member" and the Party of the Second Part and Third Part as the "Other Member(s)".

### WHEREAS,

- A. **IREL (India) Limited (IREL)**, a central public sector undertaking under the administrative control of the Department of Atomic Energy(DAE)and having its registered office at **Odisha** (herein after referred to as the "IREL" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the "**Bids**") by its RFP No. [●] dated [●] (the "**RFP**") for appointment of Mine Developer and Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha(the "**Project**").
- B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP and other Tender Documents in respect of the Project, and
- C. It is a necessary condition under the tender conditions that the members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Bid.

### NOW IT IS HEREBY AGREED as follows:

#### 1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning given thereto under the tender/ RFP.

#### 2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (this "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a Joint Venture Company (the “JV”) as a Limited Liability Company under the Indian Companies Act, 2013 for entering into the Mining Services Agreement (MSA) with IREL and for performing all its obligations as the MDO in terms of the Mining Services Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead Member of the Consortium and shall have Board Resolution in its favour from the Other Member for conducting all business for and on behalf of the Consortium during the Bidding Process and until the signing date of the Mining Services Agreement when all the obligations of the JV Company/ MDO shall become effective;
- (b) In addition to the above,
  - i. the role of the Party of the First Part shall be to comply with all the responsibilities and obligations of the Lead Member as mentioned in this Agreement and Draft MSA;
  - ii. the role of the Party of the Second Part shall be to comply with all the responsibilities and obligations of Other Member as mentioned in this Agreement and Draft MSA;

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender Documents, RFP and the Mining Services Agreement.

**6. Shareholding in the JV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the JV Company shall be as follows:

First Party (Minimum 51 %): [●] %

Second Party (Minimum .....%): [●] %

6.2 The Parties undertake that no change in the above ownership of the subscribed and paid up equity share capital of the JV shall be permitted throughout the Contract Period, without the prior written approval of IREL.

6.3 The Parties undertake that a minimum of 51% (fifty-one per cent) of the subscribed and paid up equity share capital of the JV shall, at all times till expiry or termination of Mining Services Agreement, be held by the Party of the First Part.

6.4 The Parties undertake that a minimum of 10% (ten per cent) of the subscribed and paid up equity share capital of the JV shall, be held by the Party of the Second, till at least 10 years from the Appointed Date as mentioned in Draft MSA.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Tender Documents and the MSA.

**7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - i. require any consent or approval not already obtained;
  - ii. violate any Applicable Law presently in effect and having applicability to it;
  - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

**8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the expiry or termination of Mining Services Agreement in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified.

**9. Miscellaneous**

9.1 This Consortium Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of IREL.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

For and on behalf of

First part i.e. LEAD MEMBER by

Second Part i.e. other Member by

Third Part i.e. other Member by

(Signature)

(Signature)

(Signature)

(Name)

(Name)

(Name)

(Designation)

(Designation)

(Designation)

(Address)

(Address)

(Address)

In the presence of:

1.

2.

*Notes:*

1. The mode of the execution of the Consortium Agreement 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 company's round seal affixed in accordance with the required procedure.
2. Each Consortium Member should attach a copy of the extract of the charter documents and documents such as Board resolution and power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Members.
3. For a Consortium Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney/resolution has been executed.

## **12.10A: Proforma for Joint Operating Agreement**

(On Non-Judicial Stamp Paper of Appropriate Value)

(In case the Bidder takes strength from its direct Subsidiary or Holding company, it will need to execute Joint Operating Agreement with its Supporting Partner)

This Joint Operating Agreement (“**JOA**”) is executed on this [ ] day of [ ] Two thousand [ ] between M/s [ ], a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ] (hereinafter called the “**Bidder**” which expression shall include its successors and permitted assigns)

### **AND**

[ ] a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ] (hereinafter called the “**Supporting Partner**”, which expression shall include its successors and permitted assigns);

The Bidder and the Supporting Partner are hereinafter referred to individually as Party and collectively as Parties.

### **WHEREAS**

- A. **IREL (India) Limited (IREL)**, a central public sector undertaking under the administrative control of the Department of Atomic Energy(DAE) and having its registered office at **Odisha** (“IREL”) intends for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha,by appointing Mine Developer and Operator (MDO).
- B. In order to meet the Technical/Financial Criteria of Qualifying Requirements stipulated in Section 8.5, the Bidder has relied on the strength of its direct Subsidiary(ies) and/or Holding Company and is therefore required to enter into this JOA to bind the Supporting Partner to the provisions of the Mining Services Agreement (“MSA”).
- C. The Supporting Partner is the \*Subsidiary /\*Holding Company/of the Bidder.
- D. The Parties now wish to enter into this JOA in order to create binding obligations in favour of IREL to the extent set forth as follows.

### **NOW THEREFORE THIS AGREEMENT WITNESSETH AS UNDER:**

- 1. All capitalized terms used herein if not otherwise defined shall have the same meaning as those ascribed to them in the Tender documents, the RFP and MSA.
- 2. In consideration of IREL awarding the MSA, to and in favour of the Bidder inter alia relying on the strength and support of the Supporting Partner to the Bidder pursuant to the terms of the Tender Documents, the Supporting Partner hereby irrevocably and unconditionally agrees and undertakes to be jointly and severally be bound and liable for any and all acts and omissions of the Bidder, in the same manner and to the same extent as set forth in the MSA. For the avoidance of doubt, it is clarified that:

- 2.1. any service by IREL of a notice pursuant to terms of the MSA shall be deemed to be service of notice to the Supporting Partner, on a several basis;



- 2.2. the Parties hereby assume full responsibility and liability for the performance by the Bidder/MDO (where the Bidder has incorporated a separate company as the MDO) of its obligations in accordance with and subject to the terms of the MSA read with this JOA;
- 2.3. the Supporting Partner confirms that in the event the Bidder is successful in its Bid and is issued LOA, it shall promptly and in no event later than (30) thirty days following the date of signing the Service Agreement, furnish Performance Guarantee in the form of a bank guarantee in favour of IREL for an amount as defined in the draft MSA, in addition to the Performance Security to be submitted by the Bidder in the format provided in the draft MSA.
- 2.4. Subject to Clause 3 of this JOA, upon any default, whatsoever by the Bidder/MDO in performing, meeting or otherwise complying with any of its obligations in accordance with the terms of the MSA, IREL may at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Bidder/MDO, require the Supporting Partner to hold IREL harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered, incurred or paid by IREL, as a result of, in connection with or arising out of such default; and
- 2.5. the obligations of the Supporting Partner or the rights of IREL hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists, at anytime, any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Project Agreement between the Bidder/MDO and IREL;
3. Notwithstanding anything to the contrary contained in this JOA or the MSA, the aggregate liability and obligation of the Supporting Partner under or in connection with this JOA shall not exceed the aggregate liability and obligation of the Bidder/MDO under the MSA and it shall continue for at least 5 (five) years or upto the time that the mine achieves its Peak Rated Capacity;
4. The Supporting Partner hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations hereunder:
  - 4.1. is irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the MSA, or the insolvency, bankruptcy, reorganization, dissolution, winding-up or liquidation of the Bidder/MDO or any change in the ownership of the Bidder/MDO, or any purported assignment by the Bidder/MDO or any other circumstances whatsoever which might otherwise constitute a defense or discharge of a guarantor or surety;
  - 4.2. shall not be affected by the existence of or release or variation of any guarantee of or security for any of the obligations of the Bidder under the MSA;
  - 4.3. shall not be affected by any failure by IREL to pay or perform any of their obligations under the MSA, or any waiver of any of such obligations;
  - 4.4. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Bidder under the MSA;
  - 4.5. shall not be affected by any failure, omission or delay on IREL's part to enforce, assert or to exercise any right, power or remedy conferred on IREL in this JOA or any such failure,

omission or delay on IREL's part in connection with any obligation of the Bidder/MDO under the MSA or any extension of time granted by IREL to the Bidder/MDO for performance of its obligations under the MSA.

5. Each Party hereby represents and warrants that:
  - 5.1. it is duly organized and validly existing under the laws of the jurisdiction of their organization, with full power, authority and capability to enter into this JOA and to perform all acts and obligations contemplated herein;
  - 5.2. the signature and delivery of this JOA on its behalf and the exercise of its rights and performance of its obligations under this JOA have been duly authorized;
  - 5.3. this JOA has been duly signed and delivered by it and its obligations described in this JOA are legal, valid and binding obligations of such Party; and
  - 5.4. the execution and/or performance of this JOA:
    - 5.4.1. will not conflict with or violate any provision of any of its constitutional documents / charters or other organizational document;
    - 5.4.2. will not require any notice to or filing with, or any approval of, any authority or the consent of any third party;
    - 5.4.3. will not conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any person the right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which such Party is a party or by which such Party is bound or to which any of such party's assets are subject;
    - 5.4.4. will not result in the creation or enforcement of any security interest upon any assets of the Bidder;
    - 5.4.5. will not violate any Applicable Law or any order, writ, injunction, or decree applicable to it;
6. This JOA shall be construed and interpreted in accordance with the laws of India. In the event of any dispute or claim of any kind whatsoever that may arise between the Parties or IREL because of construction, interpretation or application of any of the terms and conditions of this JOA, such dispute shall be settled in accordance with terms of the MSA.
7. The courts in Mumbai, Maharashtra, India shall have exclusive jurisdiction in all matters under this agreement.
8. Subject to Clause 3, the Parties hereby acknowledge and agree that this JOA has been executed for the sole benefit of IRELand for the specific purpose of ensuring that IREL receives the benefits of the Bidder's services under and in accordance with the MSA. Accordingly, IREL shall, notwithstanding anything contained herein, always have the right to enforce the performance by the Supporting Partner of its obligations pursuant to this JOA read with the MSA and the Supporting Partner hereby irrevocably and unconditionally waive any defense, rights or protection that they may have in law, contract or otherwise in this regard.
9. The Supporting Partner shall not assign or delegate its rights, duties or obligations under this JOA and the MSA in any manner whatsoever, except with prior written consent of IREL.
10. The Supporting Partner agrees that this Agreement shall be irrevocable and shall form an integral part of the Tender Document and MSA. This Agreement shall continue to be enforceable for at

least 5 years, which will have to be extended till such time the mine achieves the Peak Rated Capacity.

11. Terms not defined in the JOA shall have the same meaning as ascribed to them in the MSA. The word Bidder wherever appearing in the JOA shall also include the MDO.

12. The terms and conditions of this JOA shall not be amended or modified, except with prior written consent of IREL.

IN WITNESS WHEREOF, the Parties have, through their authorized representatives, executed these presents and affixed the round seals of their respective companies on the day, month and year first mentioned above at \_\_\_\_\_

**On behalf of the Bidder**

**On behalf of the Supporting Partner**

Name:

Name:

Designation:

Designation:

Company's round Seal of the Bidder

Company's round Seal of the Supporting Partner

Witness-1:

Witness-1:

Witness-2:

Witness-2:

*Note:*

- a) The Bidders should provide details of their Subsidiary (ies) and/or Holding Company whose experience had been offered for evaluation in the Covering Letter of Techno-commercial Proposal.
- b) Notarized Power of Attorney of the Persons signing the Joint Operating Agreement along with Board Resolution in support of Power of Attorney shall necessarily be furnished and to be attached with the signed Joint Operating Agreement.

**12.11. Proforma for Earnest Money Deposit submitted through Bank Guarantee**

**PROFORMA FOR EARNEST MONEY DEPOSIT BANK GUARANTEE  
(On Non-Judicial Stamp Paper of appropriate value)**

..... (Name of the Bank)

Address.....

.....

Guarantee No. ....

A/c Messrs..... (Name of Bidder)

Date of Expiry.....

Limit to liability (currency & amount) .....

Invitation for Bid No. .... dated .....

For..... (Name of Facilities)

**Subject: Earnest Money Deposit Bank Guarantee.**

Date .....  
20....

To

.....  
IREL (India) Limited

.....  
**[Name and Address of Employer]**

In accordance with Notice Inviting Tender (NIT) No. \_\_\_\_\_ Dated \_\_\_\_\_ for the work of \_\_\_\_\_ (herein after referred to as "the Project") for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only), by M/s IREL (India) 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 Contractor (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 tenderer's failure to enter into an agreement of contract on intimation of acceptance of his tender and/or to commence the contract 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 Notice Inviting Tender (NIT). 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 tender of the tenderer afore stated by IREL including the question as to the tenability of the claim of the IREL for forfeiting the Earnest Money 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 the IREL under the terms and conditions of

the NIT for the work have been fully paid and its claims satisfied or discharged or till IREL certifies, that the terms and conditions of the NIT have been fully and properly carried out by the said tenderer and accordingly discharges the guarantee.

We \_\_\_\_\_ Bank further agree with the IREL that the 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 NIT and/or terms and conditions governing the contract or to extend the time of validity of the offer from the said tenderer from time to time or to postpone for any time or from time to time any of the powers exercisable by the IREL against the said tenderer and to forbear or enforce any of the terms and conditions of the NIT and we shall not be relieved from our liability hereunder by reason of any such variation, or extension being granted to the said tenderer or for any forbearance, act or omission on the part of the IREL or any indulgence by the IREL to the said tenderer 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 tenderer 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 the IREL in writing.

Notwithstanding anything to the contrary contained herein before :

- (i) Our Liability under this Bank Guarantee shall not exceed and restricted to Rs ..... (in words)
- (ii) This Bank Guarantee shall be valid upto ....., unless extended on demand.
- (iii) The bank is liable to pay the guaranteed amount or any part thereof under this bank Guarantee only if IREL serve a written claim or demand on or before ..... (Three months from the expiry of Guarantee period)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 201\_ \_\_\_\_\_ Bank

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

Bank's Common seal

**12.12. Format for Power of Attorney for signing of Bid for Bidding Entity/ the Lead Member of the Consortium**

[To be notarised and to be executed on non-judicial stamp paper of appropriate value]

Know to all men by these presents, we, ..... (name of the Bidder/Lead Member and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise 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 "Appointment of Mine Developer and Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha," (the "Project"), by IREL (India) Limited ("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 Mining Services Agreement and undertakings consequent to acceptance of our bid, and generally deal 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 Mining Services Agreement with IREL.

AND we hereby agree to ratify and confirm all acts, deeds and things 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.

AND we hereby confirm that this Power of Attorney is being executed by us at our own volition with full knowledge of the facts and the contents thereof and with our free consent. We also confirm that no undue influence or coercion has been exercised on us any other person for execution of this Power of Attorney nor has there been any abuse of power by any person for execution of this Power of Attorney.

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

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

1. 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.
2. 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.
3. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.

**12.13. Format for Power of Attorney by Other Member of consortium authorising signing of the Bid by the Lead Member**

[To be notarised and to be executed on non-judicial stamp paper of appropriate value]

Whereas IREL (India) Limited has invited bids for Selection of Mine Developer cum Operator for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha ("**Project**").

Whereas, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively the "Consortium") being members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, \_\_\_\_\_ having our registered office at \_\_\_\_\_, and \_\_\_\_\_, having our registered office at \_\_\_\_\_, and \_\_\_\_\_, having our registered office at \_\_\_\_\_, (hereinafter referred to as "**Principal**") do hereby irrevocably designate, nominate, constitute, appoint and authorise \_\_\_\_\_, having its registered office at \_\_\_\_\_, being one of the members of the Consortium, as the "Lead Member" and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accepting the Letter of Award, participating in bidders' and other conferences, responding to queries, submitting information/ documents, signing and executing contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with IREL, and/ or any other person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/ or upon award thereof till the Mining Services Agreement is entered into with IREL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things 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/ Consortium.

AND we hereby confirm that this Power of Attorney is being executed by us at our own volition with full knowledge of the facts and the contents thereof and with our free consent. We also confirm that no undue influence or coercion has been exercised on us any other person for execution of this Power of Attorney nor has there been any abuse of power by any person for execution of this Power of Attorney.



Capitalised words not defined herein shall have the meaning ascribed to them in the Tender Documents.

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

For .....

(Signature, Name & Title)

(Executant)

(To be executed by the Other Member(s) of the Consortium)

Witnesses:

- 1.
- 2.

Notes:

1. 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.
2. 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.
3. Power of Attorney should be executed upon payment of stamp duty of appropriate value, as applicable in the State, where such Power of Attorney has been executed.

**12.14. Format for Certificate of Total Compliance**

(On letter head of the Bidding Company/ LLC/ LLP or, Lead Member of Bidding Consortium)

**Certificate of Total Compliance**

To,

.....  
.....  
.....  
.....

**Sub: Undertaking of Compliance with the Scope of work, Roles & Responsibilities and Other terms and conditions as mentioned in the Tender Document, RFP and MSA.**

Sir,

1. We \_\_\_\_\_ unconditionally offer to undertake the works as indicated in the Notice Inviting Tender and the Tender Document and hereby bind myself / ourselves to execute the work as per the scope stipulated in the Tender Document and under the subject-stated above.
2. We have read the conditions of Notice Inviting Tender, Tender Document and Draft Mining Services Agreement including any clarification, addendum or corrigendum issued in reference to this tender attached hereto and agree irrevocably to abide by such conditions. We agree to execute the work and achieve the target without any let or demur or hindrance.
3. We shall comply with all the Applicable Laws and conditions of all the approvals and clearances and orders granted upon IREL in relation to Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha.
4. We bind ourselves to furnish the required Performance Security, failing which we shall have no objection towards cancellation of Letter of Award (LOA) by IREL and bear all the liabilities.
5. There is no existing or potential conflict of interest which may affect our ability to perform our obligations contemplated in the Tender Document.

Name:

Designation:

Signature & Company's Round Seal

## 12.15. Format for Pre-Contract Integrity Pact

### PRE-CONTRACT INTEGRITY PACT

#### General

This pre-bid pre-contract Agreement (hereinafter the Integrity Pact) is made on ..... day of the month of ..... year ..... between IREL (India) Limited (hereinafter called the "BUYER" which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s. .... (hereinafter called the "BIDDER / Seller" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the BUYER proposes to procure (Name of the Stores / Equipment / Item) and the BIDDER/Seller is will to offer / has offered the stores and

WHEREAS the BIDDER is a private company / public company / Government undertaking / partnership / registered export agency, constituted in accordance with the relevant law in the matter and the BUYER is a PSU.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence / prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling the BUYER to obtain the desired said stores/equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary Impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

#### Commitments of the BUYER

- 1.1 The BUYER undertakes that no official of the BUYER, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immediate benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The BUYER will, during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not ;provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS

- 1.3 All the officials of the BUYER will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
- 2 In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the BUYER will full and verifiable facts and the same is prima facie found to be correct by the BUYER, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the BUYER and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the BUYER the proceedings under the contract would not be stalled.

### **Commitments of BIDDERS**

- 3 The BIDDER commit itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the followings:-
- 3.1. The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract for showing or forbearing to show favour or disfavor to any person in relation to the contract or any other contract.
- 3.3 The BIDDER further confirms and declares to the BUYER that the BIDDER has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BUYER or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.4 The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the BUYER or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.5 The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.6 The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.7 The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the BUYER as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic

data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.

- 3.8 The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.9 The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.10 If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the BUYER, or alternatively, if any relative of an officer of the BUYER has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of fill of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956

- 3.11 The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the BUYER.

#### **4 Previous Transgression:**

- 4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- 4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **5 Earnest Money (Security Deposit)**

- 5.1 While submitting commercial bid, the BIDDER shall deposit an amount \_\_\_\_\_ (to be specified in RFP) as Earnest Money / Security Deposit, with the BUYER through any of the following instruments:
- (i) Bank Draft or a Pay order in favour of \_\_\_\_\_
  - (ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the BUYER on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the BUYER shall be treated as conclusive proof of payment.
  - (iii) Any other mode or through any other instrument (to be specified by the RFP).
- 5.2 The Earnest Money / Security Deposit shall be valid upto complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the BUYER.
- 5.3 In case of the successful BIDDER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 5.4 No interest shall be payable by the BUYER to the BIDDER on Earnest Money / Security Deposit for the period of its currency.

## **6 Sanctions for Violations**

- 6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the BUYER to take all or any one of the followings actions, wherever required:-
- (i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
  - (ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit / Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the BUYER and the BUYER shall not be required to assign any reason therefore.
  - (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
  - (iv) To recover all sums already paid by the BUYER, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India.
  - (v) To encash the advance bank guarantee and performance bond / warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, along with interest.
  - (vi) To cancel all or any other Contracts with BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the BUYER resulting from such cancellation / rescission and the BUYER shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
  - (vii) To debar the BIDDER from participating in future bidding processes of IREL (India) Limited for a minimum period of five years, which may be further extended at the discretion of the IREL.
  - (viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
  - (ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.
  - (x) Forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 The BUYER will be entitled to take all or any of the actions mentioned at Para 6.1 (i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the BUYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent Monitor(s) appointed for the purposes of this Pact.

## **7 Independent External Monitors**

- 7.1 The BUYER has appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).
- 7.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 7.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 7.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 7.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the BUYER.
- 7.6 The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the BUYER including that provided by the BIDDER. The BIDDER will also grant the Monitor upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.
- 7.7 The BUYER will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 7.8 The Monitor will submit a written report to the designated Authority of BUYER with 8 to 10 weeks from the date of reference or intimation to him by the BUYER/BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

## **8 Facilitation of Investigation**

In case of any allegation of violation of any provision of this Pact or payment of commission, the BUYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

## **9 Law and Place of Jurisdiction**

This pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER.

## **10 Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

## **11 Validity**

- 11.1 The validity of this Integrity Pact shall be from date of its signing and upto the complete execution of the contract to the satisfaction of both the BUYER and the BIDDER/Seller, including warranty

period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of signing of the contract.

11.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

12 The Parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_.

BUYER

BIDDER

Signature

Name of the Officer

Designation

Witness

Witness

1

1

\_\_\_\_\_

\_\_\_\_\_

2

2



**Format for self-certificate about understanding of the Site conditions**

To,

.....  
.....  
.....

Sub: Self-certificate about understanding of the Site conditions as a part of Techno-commercial Proposal for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at BrahmagiriTahasil, Puri District, Odisha (“the **Project**”)

Dear sir,

I, \_\_\_\_\_ (Name of the Authorized signatory/Authorized Representative of Bidder) hereby certify on behalf of \_\_\_\_\_ (Name of the Bidder/ Bidding Consortium) that we have visited the Site location and have sufficient knowledge about the Site conditions of Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha and nearby area required in order to participate in the Bidding Process and we are submitting our Techno-commercial and Financial Proposal keeping in mind all the risk and benefits associated with the Projects.

Also, we certify that we have read all the documents provided as a part of Tender Documents for understanding of the Project and preparation of our Techno-commercial and Financial Proposal.

Yours sincerely,

Name of Authorized Representative / Authorized Signatory:

For and on behalf of .....

Designation:

Signature & Company’s Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

**12.16. Format for Declaration by Bidder for relationship with key managerial personnel of IREL**

To,

.....  
 .....  
 .....

**Sub: Declaration for relationship with key managerial personnel of IREL as a part of Techno-commercial Proposal for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha (“the Project”)**

Dear sir,

\*I, \_\_\_\_\_(Name of Authorized signatory) on behalf of \_\_\_\_\_ (Name of Bidder/ Bidding consortium) hereby declare that Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium \_\_\_\_\_, its Subsidiary/Holding Company/Affiliate have no close business/ family relationship with key managerial personnel of IREL.

Or

\*I, \_\_\_\_\_(Name of Authorized signatory) on behalf of \_\_\_\_\_ (Name of Bidder/ Bidding consortium) hereby declare that Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium \_\_\_\_\_, its Subsidiary/Holding Company/Affiliate have business/ family relationship with key managerial personnel of IREL in following manner.

Or

\*I, \_\_\_\_\_(Name of Authorized signatory) on behalf of \_\_\_\_\_ (Name of Bidder/ Bidding consortium) hereby declare that Promoters or key managerial personnel of the Bidder/members of the Bidding Consortium \_\_\_\_\_, its Subsidiary/Holding Company/Affiliate have business/ family relationship with key managerial personnel of IREL in following manner.

S No	Name and designation of personnel of the Bidder/ Bidding Consortium	Name and designation of key managerial personnel of IREL	Relationship
1			
2			
3			
4			

*\*(strike out whichever is not applicable)*

Name of Authorized Representative / Authorized Signatory:

For and on behalf of .....

Designation:

Signature & Company's Round Seal

Email address:

Mobile No:

Dated the ----- day of ----- of 20---

**12.17. Format for CV of Team Members for scoring as per clause 8.5.7**

**Name of the Staff:**

**Proposed Position:**

**Employer:**

**Date of Birth: Nationality:**

**Education:**

<u>School, college and/or University Attended</u>	<u>Degree/certificate or other specialized education obtained</u>	<u>Date Obtained</u>

**Professional Certification or Membership in Professional Associations:**

**Other Relevant Training**

**Countries of Work Experience:**

**Languages:**

<u>Language</u>	<u>Speaking</u>	<u>Reading</u>	<u>Writing</u>

**Employment Record:**

Position held:

<b>1. Detailed Tasks Assigned</b>	<b>2. Work Undertaken that Best Illustrates the Capability to Handle the Tasks Assigned</b>



13. **Schedule 1: Draft Mining Services Agreement as given in the following pages**

14. **Schedule 2: Clarifications regarding Tender Document**

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1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					



IREL (India) Limited

(A Government of India Enterprise)

**SCHEDULE- 1**

# **MINING SERVICES AGREEMENT**

BETWEEN

IREL (India) Limited

(A Government of India Undertaking)

AND

M/s. .... (the MDO)

for

DEVELOPMENT AND OPERATION OF BRAHMAGIRI MINE,  
CONSTRUCTION AND OPERATION OF WET UPGRADATION  
PLANT

AT BRAHMAGIRI TAHASIL, PURI DISTRICT, ODISHA

Agreement No: \_\_\_\_\_ dated \_\_\_\_

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***PART I***

***PRELIMINARY***

**MINING SERVICES AGREEMENT FOR DEVELOPMENT AND OPERATION OF BRAHMAGIRI MINE, CONSTRUCTION AND OPERATION OF WUP FOR MINERAL SAND AT BRAHMAGIRI TAHASIL, PURI DISTRICT, ODISHA**

THIS AGREEMENT is entered at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**BETWEEN**

1. **IREL (INDIA) LIMITED[CIN: U15100MH1950GOI008187], a company incorporated under the Indian Companies Act 1956 (hereinafter referred to either as the "Employer or IREL" which expression shall include its successors and assigns) having its registered office at 1207, Veer Savakar Marg, Prabhadevi, near Siddhi Vinayak temple, Mumbai - 400028, India of the FIRST PART;**

**AND**

2. M/s XYZ, a company [SPV/ JVC as the case may be] duly incorporated in India under the provisions of the Companies Act, 1956/2013, having identification number [•], and having its registered office at [Address] (hereinafter referred to as the "**Mine Developer cum Operator**" or "**MDO**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART.

**AND**

3. [Selected Bidder/ Consortium as the case may be] {The consortium of (i) M/s XXX, having its registered office at [Address] and (ii) M/s ABC having its registered office at [Address], with M/s XXX as the Lead Member (the "**Lead Member**"), in their capacity as the confirming parties to this Agreement (hereinafter collectively) OR (hereinafter referred to as the "**Selected Bidder**"<sup>1</sup>) which expression shall, unless the context otherwise requires, include its/their successors and permitted assigns) of the THIRD PART.}

(Each of the parties of the FIRST, SECOND and the THIRD parts are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**").

**WHEREAS:**

- (a) IREL had resolved to undertake development and operation of Brahmagiri mine, Construction and Operation of a wet upgradation plant at Brahmagiri Tahasil, Puri District, Odisha (the "**Mines**") in accordance with the terms and conditions set forth in this Agreement (the "**Mining Services Agreement**" or "**MSA**" or "**Agreement**").
- (b) IREL had prescribed certain technical and financial terms and conditions and invited proposals from the bidders by its Tender Document No. \_\_\_\_\_, dated \_\_\_\_\_ ("RFP/Request for Proposal") and shortlisted certain bidders including the Selected Bidder on the basis of prescribed technical and financial qualification requirements as per the terms and conditions of the tender.
- (c) After the completion of the Bidding Process, IREL had accepted the Proposal of the Selected Bidder and issued its Letter of Award No \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement and Selected Bidder has acknowledged the receipt of LOA vide Letter No:.....dated.....
- (d) The Selected Bidder has incorporated the MDO [SPV/ JVC as the case may be], being M/s XYZ a company incorporated under the Companies Act, 2013 and has requested IREL to accept the MDO

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<sup>1</sup> In case the selected bidder itself is the MDO, then all obligations and warranties of the Selected Bidder shall be subsumed by the MDO

as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.

- (e) Notwithstanding the formation of the MDO, the Selected Bidder/(s) shall continue to be bound by all the representations and commitments as made in the Bid and shall be responsible for ensuring the implementation of the Project by the MDO in the manner contemplated herein and in performance by the MDO of all its obligations contained herein and in the Bid. The Selected Bidder/(s) are therefore necessary party/parties to the Agreement.
- (f) By its letter no. \_\_\_\_\_ dated \_\_\_\_\_, the MDO has also joined in the said request of the Selected Bidder to IREL to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The MDO has further represented to the effect that it has been incorporated by the Selected Bidder for the purposes hereof.
- (g) IREL has agreed to the said request of the Selected Bidder and the MDO and has accordingly agreed to enter into this Agreement for development of the Mines and WUP, and for mining and beneficiation of Mineral Sand, subject to and on the terms and conditions set forth hereinafter.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## Article 1. Definitions and Interpretation

### 1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

- 1.1.1. **"Accounting Year"** shall mean the Financial Year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, provided that, the first Accounting Year shall commence from the Appointed Date and end on the thirty-first day of March of the next calendar year and the last Accounting Year shall commence on the first day of April immediately preceding the Transfer Date occurs and shall end on the Transfer Date. If there is any change in the definition of financial year in the Companies Act, 2013, the same shall be applicable in Accounting Year in this Agreement.
- 1.1.2. **"Affected Party"** shall mean the party whose performance obligations under this Agreement is affected due to commission and/or omission of actions, of the opposite party and/or Force Majeure.
- 1.1.3. **"Annual Capacity"** shall have its meaning as ascribed to it in Clause 16.1.1(b);
- 1.1.4. **"Annual Production Programme"** shall have its meaning as ascribed to it in Clause 16.1.1.
- 1.1.5. **"Annual Safety Report"** shall have the meaning set forth in Clause 14.4.1.
- 1.1.6. **"Applicable Laws"** means any law, legislation, statute, ordinance, rule, directive, notification, regulation, guidelines for public procurement etc. enacted, issued, or promulgated by any Authority and any interpretation thereof by a competent Court or Tribunal as may be applicable to IREL and / or the MDO, their respective obligations or this Agreement from time to time.
- 1.1.7. **"Approvals"** shall mean and include all other licenses, permits, consents and permission necessary under Applicable Law in respect of this Agreement for the operation of the Mine including performance of any obligation or exercise of any right by a Party herein.
- 1.1.8. **"Approved"** means approval in writing including subsequent written confirmation of previous verbal approval(s).
- 1.1.9. **"Approved Annual Works Plan"** shall have its meaning as ascribed to it in Clause 16.1.2.
- 1.1.10. **"Appointed Date"** shall have the meaning set forth in Clause 4.1.6.
- 1.1.11. **"Associate"** shall have the meaning set forth in section 2(6) of the Companies Act, 2013.
- 1.1.12. **"Authority"** means the Central Government, the concerned State or Local Governments and includes any Department, Agency, Board, Bureau, Authority, Regulator etc., constituted or established under a Central, State or Local Legislation, ordinance including rules and regulations made there under or by the Central, State or Local Government and court to exercise sovereign functions in relation to the Scope of Work as per the Agreement.
- 1.1.13. **"Average Annual Contract Value"** shall mean the value in INR calculated as follows:  
Average Annual Contract Value = MDO Fee (in INR/tonne) x 6,32,000 tonnes
- 1.1.14. **"Bank"** shall mean any Nationalized Bank or Scheduled Commercial bank incorporated in India (excluding Co-operative Bank).



- 1.1.15. **"Bank Rate"** shall mean the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.
- 1.1.16. **"Total Heavy Mineral" or "Heavy Mineral"** (commonly referred to as Beach Sand Mineral) shall have its meaning as defined in sub-rule (1) of rule 2 of Atomic Minerals Concession Rules, 2016/2019.
- 1.1.17. **"Bid"** shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Tender Document in accordance with the provisions thereof and "Bids" shall mean the bids submitted by any and all pre-qualified bidders.
- 1.1.18. **"Bidder"** shall mean a bidding company which is a single member that has submitted a Bid in response to the Tender Document.
- 1.1.19. **"Bidding Company"** shall mean the single registered corporate entity in India that has submitted its Proposal in response to the Tender Document.
- 1.1.20. **"Bidding Consortium"** means a group of not more than 2 (two) registered corporate entities in India that has jointly submitted their Proposal in response to this Tender Document.
- 1.1.21. **"Bidding Process"** shall mean procedural activities undertaken pursuant to the Tender Document for selection of MDO.
- 1.1.22. **"Business Day"** means a day other than a Sunday or a public holiday on which banks are open for business in Odisha.
- 1.1.23. **"Change in Law"** shall mean the occurrence of any of the following after the date of submission of the Final Price Offer, to the extent such occurrence was not reasonably foreseeable by the Parties prior to the date of submission of the Final Price Offer:
- (a) enactment of any new Indian law;
  - (b) repeal, modification or re-enactment of any existing Indian law;
  - (c) change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, vis-à-vis interpretation or application by a court of record prior to the date of submission of the Final Price Offer; or
- any change in the rate of any Tax or introduction of any new Tax, after the date of submission of Final Price Offer that has a direct impact on the Project; *[Reference: - Tax here does not include any tax on income or tax applicable on input material and/or equipment.]*
- Such changes will not invalidate the Agreement, but the impact of the changes will be settled on mutually agreed terms.
- 1.1.24. **"Change in Ownership"** shall have the meaning set forth in Clause 5.3.2.
- 1.1.25. **"Claim"** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.
- 1.1.26. **"Clearance"** means all clearances as required from time to time mandatorily to be obtained from any appropriate State or Central Government Authority or Ministry of Environment, Forest & Climate Change or any other Authority who under the Law are designated to object or give clearances for mining activities as envisaged in this project or related to this project.
- 1.1.27. **"Commencement Date"** shall mean the date of signing of this Agreement or 90 days from the date of issuance of LoA, whichever is earlier.

- 1.1.28. **“Commercial Operation Date”** or **“COD”** shall have the meaning set forth in Clause 12.4.1.
- 1.1.29. **“Conditions Precedent”** shall have the meaning as set forth in Clause 4.1.
- 1.1.30. **“Construction Period”** shall mean the period during which Construction Works are being undertaken.
- 1.1.31. **“Construction Works”** shall have its meaning as set forth in Clause 12.1.1.
- 1.1.32. **“Contract Period”** means the period of Contractual obligation between IREL and MDO from the Commencement Date till the period of 20 years commencing from Commercial Operation Date OR till such period IREL approves the extension of contract period OR till the exhaustion of reserves and completion of mine closure as per the Approved Mining Plan, whichever is earlier.
- 1.1.33. **“CP Satisfaction Notice”** shall have the meaning set forth in Clause 4.1.6;
- 1.1.34. **“Delivery Point”** shall mean the designated point(s) identified by IREL near the Mineral Separation Plant for the purpose of delivery of HM Concentrate.
- 1.1.35. **“Development Period”** shall mean the period from the Commencement Date until the Appointed Date.
- 1.1.36. **“Drawings& Documents”** shall mean all of the drawings, calculations and documents pertaining to the Mines and WUP as set forth in Schedule E, and shall include `as built' drawings of the Mines;
- 1.1.37. **“Documentation”** means documents required or relevant for the due performance of this contract.
- 1.1.38. **“Employer”** or **“Owner”** shall mean IREL (India) Limited, a Central Public Sector Undertaking, incorporated under the Company's Act 1956 and having its Registered office at Plot No. 1207, Veer Savarkar Marg, Prabhadevi, Mumbai, Maharashtra-400086 and includes its successors, assigns and Units.
- 1.1.39. **“Encumbrance”** shall mean, any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Mines, where applicable herein but excluding utilities referred to in Clause 11.1;
- 1.1.40. **“Engineer-In-Charge or EIC”** means the person designated from time to time by Employer and shall include those who are expressly authorized by him to act for and on his behalf for operation/execution of this Agreement for services. The Engineer-in-charge shall act as authorized representative of IREL and shall act on behalf of IREL at all times during the currency of the all notices, instructions, orders, certificates, approvals and all other communications under this Agreement shall be given by the Engineer-in-charge, except as herein otherwise provided. The Engineer-in-charge shall have authority for:
- (a) General supervision, follow up of supply and direction of the Works.
  - (b) Direction to stop the Works whenever such stoppage may be necessary to ensure the proper execution of the works.
  - (c) To reject all Works and Equipment which do not conform to the contract specifications.
- The Engineer-in-charge shall have no authority to relieve the MDO of any of his duties or obligations under the contract nor except as expressly provided here-in-under or elsewhere in the Agreement to order any work involving delay or any extra payment by IREL or to make any variation of or in the Works.

- 1.1.41. **"Equipment"** shall mean the tools, machinery, vehicles and other equipment provided or installed at the Mines and used for excavation of Mineral Sand and feeding the excavated Mineral Sand in WUP for purposes incidental or consequential thereto.
- 1.1.42. **"Equity"** shall mean the sum expressed in Indian Rupees representing the issued and paid up equity share capital of the MDO for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement, shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the MDO, and any interest-free funds advanced by any shareholder of the MDO for meeting such equity component;
- 1.1.43. **"Force Majeure"** has the meaning given in Clause 22.1.1 of the Agreement.
- 1.1.44. **"GOI"** means Government of India.
- 1.1.45. **"Govt."** means Government of India or Odisha State Government as the case may be.
- 1.1.46. **"HM Concentrate"** shall have its meaning as ascribed to it in Clause 2.1.
- 1.1.47. **"Project"** shall mean all works, services for the purpose of scope and obligations of the MDO in accordance with the provisions of this Agreement.
- 1.1.48. **"Peak Rated Capacity"** shall mean the maximum mining capacity in MTPA as per the Approved Mining Plan.
- 1.1.49. **"Lease Area"** means the mining leasehold area within the Mine Lease boundary.
- 1.1.50. **"Lenders"** means collectively all of the entities (including banks, non-banking financial institutions, multilaterals and export credit agencies if applicable) providing finance for Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sand at Brahmagiri Tahasil, Puri District, Odisha.
- 1.1.51. **"Material Breach"** shall mean substantial failure in the performance of the obligations, terms and conditions of this Agreement by one Party, significant enough to have an adverse effect on the business, condition (financial or otherwise), liabilities, assets, operations (or the result of operations) or prospects of the other Party.
- 1.1.52. **"MDO Fee"** means the per tonne fee to be charged by the MDO for each tonne of HM Concentrate delivered to IREL at delivery point(s) after upgradation of Mineral Sand excavated from the Mine.
- 1.1.53. **"Mine Plan"** means the plan for the Mine as approved by Atomic Minerals Directorate (AMD)
- 1.1.54. **"Mine Lease" or "Mining Lease"** means the mining lease to be applied over by IREL for the Brahmagiri Heavy Mineral deposit located in Brahmagiri & Puri tahasil of Puri district, Odisha. The agreement is to be executed between IREL and the Government of Odisha in accordance with the Mines and Minerals (Development and Regulation) Act, 1957 and shall include any lease renewals/ extensions thereof.
- 1.1.55. **"Mine"** shall refer to the mine corresponding to Brahmagiri Mine Lease.
- 1.1.56. **"Mine Developer and Operator (MDO)"** means the Bidder who is selected through the Bidding process, who would sign and execute the Mining Services Agreement and any other Legal Agreements as prescribed by the law applicable from time to time, with IREL. The MDO shall include its legal representatives and successors.
- 1.1.57. **"Mineral Sand"** shall mean the beach sand available in the Lease Area comprising of Heavy Minerals.
- 1.1.58. **"Mining Services Agreement" or "MSA" or "Agreement"** means this Agreement (along with all Schedules, Attachments and Annexures), Tender Document and any other Amendment which may be entered into between parties to this Agreement.

- 1.1.59. **“MDO’s Employees”** means the employees to be deployed by MDO for the purpose of carrying out the Work as itemized and described in the Scope of Work of this Agreement. All employees, representatives or sub-contractors engaged by the MDO in connection with the performance of the contract shall be under the exclusive control of the MDO and shall not be deemed to be employees of IREL, and nothing contained in the contract or in any sub-contract awarded by the MDO shall be construed to create any contractual or employer-employee relationship between any such employees, representatives or sub- contractors and IREL.
- 1.1.60. **“MDO’s Equipment”** means the equipment to be deployed by MDO for the purpose of carrying out the activities as itemized and described in the Scope of Work of this Agreement.
- 1.1.61. **“Mine Safety Management Plan”** means the safety management plan as specified in and in accordance with Metalliferous Mines Regulation, 2019.
- 1.1.62. **“Operation Period”** shall mean the period commencing from COD and ending on the Transfer Date.
- 1.1.63. **“Project Affected Families or PAFs”** shall have the same meaning as “Affected Family” which is defined in “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013”.
- 1.1.64. **“Project Agreements”** shall mean this Agreement, the financing agreements, EPC Contract, O&M Contract, Beneficiation contract and any other material agreements or contracts that may be entered into by the MDO with any person in connection with matters relating to, arising out of, or incidental to the Project, but does not include any agreement for procurement of goods and services.
- 1.1.65. **“Project Facilities”** or **“Project Assets”** shall mean all the amenities and facilities of the MDO, which has been deployed or situated on the Site for the Project.
- 1.1.66. **“Quantity”** means amount of mining output or HM Concentrate received as output from WUP measured in Tonnes.
- 1.1.67. **“Quarter”** means a period of 3 consecutive calendar months commencing on 1st April, 1st July, 1st October or 1st January of the Operating Year, during the Term provided that: (a) The first Quarter shall commence on the commencement Date and end on 31st March or 30th June or 30th September or 31st December in the First Operating Year, whichever is earlier; and (b) The last Quarter shall commence on 1st April, 1st July, 1st October or 1st January of the Last Operating Year, whichever is later and shall end on the Expiry Date.
- 1.1.68. **“Reimbursable”** shall mean statutory duties, levies and taxes (both present and future) which would be reimbursed to MDO by IREL on production of documentary evidence in support thereof.
- 1.1.69. **“Scheduled COD”** shall have the meaning set forth in Clause 12.4.2;
- 1.1.70. **“Scope of Work”** means the work specified in the Agreement and shall include all the activities towards Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sandat Brahmagiri, Odisha. Any activity which falls part of the Scope of Work or is not included in the Agreement but is necessary for development and operation of the mine, Construction and Operation of WUP including activities such as obtaining statutory clearances and undertaking G1 level exploration of the mine, shall be deemed and would be considered as part of scope of work, whether or not specified in this Agreement or in any other document which may or may not be part of this Agreement.
- 1.1.71. **“Work”** shall mean and include all services and activities/jobs to be performed by the MDO in pursuant to and in accordance with this Agreement or part thereof as the case may be and shall include all extra, additional, altered or substituted services and approvals from any

agency/third party & license(s)/permissions from statutory authorities (if any), as required for purpose of this Agreement.

- 1.1.72. **“Strikes”** means any strike or other industrial action which materially affects the MDO's ability to perform the Work.
- 1.1.73. **“Tailings”** shall have its meaning as ascribed to it in Clause 2.1
- 1.1.74. **“Tax/ Tax Levy / GST”** means a fee charged (levied) by the Government on any product, income or activity.
- 1.1.75. **“Technical Information”** means all technical reports, copyright, patents, designs or other intellectual property rights, techniques, processes and know-how of IREL or MDO as the case may be.
- 1.1.76. **“Termination”** shall mean the termination of this Agreement through issuance of a notice;
- 1.1.77. **“Termination Payment(s)”** shall mean the amount payable under, and in accordance with, this Agreement, by IREL to the MDO upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 23.6.
- 1.1.78. **“Total Project Cost”** shall mean the capital cost incurred on construction and financing of the Project.
- 1.1.79. **“Transfer Date”** shall mean the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.
- 1.1.80. **“Wet Upgradation Plant” or “WUP”** shall have its meaning ascribed to it in Clause 2.1

## 1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) References to Applicable Laws or any provision thereof shall include amendment or re-enactment or consolidation of such Applicable Laws or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder. Reference to a statute shall include reference to rules, regulations or any other form of delegated legislation made there under;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (f) references to **"construction"** or **"building"** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **"construct"** or **"build"** shall be construed accordingly;
- (g) references to **"development"** include but not limited to, activities such as:
  - preparation of mining plan and facilitation works for getting approved on behalf of IREL
  - Deployment of equipment and machinery as per the approved mining plan
  - obtaining statutory clearances, permits, and approvals
  - construction, maintenance, renovation, refurbishing, of WUP
  - construction & maintenance of any other infrastructure required for mining and WUP operation such as roads, site offices, boundary walls, electric power supply network, pumping network, water supply arrangement, along with procurement, supply, erection/installation and commissioning of the equipment/items required for construction;references to **"develop"** shall be construed accordingly;
- (h) references to **"operation"** include but not limited to, unless the context otherwise requires, all matters in connection therewith or incidental to facilitate excavation/extraction of Mineral Sand, operation and maintenance of all he equipment

& machinery deployed as per the approved mining plan, operation and maintenance of WUPs for processing of Mineral Sand and Delivery of HM Concentrate to IREL at the delivery point, and **“operate”** shall be construed accordingly.

- (i) references to **“excavation”** or **“extraction”** or **“mining”** include, unless the context otherwise requires, scooping or digging out Mineral Sand from the Mine for processing in WUP, and **“excavate”** shall be construed accordingly;
- (j) reference to **“upgradation”** shall mean concentration of Mineral Sand in terms of HM content i.e., removal of unwanted gangue minerals (quartz) through gravity separation, and **“upgrade”** shall be construed accordingly.
- (k) any reference to **“hour”** shall mean a period of 60 (sixty) minutes;
- (l) any reference to **“day”** shall mean a reference to a calendar day;
- (m) any reference to **“week”** shall mean a reference to a calendar week or seven days;
- (n) references to a **“business day”** shall be construed as a reference to a working day of IREL;
- (o) any reference to **“month”** shall mean a reference to a calendar month as per the Gregorian calendar;
- (p) any reference to **“quarter”** shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1 of each Accounting Year, as the case may be;
- (q) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (r) any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (s) the words imparting singular shall include plural and vice versa;
- (t) references to any gender shall include the other and the neutral gender;
- (u) **“lakh”** shall mean a hundred thousand (100,000) and **“crore”** means ten million (10,000,000);
- (v) **“indebtedness”** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (w) references to the **“winding-up”**, **“dissolution”**, **“insolvency”**, or **“re-organization”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, dissolution, arrangement, protection or relief of debtors;
- (x) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause (w) shall not operate so as to increase liabilities or obligations of IREL hereunder or pursuant hereto in any manner whatsoever;

- (y) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is writing either in physical form or in the electronic form (email) from authorized representative of such party in this behalf and not otherwise; It is preferred that the same correspondence is maintained in written forms as well;
- (z) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (aa) references to Recitals, Articles, Clauses, sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, sub-clauses, Provisos and Schedules of, or to, this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (bb) the damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");
- (cc) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (dd) reference of the phrase "on behalf of IREL", "as authorized representative of IREL" or word denoting the same shall mean that such activities shall be performed by the MDO as per directive of IREL, provided that wherever any permission/ approval/ directives is to be given/ accorded by IREL, the same shall not be unduly delayed";
- (ee) Any determination with respect to the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise shall be made by IREL and the same shall be conclusive and binding on the MDO.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the MDO to IREL shall be provided free of cost and in three copies, and if IREL is required to return any such Documentation with its comments and/or approval, IREL shall be entitled to retain two copies thereof;

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply;

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply;

### **1.3. *Measurements and arithmetic conventions***

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places, if required. As for the matter of convenience, Mineral Sand production figures shall be quantified in tonnes and any financial figure shall be mentioned in INR.



#### **1.4. Priority of agreements, clauses and schedules**

1.4.1 This Agreement, and all other agreements and documents forming part of, or referred to in this Agreement, are to be read collectively and harmoniously and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) Amendment(s) to the Agreement
- (b) Agreement; and
- (c) Request for Proposal (RFP) / Notice Inviting Tender (NIT)
- (d) Any other agreement and document forming part hereof or referred to herein.

in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer-In-Charge who shall thereupon issue to the MDO instructions thereon and in such event, unless otherwise provided in the Agreement.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings & Documents and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawings & Documents and its specific written dimension, the latter shall prevail;
- (f) between any value written in numerals and that in words, the latter shall prevail.



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## ***PART II***

# ***SCOPE OF THE PROJECT***



## Article 2. Scope of the Project

### 2.1. Objective of IREL

The Government of Odisha has issued a Letter of Intent to IREL for grant of mining lease over an area of 1487.746 Hectares for Mineral Sand in favour of IREL in Brahmagiri & Puri tahasil of Puri district, Odisha. The Mine Lease extends along the coastline of Bay of Bengal containing Mineral Sand which consists of minerals like Ilmenite, Rutile, Zircon, Garnet, Sillimanite & RE bearing mineral.

IREL plans to setup and operate a complex for Mineral Sand processing for the corresponding mine. The complex would involve facilities for mining of Mineral Sand from the lease area, upgradation of the Mineral Sand and then separation of constituent minerals.

The Mineral Sand shall be excavated through suitable methods of mechanized mining. Such mined Mineral Sand shall be pumped into processing units ("**Wet Upgradation Plant**" or "**WUP**"), where it shall be upgraded for Heavy Minerals i.e., unwanted gangue minerals (quartz) shall be removed by gravity separation via equipment like spiral banks, trommel screen, teeter bed separator etc. Such operation in the WUP is referred as "Wet Upgradation". Accordingly, the upgraded output from WUPs shall be referred to as "**HM Concentrate**" and the quartz rich rejects shall be referred to as "**Tailings**". This is followed by separation of constituent minerals in the HM Concentrate in a mineral separation plant.

Now, IREL is appointing a Mine Developer and Operator (MDO) for mining of Mineral Sand and its upgradation in WUP. The MDO shall undertake all required works for setting up the facilities for such operations, and then subsequently operate it. This shall include preparation of Mining plan, facilitate IREL in getting all statutory clearances, permits & approvals, facilitation in land acquisition or consent from landowners for a short period for surface operation, deployment of equipment & machinery, erection and commissioning of WUPs and other infrastructures, operation & maintenance of the deployed equipment, machinery & plants, delivery of HM Concentrate to IREL at designated delivery point and any other related activities.

### 2.2. Scope of the Work

The scope of the Project (the "**Scope of the Project**") for MDO shall mean and include all the activities required to develop and operate the Brahmagiri Mine, excavation of Mineral Sand from the Mine, construction of WUP, Processing of the excavated Mineral Sand in WUP, and delivery of the upgraded Heavy Mineral concentrates at the Delivery Point identified by IREL. Brahmagiri Mine shall be developed to achieve a Peak Rated Capacity of 7.5 MTPA (or 75,00,000 tonnes per annum). The MDO shall undertake all activities including but not limited to, the activities mentioned hereunder:

- 2.2.1 MDO shall undertake G1 level of exploration of the Mineral Sand deposit in accordance with Schedule B of the Atomic Minerals Conservation Rules, 2016/2019 and prepare a Geological Report for estimation and reporting of Mineral Resources integrating all data of exploration, sampling and testing generated through processes including but not limited to drilling, logging, laboratory analysis, technological studies etc. All such data generated through these processes and the geological report shall be submitted to IREL.
- 2.2.2 MDO shall be responsible for preparation of the Mining Plan along with the Progressive Mine Closure Plan, updation in the scheme of mining every 5 years and for procuring approval on them, on behalf of IREL in accordance with the provision of Atomic Mineral Concession Rules, 2016/2019. *[Documented payments to Government Instrumentalities for obtaining such approval shall be borne by IREL itself].*
- 2.2.3 MDO shall undertake all activities for obtaining all statutory clearances, permits and approvals on behalf of IREL for the commencement of mining, WUP operations and for mineral separation plant as well. CTO/CTE for MSP shall not be MDO's responsibility. The list of clearances required have been mentioned in the Schedule A. Any technical



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study required for the grant of such statutory clearance shall be under the scope of the project for MDO. [Documented payments to Government Instrumentalities for obtaining statutory clearances and approvals, shall be borne by IREL itself].

2.2.4 The surface plots across the Mining Lease area are required in phased manner as mining of Mineral Sand proceeds over the Mining Lease area. As per the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019, IREL is required to obtain consent for operating over such surface plots on short-term basis. MDO shall assist IREL with the foregoing: -

- (i) In case of private land within the Mining Lease area, it shall undertake activities on behalf of IREL relating to obtaining consent from the landowners for operating over such land(s) for a short-term, as per the procedure specified at Schedule G of this Agreement.
- (ii) In case of government land within the Mining Lease area, it shall assist IREL in obtaining consent from the District Administration (if required) for operating over such land(s).
- (iii) Liaisoning and coordination on behalf of IREL, with the officer appointed by the State Government for the purposes of compensation for leasing of surface within the Mining Lease area for short term leasing, as per the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019.
- (iv) Take physical possession of the land mentioned at clause 2.2.4 (i) and (ii), after obtaining the required consent during the period for which consent has been obtained.

2.2.5 The MDO shall, if needed, assist and facilitate IREL in acquiring any land area required for the Project and obtain physical possession of such acquired land(s) on behalf of IREL. Also, the MDO shall undertake all activities to rehabilitate and resettle the PAFs with respect to such land including construction of R&R houses for them, as applicable under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016.

*[For the purpose of Documented Payment towards compensation for leasing of surface within the Mining Lease area as per Rule 16 of Atomic Minerals Concession Rules, 2016/2019, payment towards land acquisition, payment towards R&R compensation as per applicability, shall be made by IREL].*

2.2.6 Deploy equipment as per Mining Plan:

- (i) The MDO shall, at its own cost, deploy appropriate Equipment for mining and WUP operation, and shall procure adequate after sales maintenance support and comply with the standard recommendations for operations and maintenance of the Equipment. The size and capacity of Equipment to be deployed by MDO shall be as per the Approved Mining Plan.
- (ii) Any change in the size/ configuration of Equipment being deployed at the Mines shall be done only with the consent of IREL. If any approval is required from any statutory Authorities due to the change in the Equipment deployment plan and/ or equipment configuration, the same shall be procured by the MDO at its own costs.
- (iii) The Equipment configuration deployed by the MDO shall at all times during the Contract Period comply with the Applicable Laws, including those imposed by



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any government agencies or authority such as the MoEF&CC, Atomic Minerals Directorate (AMD), and Directorate General of Mines Safety (“DGMS”).

- 2.2.7 Construction and commissioning of the Wet Upgradation Plant.
- 2.2.8 Excavation of Mineral Sand from the Mine and feeding the excavated Mineral Sand into the WUP.
- 2.2.9 Processing the excavated Mineral Sand in WUP to produce HM Concentrate.
- 2.2.10 Transportation of HM Concentrate from WUP and delivery of HM Concentrate at the Delivery Point.
- 2.2.11 IREL as the owner of the mine, shall at its own costs appoint the statutory manpower (including Mine Manager) of the mine as per Applicable Laws including in relation to the qualification requirements set out under the Mines Act, 1952, the Metalliferous Mines Regulation, 2019, directions by the Director General of Mines Safety (DGMS) and other Applicable acts, laws, and regulations. Apart from the statutory manpower of the mine deployed by IREL, the MDO at its own cost, shall also, specifically make appointment for each of the statutory manpower positions i.e., deploy persons holding requisite statutory competency certificates issued by the concerned statutory authorities for conducting different mining activities/ operations safely abiding by the relevant laws and statute.
- 2.2.12 The MDO shall also appoint and deploy all other manpower and workmen required for the Project apart from the ones required for statutory manpower positions.
- 2.2.13 Installation of weighing equipment as per the provisions of this Agreement.
- 2.2.14 Construction & Maintenance of roads
  - (i) the MDO shall progressively construct & maintain approach roads along with the progressively moving mining activity across the Mining Lease area.
  - (ii) the MDO shall construct and maintain all roads required for the purpose of transportation between location of mining operation, WUP and the Delivery Point.
  - (iii) the MDO shall construct and maintain any other roads as may be required for the development and maintenance of the Mine.
- 2.2.15 Dust suppression and water sprinkling: Water sprinkling will be done by the MDO in the road or any place in the mine where required for dust suppression to the satisfaction of mining laws and guidelines. The MDO shall deploy and continuously operate sufficient number of water sprinklers of capacity as per the Approved Mining Plan for suppression of dust.
- 2.2.16 Illumination: MDO shall make its own arrangement for illumination of Mine and the facilities erected as per the requirement of mining activity, complying industry standard practices and Applicable Laws.
- 2.2.17 Water: MDO shall make its own arrangement for all the water requirement of operations including that of drinking water, water to be used in the Wet Upgradation Plant, dust suppression etc.
- 2.2.18 Power: IREL shall be responsible for setting up of a central power substation near the mining lease area with provisions of providing power for the entire Brahmagiri project including mine, WUP and as well as MSP units. The MDO shall make its own arrangement for drawing power from the substation to WUP and the mining areas. The cost of setting up of transformers and other necessary infrastructure for drawing power



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- from the central power substation to the mine areas and WUP to be borne by the MDO itself..
- 2.2.19 Reclamation: The MDO shall be responsible for all reclamation activities including backfilling/dumping of tailings into the mined-out area in mining lease. Plantation on excavated areas and dumps for reclamation purposes and to bring back to the state of normal ground/ altered ground in accordance with the Mining Plan and Mine Closure Plan.
- 2.2.20 MDO shall perform all its obligations with respect to Corporate Environment Responsibility (CER) activities as per the guidelines issued by MOEF&CC.
- 2.2.21 Corporate Social Responsibility (CSR) Activities: MDO shall perform all its obligations with respect to CSR activities as per Companies Act 2013 and shall be responsible for the funding towards it. Such activities shall also include, but not limited to, health checkup in the R&R colony (if available) and project affected area.
- 2.2.22 The MDO shall ensure compliance of all Applicable Laws, regulations, acts and government orders/circulars or guidelines for public procurement, during Contract Period and Extended Contract Period.
- 2.2.23 Performance and fulfillment of all other obligations of the MDO 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 MDO under the Agreement.
- 2.2.24 Any other work, as may be assigned by IREL from time to time during the contract period, incidental to development & operations of Brahmagiri mine and construction& operation of WUP.
- 2.2.25 The MDO shall ensure that sustainable mining practices are followed with usage of state-of-the-art technologies, energy efficient equipment and clean energy source for low carbon footprint.

### Applicable Acts, laws and Regulations:

MDO shall, at all times, comply with all the Applicable Laws including but not limited to the following Acts and rules and any subsequent amendments therein:

- (i) The Mines Act, 1952
- (ii) The Atomic Energy Act, 1962
- (iii) Atomic Energy (Arbitration Procedure) Rules, 1983
- (iv) Atomic Energy (Working of the mines, minerals, and handling of prescribed substances) Rules, 1984
- (v) Atomic Energy (Factories) Rules, 1996
- (vi) Atomic Energy (Safe disposal of radioactive wastes) Rules, 1987
- (vii) Civil liability for Nuclear Damage Act (2010)
- (viii) Atomic Minerals Concession Rules, 2016/2019
- (ix) Atomic Energy (Radiation Protection) Rules, 2004
- (x) Mines and Minerals (Development and Regulation) Act, 1957
- (xi) Mines Vocational Training Rules, 1966
- (xii) The Employees Compensation Act, 1923.
- (xiii) CMPF and miscellaneous provisions Act, 1948
- (xiv) Electricity Act, 2003 & CEAR 2010



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- (xv) Petroleum Act, 1934
- (xvi) Explosive Act, 1884
- (xvii) The Apprentices Act, 1961 and Rules made thereunder.
- (xviii) The Contract Labor (Regulation and Abolition) Act, 1970.
- (xix) The Workmen's Compensation Act, 1923
- (xx) The Maternity Benefit Act, 1961.
- (xxi) The Employers' Liability Act, 1938.
- (xxii) Workmen's compensation Act, 1923
- (xxiii) The Employment of Children Act, 1923
- (xxiv) Mines Rules, 1955
- (xxv) The Forest (Conservation) Act, 1980
- (xxvi) Mines (Rescue) Rules, 1985
- (xxvii) The Maternity Benefit (Mines) Rules, 1963
- (xxviii) Factories Act, 1948
- (xxix) Child Labor (Prohibition and Regulation) Act, 1986
- (xxx) Mineral Conservation and Development Rule 2017
- (xxxi) Water (Prevention and Control of Pollution) Act 1974
- (xxxii) Air (Prevention and Control of Pollution) Act 1981
- (xxxiii) Environment Protection Act 1986
- (xxxiv) Wildlife Protection Act 1972
- (xxxv) Forest Act 1927
- (xxxvi) Hazardous Waste Management (HWM) Rule 2016
- (xxxvii) Occupational Safety, Health and Working Conditions (Central) Rules, 2020
- (xxxviii) Occupational Safety, Health and Working Conditions Code, 2020
- (xxxix) Metalliferous Mines regulations 1961/2019
- (xl) Explosive Rules 2008
- (xli) Battery Waste Management Rule 2020
- (xlii) Solid Waste & E-Waste Management Rule 2016
- (xliii) Companies Act, 2013
- (xliv) Any/ all other relevant Acts and Rules guiding the development, operations, and maintenance of the Mine, Wet Upgradation Plant and equipment deployed.



## **Article 3. Appointment of MDO**

### **3.1. Appointment of MDO**

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, IREL hereby appoints the MDO, to undertake all activities for development of Brahmagiri mine, commissioning of WUP, excavation of Mineral Sand, processing of the mined Mineral Sand in WUP for production of HM Concentrate and delivery of HM Concentrate at the Delivery Point for the Contract Period or till such period IREL approves the extension of contract period or till the exhaustion of reserves, whichever is earlier.
- 3.1.2 Contract Period shall be commencing from the Commencement Date. MDO hereby accepts such appointment and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- (a) Provided that, not later than 1 (one) year before the expiry of the Contract Period, the Parties may, with mutual agreement, extend the Contract Period for such further duration and on such terms and conditions as the Parties may mutually agree (“**Extended Contract Period**”). The Contract Period can be extended by a period of 5 years. Provided that, unless otherwise agreed by the Parties, the terms of this Agreement shall continue to apply to any Extended Contract Period, subject to Clause 9.1.1.
- (b) Provided further that, the Contract Period shall be deemed to have expired in the event the Parties mutually agree that the contractual obligations and period of Agreement is completed.
- 3.1.3 Subject to and in accordance with the provisions of this Agreement, the MDO shall be obliged or entitled (as the case may be) to:
- (a) access to the Mine for the purpose of, and to the extent, conferred by the provisions of this Agreement;
- (b) prepare and procure approval of the Mining Plan including the plan for mine closure;
- (c) Update the scheme of mining every 5 years.
- (d) finance and develop and operate the Mines and the WUP, so as to excavate Mineral Sand and produce HM Concentrate as per the terms and conditions of this MSA on a sustainable basis, during the Contract Period, in accordance with the Approved Mining Plan;
- (e) obtain the Applicable Permits;
- (f) manage, operate and maintain the Mines in accordance with this Agreement;
- (g) safety of the Mines and WUP
- (h) excavation of Mineral Sand in accordance with the provisions of this Agreement, including backfilling of tailings and production of HM Concentrate;
- (i) set-up, design and construct the WUP as per the Approved Mining Plan. Moreover, allied infrastructure facilities which are required for evacuation of HM Concentrate and tailings from the project shall be constructed/ arranged by MDO.
- (j) operation and maintenance of the WUP.





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- (k) operation and maintenance of the stockyard for stocking and weighing of Mineral Sand / HM Concentrate.
- (l) transportation of the mined Mineral Sand to the WUP.
- (m) perform its obligations related to land acquisition (if required), consent from private patta landowners and R&R including construction of R&R houses (if required) on behalf of IREL for carrying out Mineral Sand production and beneficiation of Mineral Sand from the Project;
- (n) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the MDO under this Agreement; and neither assign, mortgage, transfer or sub-let or create any lien or Encumbrance on this Agreement, or on the whole or any part of the Mines, nor sell, transfer, exchange, lease, encumber or part possession thereof, save and except as expressly permitted by this Agreement. It is hereby clarified that any assignment, transfer or sub-let of, or creation of any lien or Encumbrance on, this Agreement or on the whole or any part of the Mines as may be expressly permitted under this Agreement, shall be subject to the prior written consent of the IREL, and in case, the permission sought for consent is withheld by the IREL for any reason, then the same cannot be deemed to be a consent by the IREL.
- (o) perform and fulfill all of the MDO's obligations for facilitation of land acquisition (if required), physical possession of land and obtaining statutory clearances and implement provisions thereof in accordance with the provisions of this Agreement on behalf of IREL;
- (p) Any other work, as may be assigned by IREL from time to time during the contract period, incidental to development & operations of Brahmagiri mine and construction & operation of WUP;
- (q) Maintain book of accounts for monthly and annual returns.



## **Article 4. Conditions Precedent**

### **4.1. Conditions Precedent**

- 4.1.1 Save and except as provided in Article 4, sub-clauses (b) and (c) of Clause 6.1.2 and Clause 5.14, the rights of the MDO and the obligations of IREL under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").
- 4.1.2 The MDO as authorized representative of IREL and on its behalf shall satisfy the following Conditions Precedent within a period not exceeding 730 (Seven hundred and Thirty days) from the date of signing of this Agreement:
- (a) Prepare and procure approval of Mining Plan from Atomic Minerals Directorate, for Exploration and Research, under the Applicable Laws.
  - (b) Procure all statutory clearances as required for commencement of operations. The list of necessary clearances has been specified in Schedule A.
  - (c) Procure consent from private landowners, take physical possession of the such consented land and ensure completion of all activities as specified in Schedule G for the private land within the Mining Lease area required for the first year of mining as per the Approved Mining Plan.
  - (d) Procure consent from District Administration, take physical possession of such consented land and ensure completion of all activities as specified in Schedule G for the government land within the Mining Lease area required for the first year of mining as per the Approved Mining Plan.
  - (e) Finalize with IREL the particulars of land acquisition (if required for the Project) and on behalf of IREL, undertake complete acquisition of such land which would be required for the first year of operations from Commercial Operation Date.
  - (f) Complete Rehabilitation & Resettlement of PAFs (if required for the Project) which shall be displaced from the land, consented and acquired for the first year of operations from Commercial Operation Date.
- 4.1.3 Provided that upon request in writing either in physical form or in electronic form (email) by the MDO, IREL may, in its discretion, waive any of the Conditions Precedent set forth in this Clauses 4.1.2 or grant any extension of time from the due date for fulfillment thereof, as the case may be. For the avoidance of doubt, IREL may, in its sole discretion, grant any waiver of the Conditions Precedent set forth in the Clauses 4.1.2 with such conditions as it may deem fit.
- 4.1.4 MDO shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable co-operation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The MDO shall notify IREL in writing either in physical form or in electronic form (email) at least once in a month on the progress made in satisfying the Conditions Precedent. The MDO shall promptly inform IREL when any Condition Precedent for which it is responsible has been satisfied.
- 4.1.6 Immediately upon the fulfillment or waiver of all the Conditions Precedent required to be fulfilled by the MDO under Clauses 4.1.2, the MDO shall deliver to IREL, a notice in writing either in physical form or in electronic form (email) confirming that the Conditions Precedent set out in Clauses 4.1.2 as the case may be, have been satisfied and/or



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waived (in accordance with the terms hereof), together with all necessary supporting documentation to support the statements in such notice (each a "**CP Satisfaction Notice**"). Upon receipt of the CP Satisfaction Notice from the MDO, IREL may verify the same. Upon IREL being satisfied that the Conditions Precedents have been fully satisfied or waived in accordance with the Agreement, it shall certify and declare the satisfaction (or waiver) of all Conditions Precedent and the date of such certification and declaration shall be the "**Appointed Date**".

### 4.2. **Damages for delay by in Fulfilling Conditions Precedent by the MDO**

4.2.1. In the event that, the MDO does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clauses 4.1.2 within the period specified in respect thereof (including any extension of time granted) the MDO shall pay to IREL, Damages calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each week's delay until the fulfillment of such Conditions Precedent. Provided, however, that upon the Damages payable hereunder reaching to 30% of the value of Performance Security, IREL may, in its sole discretion, terminate the Agreement. Provided further that in the event,

- (a) Conditions Precedent set forth in Clauses 4.1.2 are not satisfied within the period specified in respect thereof due to reasons solely attributable to IREL, and/or
- (b) the delay has not occurred as a result of breach by the MDO

IREL may extend the time period for fulfillment of such Condition's Precedent based on mutual discussion and agreement with the MDO. IREL shall provide all reasonable assistance as may be required to ensure fulfillment of the Condition's Precedent specified in Clauses 4.1.2 above expeditiously.

### 4.3. **Commencement of Contract period**

The Contract Period shall commence from the Commencement Date.

### 4.4. **Termination upon delay**

Without prejudice to the provisions of Clauses 4.2 and Article 9, and unless otherwise agreed between the Parties, in the event the Appointed Date does not occur, for any reason whatsoever, at the end of the third anniversary from the Commencement Date or such extended period as maybe agreed between the Parties in accordance with this Agreement, IREL shall at its sole discretion be entitled to terminate this Agreement forthwith and all rights, privileges, claims and entitlements of the MDO under or arising out of this Agreement shall cease to have effect on and from the date of the notice issued by IREL for terminating the Agreement. Further, the Parties agree that in the event such delay in occurrence of the Appointed Date is due to reasons attributable to MDO, IREL shall, without affecting its rights under Clause 4.2.1. and 4.4, be entitled to appropriate the Performance Security as Damages thereof.



## **Article 5. MDO Obligations**

### **5.1. General Obligations**

- 5.1.1 Subject to, and on the terms and conditions of this Agreement, the MDO shall, at its own cost and expense, procure, finance for, and undertake all the activities related to the design, engineering, procurement, construction, development, operation, and maintenance of the Mines and WUP for excavation of Mineral Sand and its upgradation in the WUP, Delivery of HM Concentrate at the designated delivery point, and shall observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The MDO shall comply with all Applicable Laws and Applicable Permits in the performance of its obligations under this Agreement.
- a. Compliance with the terms and conditions of the Mining Lease and the Approvals relating to the Site and hold harmless IREL from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violations of such Applicable Laws by the MDO or its officials or personnel including the subcontractors and their personnel;
  - b. Comply with all the relevant directions and guidelines issued by any Government Instrumentality and relevant Indian standards in respect of the Site or the performance of the mining services and its other obligations under this Agreement including any direction issued by IREL's Mine Manager; and
  - c. Promptly give the IREL's representative/IREL's Mine manager copies of all relevant documents issued by or presented to any Authority.
  - d. The MDO shall ensure compliance in all respects with all Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services or on behalf of the MDO, including all laws relating to wages, hours of work, employment standards, collective bargaining, discrimination, civil rights, safety and health, compensation etc.
- 5.1.3 The MDO shall discharge its obligations in accordance with Best industry practices and as a reasonable and prudent person.
- 5.1.4 The MDO shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, Clearances and Approvals obtain and keep in force and effect such Applicable Permits, Clearances and Approvals in conformity with Applicable Laws;
  - b. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the development & operations of Brahmagiri Mine and construction& operation of WUP;
  - c. procure issuance of all necessary and required clearances, approvals, permits and licenses if not available;
  - d. maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement and shall ensure that in no way does it impacts other businesses of IREL;



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- e. comply with, ensure and procure that its contractors, and sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the MDO's obligations under this Agreement, including but not limited to compliance with Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services to or on behalf of the MDO;
- f. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement;
- g. ensure that all equipment and facilities at the Mine and WUP are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Best industry practices;
- h. support, cooperate with and facilitate IREL in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- i. take all reasonable precautions for the prevention of accidents at the Mine and WUP and provide all reasonable assistance and emergency medical aid including 24 hours a day ambulance service to accident victims;
- j. establish a fully-fledged office equipped with computers, e-mail, telephone at the Site, including communication facilities for day-to-day communication and for data transfer from one point to another;
- k. submit soft copies of all data relating to quantity of Mineral Sand excavated, quantity of HM Concentrate delivered to IREL, recovery from the WUP, percentage content of Heavy Minerals in the Tailings, documents of equipment, plant & machinery installed at mines and plant, and furnish various returns/ statements to IREL, as may be required by IREL from time to time;
- l. shifting of all existing public and private infrastructure and diversion of road and its maintenance and repairs from within and outside the Mine Lease Boundary;
- m. set-up and maintain a well-organized management having experienced and qualified personnel for efficient administration and supervision of various activities to be undertaken as per the Agreement and shall employ all personnel as may be required by the IREL or as per Applicable Law. However, IREL shall also deploy the requisite statutory manpower for administrative purpose;
- n. abide by all instructions and directions issued by IREL, any Government Instrumentality or statutory authorities in relation to the performance of its obligations under this Agreement;
- o. facilitation in obtaining consent from owners of private land within the Mining Lease area and in acquisition of land and resettlement & rehabilitation works;
- p. obtaining the right of way for transportation of Mineral Sand and HM Concentrate
- q. construction of electrical lines, water pipelines or any other infrastructure activity;
- r. necessary infrastructure to draw water either from surface/ underground
- s. Comply and fulfill in welfare and corporate social responsibility activities/ obligations'
- t. transfer the Project Assets to IREL upon Termination of this Agreement, in accordance with the provisions thereof;
- u. compliance for applicable labor law, minimum wages act, gratuity act;
- v. construction and maintenance of approach roads, connecting the main state highway with the mining premises to be utilized for transportation of equipment, consumables or any other miscellaneous works;
- w. all other planning, development, operation, and maintenance activities related to the Project as stated in the Scope of the Project;



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- x. agree to be liable for all the residuary obligations relating to the Project if not specifically stated herein in the scope of any of the parties and undertake to fulfil such residuary obligations at its own risk and cost;

### 5.2. ***Obligations to Project Agreements***

- 5.2.1 It is expressly agreed that the MDO shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the MDO from its obligations or liability hereunder.
- 5.2.2 The MDO shall submit to IREL, the drafts of all Project Agreements (for the purpose of this clause, Project Agreement does not include this Agreement) or any amendments or replacements thereto, for its review and comments, and IREL shall have the right but not the obligation to undertake such review and provide its comments, if any, to the MDO within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the MDO shall submit to IREL a true copy thereof, duly attested by the managing director/ whole time director of the MDO, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of IREL to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by IREL. Any failure on part of IREL to review, comment and/or convey its observations on any document shall not relieve the MDO of its obligations and liabilities under this Agreement in any manner nor shall IREL be liable for the same in any manner whatsoever.
- 5.2.3 Notwithstanding anything to the contrary contained in this Agreement, the MDO shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Site, as the case may be, without prior written approval of IREL, which IREL may, in its discretion, deny if such sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of IREL under this Agreement or under Applicable Laws.
- 5.2.4 The MDO shall ensure that each of the Project Agreements contain provisions that entitle IREL to step into such agreement, in its sole discretion, in substitution of the MDO in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event IREL does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on IREL and the Covenant shall expressly provide for such eventuality. The MDO expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to IREL an acknowledgment and undertaking, in a form acceptable to IREL, from the counterparty(s) of each of the Project Agreements, where under such counterparty(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from IREL in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the MDO agrees and acknowledges that if the MDO further sub-contracts few of its work like O&M, then selection or replacement of such sub-contractor shall be subject to the prior approval of IREL and the decision of IREL in this behalf being final, conclusive and binding on the MDO, and the MDO undertakes that it shall not give effect to any such selection or



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contract without prior approval of IREL. It is also agreed that IREL shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the MDO or its Contractors from any liability or obligation under this Agreement.

### 5.3. ***Obligations to Change in Ownership***

5.3.1 The MDO shall not undertake or permit any Change in Ownership in it except with the prior written approval of IREL. The MDO shall not undertake or permit any Change in Ownership to an acquirer which is not a legally registered entity in India.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement and subject to Clause 5.3.1, the MDO agrees and acknowledges that the following events

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the MDO either in one tranche or in a series of acquisitions; or
- (b) acquisition of any control directly or indirectly of the board of directors of the MDO by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a “**Change in Ownership**” requiring prior approval of IREL. The decision of IREL in this regard shall be final, conclusive and binding on the MDO, and MDO/ Selected Bidder undertakes that it shall not give effect to any such acquisition of Equity or change in control of the board of directors of the MDO without such prior approval of IREL. It is also agreed that IREL shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the MDO from any liability or obligation under this Agreement.

5.3.3 For the purposes of the Clause 5.3.1 and 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the MDO;
- (b) the indirect transfer of control or legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies which results in the acquirer acquiring control over the shares or voting rights of shares of the MDO; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company, holding directly or through one or more companies, the Equity of the MDO, not less than half of the directors on the board of directors of the MDO or of any company, directly or indirectly, having ultimate control of 25% (twenty five per cent) or more of the Equity of the MDO shall constitute acquisition of control, directly or indirectly, of the board of directors of the MDO.

5.3.4 Notwithstanding anything contained above, in case the Selected Bidder is a Sole Bidding entity, and it forms a Special Purpose Vehicle to sign the Agreement to act as the MDO, it shall hold 100% of the equity in the MDO SPV till the achievement of Peak Rated Capacity of the Mine and thereafter at least 51% of equity in the SPV during the Contract Period. Any change in the shareholding of the SPV, can be made only after obtaining the prior written consent of IREL. Notwithstanding the formation of the SPV, the Selected





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Bidder shall be jointly and severally responsible with the SPV for performance of the obligations contemplated under the Agreement.

5.3.5 Notwithstanding anything contained above, in case the Agreement is signed by JV of winning Bidding Consortium, Lead Member of the Consortium must maintain minimum 51% equity at all times in the JVC and the Other Member shall have to maintain at least 26% of the equity in JVC for at least till 10 years from the Appointed Date as mentioned in this MSA. Any change in the shareholding of the members of the Consortium shall require the prior written consent of IREL.

5.3.6 Notwithstanding anything to the contrary contained herein, it is hereby expressly agreed by the MDO that no change shall be effected in its shareholding pattern or beneficial ownership or otherwise so as to make it ineligible in terms of the General Financial Rules, 2017 read with the OM no. F.No.6/18/2019-PPD dated 23 July 2020 issued by the Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (as amended or supplemented from time to time) and the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued there under (as amended or supplemented from time to time) to undertake and perform its obligations hereunder.

5.3.7 The MDO understands and agrees that the prior written approval of IREL in case of Change in Ownership as described in Clause 5.3.1 and 5.3.2 is mandatory condition and if the MDO is found to be in violation of the same then IREL may exercise its right to terminate this Agreement and also forfeit the Performance Security to make good, any of its losses and damages caused due to such Change in Ownership.

### 5.4. ***Obligations to employment of foreign nationals***

The MDO acknowledges, agrees and undertakes that employment of foreign personnel by the MDO and/or its Contractors and their subcontractors shall be subject to grant of requisite Applicable Permits under Applicable Laws, including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the MDO and, notwithstanding anything to the contrary contained in this Agreement, refusal of, or inability to obtain any such Applicable Permits by the MDO or any of its Contractors or subcontractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the MDO from the performance and discharge of its obligations and liabilities under this Agreement.

### 5.5. ***Obligations to employment of trained personnel***

5.5.1 The MDO shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the requirements of Applicable Laws and Best industry practices.

5.5.2 The MDO shall ensure that the scope of work and its obligations are performed by, and under the supervision of appropriately qualified, experienced and skilled personnel.

5.5.3 The representative of IREL may, by written notice require the MDO to remove from the Mine, deny access/ entry to the Mine or from any activity connected with this Agreement, any person employed/ engaged by the MDO, including any sub-contractor, in connection with the provision of this Agreement who, in the reasonable opinion of the IREL's representative, is guilty of misconduct or is incompetent or negligent or who works in an unsafe manner that is likely to prejudice the safe operation at Mines and Concentrator Plant.





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### **5.6. Obligations to Taxes and duties**

- 5.6.1 The MDO Fees mentioned in Article 20 shall comprise of its service fee inclusive of its expenses & margin and all duties, taxes and levies, shall be paid in addition to the MDO Fees as may be applicable. While the basic price will constitute the consideration under the Contract, the payment of GST thereon, will be paid in addition to the MDO Fee.

### **5.7. Obligations to Owner**

Subject to the provisions of this Agreement, the IREL shall be the Owner of the Mines for the purposes of the Mines Act, 1952 and other Applicable Laws. All the responsibilities and duties of the Owner of the Mines in conformity with the provisions of the Applicable Laws, shall be performed by the MDO. For the avoidance of doubt and without prejudice to MDO's obligation to comply with Applicable Laws, the Parties expressly acknowledge and agree that for discharging its obligations under the Mines Act, 1952 and other Applicable Laws, IREL may from time to time give directions to the MDO for compliance with the provisions of the Mines Act, 1952 and other Applicable Laws and the MDO agrees and undertakes to abide by such directions at all times.

### **5.8. Rights and Obligations to the Manager and employees**

- 5.8.1 IREL as the owner of the mine, shall at its own costs appoint the statutory manpower (including Mine Manager) of the mine as per Applicable Laws including in relation to the qualification requirements set out under the Mines Act, 1952, the Metalliferous Mines Regulation, 2019, directions by the Director General of Mines Safety (DGMS) and other Applicable acts, laws, and regulations. Apart from the statutory manpower of the mine deployed by IREL, the MDO at its own cost, shall also, specifically make appointment for each of the statutory manpower positions i.e., deploy persons holding requisite statutory competency certificates issued by the concerned statutory authorities for conducting different mining activities/ operations safely abiding by the relevant laws and statute.
- 5.8.2 Notwithstanding the appointment of officials by IREL, as per Clause 5.8.1, the MDO and its personnel shall continue to be responsible and liable for compliance with Applicable Laws and this Agreement and in any event, the liability and responsibilities of the MDO shall be no less than that of the Mine Manager.
- 5.8.3 All the employees and manpower engaged by MDO shall be competent as per the Mines Act 1952, the Metalliferous Mines Regulation, 2019, Factories Act, 1948, as may be directed by DGMS from time to time and other Applicable Laws for discharging their duties in safe and efficient manner. Any commercial, financial, legal or other implication arising out of such acts and appointments shall be the responsibility of MDO. MDO shall be responsible for payment of wages of manpower in accordance with Applicable Laws and in consonance with the High-Power Committee's recommendation.

### **5.9. Obligations to reporting requirements**

All information provided by the MDO to any Government Instrumentality as a part of its operating and reporting obligations under Applicable Laws shall also be provided by the MDO to IREL simultaneously. The MDO shall provide all information as may be required by IREL in connection with the Project. The MDO shall assist IREL by providing all information as may be asked by IREL for internal use or submission of reports as required to be submitted by IREL for statutory compliances.



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### 5.10. **Sole purpose of the MDO<sup>2</sup>**

The MDO having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the MDO or any of its subsidiaries shall not, except with the previous written consent of IREL, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

### 5.11. **Obligations to Mining Plan**

The MDO shall at all times conform to the provisions of the approved Mining Plan, or any modification thereof, as may be approved in accordance with Applicable Laws.

### 5.12. **Obligations to progressive restoration and handing over of lands**

5.12.1 The MDO shall, in conformity with approved Mining Plan along with the Progressive Mine Closure Plan, Applicable Laws and best industry practices, undertake progressive restoration, reclamation and rehabilitation activities of the Mine which includes backfilling of the mined-out area with the Tailings discharged from the WUP followed by compaction and plantation over such area, watering and maintenance of the plantation, at its sole cost and expense as per the Applicable Laws.

5.12.2 The MDO, on behalf of IREL shall facilitate in handing over the backfilled areas after plantation to the owners of the land including intimating the landowner through post and obtaining its acknowledgement. The concerned officer deputed by the State Government shall also be intimated of the same for updation of records.

### 5.13. **Obligations in relation to land leasing, land acquisition & R&R**

5.13.1 The land within the Mining Lease area shall be leased on short-term lease basis, in phased manner as per the requirement for every Financial Year. With respect to the same, the MDO shall undertake the following:

- (a) The MDO, in consultation with IREL and subject to the targeted quantity for every Financial Year shall prepare the schedule of land to be leased on short term for the respective Financial Year.
- (b) As per the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019, consent shall be taken from owners of private land within the Mining Lease for entering them for any operations. The MDO shall undertake all activities on behalf of IREL to obtain the required consent from owners of such private land for undertaking operations on them on short-term lease basis.
- (c) In case of government land, it shall assist IREL in obtaining consent from the District Administration for entering them and operating over such land(s)
- (d) As per the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019, IREL shall pay compensation for leasing of surface within the Mining Lease area, a compensation amount as determined by an officer deputed by the State Government for this purpose. The MDO shall liaison and co-ordinate on behalf of IREL with such officer and perform all activities on behalf of IREL for determination of such compensation amount.

The procedure for such short-term leasing of the land within the Mining Lease area, activities to be undertaken for determining the compensation amount has been described in Schedule G.

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<sup>2</sup> Applicable only if MDO has been incorporated as an SPV/JV. Otherwise to be deleted.



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- 5.13.2 The MDO through a written request shall intimate and discuss with IREL, if in its opinion land needs to be acquired for the Project. Based on instructions received from IREL with respect to land acquisition, the MDO shall undertake the following:
- (a) The MDO shall perform all activities on behalf of IREL related to the acquisition of the land required to perform activities within the Scope of the Project, including activities in relation to land acquisition proceedings, procuring physical possession of the acquired land, registration and mutation of land and other documentation in relation to the land acquired, and other associated activities.
  - (b) The MDO shall be primarily responsible for undertaking all R&R Obligations, including rehabilitating and resettling the PAFs related to such land including construction of R&R houses for them, as applicable under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016.
  - (c) R&R compensation as one-time allowance in lieu of house (if applicable under relevant R&R laws), if opted by any PAF shall be borne by the MDO as construction of R&R houses is under the scope of MDO (Clause 2.2.5 and Clause 5.13.2 (b) of this MSA).
  - (d) The MDO shall ensure that particulars of land acquisition, if required shall be finalized during the Development Period and It shall be the responsibility of MDO to assist IREL to complete land acquisition for this Project within 5 years from the Appointed Date.

### 5.14. ***Obligations in relation to public infrastructure***

MDO shall be primarily responsible for removal/diversion/relocation of any public infrastructure, including but not limited to roads, factories, etc. required to perform the Scope of the Project.

### 5.15. ***Obligations in relation to IREL's role***

IREL either directly or through its nominated agency shall monitor or supervise Mine development & operations of Brahmagiri Mine and construction & operation of WUP during the Contract Period. The MDO hereby acknowledges and accept to obey and follow any instruction in writing either in physical form or in electronic form (email) given by IREL related to its obligations of this Agreement.

### 5.16. ***Obligations relating to non-solicitation***

The MDO shall not, without the prior written consent of IREL, as the case may be, either directly or indirectly, on the IREL's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by IREL.

### 5.17. ***Role of the Selected Bidder***

The Selected Bidder undertakes and covenants that notwithstanding the formation of the MDO SPV in case of Selected Bidder being a Sole Bidder, it shall be jointly and severally responsible with the MDO for performance of all the obligations of the MDO under this Agreement. The Selected Bidder shall provide all support both technical and financial as may be required to ensure performance by the MDO of its obligations under the Agreement. The Selected Bidder shall ensure that the MDO is adequately funded so as to be able to implement the Project and operate and maintain the same in accordance with the provisions hereof and shall contribute funds to the extent required for this purpose. In case the Selected Bidder is a consortium, its members shall make all



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contributions towards the Project cost in their respective shareholding ratio. In the event of any default of the MDO, IREL shall have full recourse against the Selected Bidder and shall be entitled to claim from the Selected Bidder, all the loss and damage suffered by IREL and/or payable by the MDO as a consequence of the default or breach of the MDO of the terms of the Agreement or pursuant to the terms of the Agreement.

### **5.18. Obligations in relation to Power supply, Illumination and Communication**

- 5.18.1 The MDO will have to arrange power for carrying out its development and operations of Mines, WUP, and other equipment & infrastructure. Illumination and communication systems shall also be arranged by the MDO. The MDO shall meet its requirement by making arrangements for power supply, illumination and communication for the project at its own cost.
- 5.18.2 MDO shall ensure sufficient illumination and CCTV monitoring system at the location of mining operation, WUP and the Delivery Point(s) as per relevant safety norms and industry practice. Access to the CCTV monitoring system shall be provided to IREL offices for continuous monitoring.
- 5.18.3 Secondary source of power supply for emergency purposes shall be arranged by the MDO at Mines and WUP.
- 5.18.4 MDO shall employ energy saving and conservation initiatives, improvement in energy efficiency initiatives including adoption of renewable energy.
- 5.18.5 Radio frequency/ telephonic communication systems shall be installed, operated and maintained in the Mines, WUP and the Delivery Point(s) covering all working areas.

### **5.19. Obligation in relation to water supply**

- 5.19.1 The MDO shall make adequate arrangements for drawing water. The cost towards drawing of water shall be borne by the MDO. Maintenance and augmentation of all pumping installations, pipe network, distribution system, and electrical supply system shall be carried out by the MDO at his own cost.
- 5.19.2 The MDO shall make necessary arrangements for sufficient supply of cool and wholesome drinking water as per the provisions of Applicable Law. Water recycling has to be done by the MDO to conserve water by making best efforts.

### **5.20. Obligation towards corporate social responsibility (CSR)**

If the MDO is liable to undertake CSR activities and incur expenditure on account of such CSR activities in accordance with the Applicable Laws, then the MDO shall prepare a CSR policy and plan, in accordance with which the MDO shall discharge its obligations towards CSR. Such CSR policy and plan shall be duly approved by IREL. In addition, the MDO shall comply with the requirements in relation to the CSR as stipulated under the Applicable Laws, including Section 135 of the Companies Act, 2013 read with the rules made there under.

The MDO shall also undertake all applicable CER activities in accordance with the guidelines published by the MOEF&CC or any other activity specified by MOEF&CC in the clearances granted by it for the Project.



## **Article 6. Obligations and Rights of IREL**

### **6.1. Obligations of IREL**

- 6.1.1 Except as otherwise provided in this Agreement, IREL shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 IREL agrees to provide support to the MDO and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) permit access to the Mine;
  - (b) furnish extracts of the approved Detailed Project Report with technical details which are relevant to deployment of equipment and construction of WUP.
  - (c) if required, depute its representatives for participation in public hearings and attending the meetings with the officials and representatives of the Ministry of Environment, Forests and Climate Change, Government of India for the purposes of procuring environmental and forest clearance in accordance with Applicable Laws;
  - (d) upon written request from the MDO, may provide reasonable assistance to the MDO in obtaining access to necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the MDO than those generally available to commercial customers receiving substantially equivalent services;
  - (e) upon written request from the MDO, provide reasonable support and assistance to the MDO only with respect to coordination with government bodies for procuring Applicable Permits required by the MDO for performance of its obligations under this Agreement;
  - (f) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
  - (g) support and cooperate with and facilitate the MDO in the implementation and operation of the Project in accordance with and subject to the provisions of this Agreement.
  - (h) the obligation of the IREL for tax compliance including GST is enumerated in Clause 5.6 of this Agreement.

### **6.2. Obligations in relation to land leasing, land acquisition, statutory clearances & R&R**

- 6.2.1. IREL shall consult the MDO in preparation of the land schedule for surface within the Mining Lease area which is to be leased on temporary basis for each Financial Year based on the targeted quantity for that respective Financial Year. Upon receipt of such land schedule, IREL shall finalize the same with changes if required. Procedure for such land leasing has been described in Schedule G.
- 6.2.2. As the Owner, a representative from IREL shall be undertake its responsibilities as mentioned in Schedule G for determining the compensation amount for leasing of surface within the Mining Lease area, in a particular Financial Year. For avoidance of doubt, notwithstanding anything, the MDO shall undertake all activities to assist IREL in activities required for determining the compensation amount.
- 6.2.3. Upon written request from the MDO, IREL shall discuss with MDO during the Development Period, upon the particulars of land acquisition for the Project. IREL on



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being of the opinion that such acquisition is necessary for the Project, shall convey its approval for land acquisition within three months from the date of such discussion.

6.2.4. IREL shall make the following payments regarding compensation to surface rights owners, payment for land acquisition and R&R compensation which shall be limited to: -

- (a) Payment towards compensation for leasing of surface within the Mining Lease area in accordance with the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019 shall be directly made by IREL. This shall include the annual lease rent for the surface, value of vegetation over such surface, compensation amount for any damage which is likely to arise from the operation and any other payment related to the same.
- (b) Payments for acquisition of either private, government or forest land(only if needed), shall be directly made by IREL.
- (c) Payments as compensation for R&R compensation to PAFs with respect to lands to be acquired,shall be directly made by IREL,as applicable under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016. However, as mentioned in Clause 5.13.2 ©, the payment of one-time allowance in lieu of housing provision (if applicable under relevant R&R laws) if opted by any PAF shall be borne the MDO itself. IREL shall pay such amount to the concerned Government Instrumentality after MDO transfers the same to IREL.
- (d) Any other statutory payment to Government Instrumentalities, State/Central Government related to clearances, approvals, licenses and permits, including the approval for Mining Plan shall be made directly by IREL.
- (e) Statutory payments including payments towards Royalty, NMET, DMF, and any other cess or statutory taxes for mining from the Mine Lease shall be directly made by IREL.

The above-mentioned payments in this Clause 6.2.4, to be made by IREL to the Authority, Government Instrumentalities, State/Central Government shall be referred to as “**Documented Payment**”.

### 6.3. ***IREL's Rights***

IREL either directly or through its nominated agency shall have the right to monitor or supervise development & operations of Brahmagiri Mine and construction& operation of WUP during the Contract Period. The MDO hereby acknowledges and accepts to obey and follow any instruction given in written either in physical form or in electronic form (email), by IREL related to its obligations of this Agreement.

The MDO accepts and acknowledge the rights of IREL including but not limited to, detailed as follows and shall adhere to oblige to these:

- (a) Assistance and guidance in CSR activities, if any.
- (b) Assistance in deployment and engagement of security personnel for Mine safety.
- (c) Supervision and monitoring of mining and WUP related activities.
- (d) Supervision and monitoring of excavation of Mineral Sand as per Approved Mining Plan and its transportation till WUP.
- (e) Supervision and monitoring of processing of Mineral Sand in WUP.
- (f) Supervision and monitoring of transportation of HM Concentrate output from WUP to the



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Delivery Point(s).

- (g) Supervision and monitoring of backfilling of tailings discharged from WUP, in the mined-out area.
- (h) Supervision and monitoring of weighment and sampling activities
- (i) Supervision of adherence to the Mine and WUP safety measures as per relevant acts and/or rules.
- (j) Supervision and monitoring of preparation and implementation of Approved Mining Plan and Mine Closure Plan and persuasion of the approval to the respective authorities.
- (k) Provide administrative support to MDO in procurement of consent from owners of private land within the Mining Lease area and in activities related to demarcation and land assessment of such land
- (l) Provide administrative support to MDO in land acquisition, if necessary.
- (m) Certify the monthly quantity of Mineral Sand excavated, quantity of HM Concentrate delivered to IREL, Grade of HM Concentrate after submission of data by MDO.

It is hereby clarified that any right not utilized by IREL shall not absolve MDO from any of its responsibilities and/or obligations which are to be fulfilled by MDO under this Agreement.

MDO shall comply with the obligations of the IREL as owner of the mine under all the Applicable acts.





## **Article 7. Representation and Warranties**

### **7.1. Representations and warranties of the MDO**

The MDO represents and warrants to IREL that:

- 7.1.1 it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- 7.1.2 it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- 7.1.3 the ultimate beneficial owner(s) of the MDO do not belong to any country which shares land border with India. For the purposes of this sub clause determination of 'beneficial ownership' shall be made in accordance with the Foreign Exchange Management Act, 1999 read with all rules, regulations, circulars, guidelines and notifications issued there under (as amended from time to time);
- 7.1.4 it has the financial standing and capacity to comply with its obligations under this Agreement and to undertake the Project in accordance with the terms of this Agreement;
- 7.1.5 this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;
- 7.1.6 it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under, including any obligation, liability or responsibility hereunder;
- 7.1.7 the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- 7.1.8 the execution, delivery and performance of this Agreement will not conflict with, or, result in the breach of, or, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- 7.1.9 there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- 7.1.10 it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which results in or may result in a Material Adverse Effect and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- 7.1.11 it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;
- 7.1.12 it has not been debarred by any State/ Central Government or Public Sector Undertakings from participating in tender for MDO or mining related services and such blacklisting is not enforced as on date of submission of Proposal;





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- 7.1.13 there is no order of conviction by any court of law for offenses involving corrupt and fraudulent practices including moral turpitude in relation to the business dealing with the Government of India or any other Government and such conviction should not be in continuance as on the date of submission of Proposal;
- 7.1.14 {the Selected Bidder/ each Consortium member} have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- 7.1.15 {the Selected Bidder/ each Consortium member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- 7.1.16 no representation or warranty by it contained herein or in any other document furnished by it to IREL or to any Government Instrumentality in relation to Applicable Permits contains or contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- 7.1.17 all information provided by the Selected Bidder in response to the Tender Document, is true and accurate in all material respects;
- 7.1.18 all undertakings and obligations of the Selected Bidder and the MDO arising from the Request for Proposal and Tender Document or otherwise shall be binding on the MDO as if they form part of this Agreement, except as modified pursuant to the terms of this Agreement;
- 7.1.19 all its rights and interests in the Mines and Stockyard (s) shall pass to and vest in IREL on the Transfer Date free and clear of all liens, claims and encumbrances, without any further act or deed on its part or that of IREL , and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- 7.1.20 no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of IREL in connection therewith.
- 7.1.21 that the finances used for the mine operation activities under this Agreement are not proceeds of crime as described under Section 2(u) of the Prevention of Money laundering Act, 2002;

### **7.2. Representations and warranties of IREL**

IREL represents and warrants to the MDO that:

- 7.2.1 it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement and exercise its rights and perform its obligations under this Agreement;
- 7.2.2 it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- 7.2.3 it has the financial standing and capacity to perform its obligations under this Agreement;
- 7.2.4 this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;



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7.2.5 it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in a Material Adverse Effect; and

7.2.6 it has complied with Applicable Laws in all material respects.

### 7.3. **Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.



## **Article 8. Disclaimer**

### **8.1. Disclaimer**

- 8.1.1 The MDO acknowledges that prior to the execution of this Agreement, the MDO has, after a complete and careful examination, made an independent evaluation of the Tender Document, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by IREL or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. IREL makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumption, statement or information provided by it and the MDO confirms that it shall have no claim whatsoever against IREL in this regard.
- 8.1.2 The MDO acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that IREL shall not be liable for the same in any manner whatsoever to the MDO, the Selected Bidder and its Associate or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided however, that a failure on part of IREL to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of IREL contained in Clause 8.1.1 and shall not in any manner shift to IREL any risks assumed by the MDO pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the MDO and IREL shall not be liable in any manner for such risks or the consequences thereof.



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# ***PART III***

# ***DEVELOPMENT AND OPERATIONS***



## **Article 9. Performance Security and Corporate Performance Guarantee**

### **9.1. Performance Security**

9.1.1 The MDO shall, as a security for the performance of its obligations under this Agreement, provide to IREL, no later than 30 (thirty) days from the date issue of Letter of Award (LOA) by IREL to them as the Successful Bidder, an irrevocable, unconditional, bank guarantee from a Nationalized Bank or Scheduled Commercial Bank (except Co-operative bank) for a sum equivalent to 10% of the Average Annual Contract Value.

Such Performance Security shall be in the form set forth in ScheduleC1 (the "**Performance Security**"); provided that, a replacement Performance Security shall be provided by the MDO to IREL in accordance with the following requirements and for the values set out below:

- (a) Further, within 30 (thirty) days of the start of each Accounting Year, the amount of the Performance Security shall be revised to a sum equivalent to 10% of the Average Annual Contract Value which shall be worked out on the basis of MDO Fee and its escalation every year as detailed in the Article 20.
- (b) For avoidance of any doubt, the value of Performance Security shall not be reduced anytime in the Contract Period.
- (c) The Performance Security shall be maintained and kept valid and effective and in full force until the date that occurs 90 (ninety) days after the expiry of the Contract Period.

Provided that, in the event that the initial Contract Period is extended pursuant to Clause 3.1.2 the MDO shall furnish a replacement Performance Security for an amount calculated on the basis of this Clause 9.1.1, no later than 90 (ninety) days prior to the commencement of the Extended Contract Period, and for each subsequent revision of the MDO Fee a replacement Performance Security shall be provided by the MDO to IREL, calculated and maintained in accordance with the provisions of Clause 9.1.1.

9.1.2 The MDO shall keep the Performance Security valid, effective and in full force for such value as is required to be maintained in accordance with Clause 9.1.1, until the date that occurs 90 (ninety) days after the expiry of the Contract Period/Extended Contract Period, if applicable.

### **9.2. Appropriation of Performance Security**

9.2.1 IREL shall, without prejudice to its other rights and remedies hereunder, in law or equity, have the unqualified right to encash and appropriate the Performance Security in part or in full, in the event of a failure or default of the MDO/Selected Bidder to comply with its/their obligations hereunder, including a MDO Default, the MDO's failure to meet any Condition Precedent, or the MDO's failure to pay any sums (including Damages) due hereunder.

9.2.2 The MDO shall, within 15 (fifteen) days from such encashment and appropriation of the Performance Security by IREL,

- (a) in case of a partial appropriation, restore the value of the Performance Security to the value as is required to be maintained pursuant to Clause 9.1.1, and,



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- (b) in case of a full appropriation, provide a fresh Performance Security in accordance with the requirements of Clause 9.1.1, failing which IREL shall be entitled to terminate this Agreement in accordance with Article 23.

### **9.3. References to Performance Security**

- 9.3.1 References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the MDO to IREL, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the MDO.
- 9.3.2 Until such time the Performance Security is provided by the MDO pursuant to Clause 9.1.1 and the same comes into effect, the Earnest Money Deposit submitted by it at the time of submission of its Bid, shall remain in force and effect and IREL shall be entitled to appropriate the Earnest Money Deposit for suspension of business relation with MDO under this Agreement; Notwithstanding anything to the contrary contained in this Agreement, in the event the Performance Security is not provided by the MDO within a period of 30 (thirty) days from the date of this Agreement, IREL may, at its option, appropriate the Earnest Money Deposit for suspension of business relation with the MDO and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the MDO under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the MDO, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **9.4. Corporate Performance Guarantee**

- 9.4.1 The Supporting Partner of Selected Bidder shall submit the Corporate Performance Guarantee, which shall be in the form of a bank guarantee from a Nationalized Bank or Scheduled Commercial Bank (except Co-operative bank), for an amount equivalent to the 01% (one per cent) of Average Annual Contract Value. The Corporate Performance Guarantee shall be submitted within 30 days from the date issue of Letter of Award (LOA) by IREL to the Successful Bidder in the format provided in Schedule C2.
- 9.4.2 Further, within 30 (thirty) days of the start of each Accounting Year, the amount of the Corporate Performance Guarantee shall be revised to a sum equivalent to 01% (one per cent) of the Average Annual Contract Value which shall be worked out on the basis of MDO Fee and its escalation every year as detailed in the Article 20;
- 9.4.3 For avoidance of any doubt, the value of Corporate Performance Guarantee shall not be reduced anytime in the Contract Period.
- 9.4.4 The Corporate Performance Guarantee shall be valid, effective and in full force for such value as is required to be maintained in this clause, until the date that occurs 90 (ninety) days after the achievement of Peak Rated Capacity of Mine as certified by IREL. For avoidance of any doubt, the value of Corporate Performance Guarantee shall not be reduced in its period of applicability.
- 9.4.5 IREL shall also be entitled to invoke the Corporate Performance Guarantee in part or in full, in the event of a failure or default of the MDO to comply with its obligations hereunder, including a MDO Default, the MDO's failure to meet any Condition Precedent, or the MDO's failure to pay any sums (including Damages) due hereunder.



## **Article 10. Access to the Site**

### **10.1. The Site**

10.1.1 The Site shall be developed in the manner as required in the Approved Mining Plan. The fixed infrastructure shall comprise the land on which the Stockyard(s), Project Facilities are to be constructed and shall include a mining area sufficient for excavation of Mineral Sand and dumping of tailings discharged from WUP, in accordance with the Annual Production Programme and the terms of this Agreement, and in respect of which the access to Site shall be granted by the IREL to the MDO commencing from the Appointment Date.

### **10.2. Access to the Site**

10.2.1 During the Contract Period, IREL hereby grants to the MDO access to the Site for carrying out any surveys, investigations and soil tests that the MDO may deem necessary during the Contract Period, it being expressly agreed and understood that IREL shall have no liability whatsoever in respect of the surveys, investigations and tests carried out or work undertaken by the MDO on or about the Site pursuant thereof to in the event of Termination or otherwise.

10.2.2 In consideration of development & operations of Brahmagiri Mine and construction & operation of WUP, this Agreement and the covenants and warranties on the part of the MDO herein contained, IREL, in accordance with the terms and conditions set forth herein, hereby grants to the MDO, commencing from the Commencement Date, access to and permission to work or to use in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) within the Mining Lease area as per the lease deed (the "Site"), on an "as is where is" basis to develop, operate and maintain the said Site, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The MDO hereby acknowledges and accepts that the entire Site shall be and shall at all times remain the exclusive and absolute property of IREL and neither the MDO nor any persons claiming through or under the MDO shall have or shall at any time claim any property, right, title or interest in such Site.

10.2.3 The MDO shall perform its obligations in a manner that the existing roads, if any, along the boundary of the Mines, or an alternative thereof are open to traffic at all times during the Contract Period.

10.2.4 It is expressly agreed that all rights and permissions of the MDO granted hereunder in respect of the Site shall terminate automatically and forthwith, without the need for any action to be taken by IREL, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the MDO, the rights and permissions of the MDO in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 Subcontractors/vendors or any visitors of the MDO shall be given access to Site only with the prior approval of IREL.

### **10.3. Procurement of the Site**

10.3.1 Following the Appointed Date, MDO shall be responsible for taking over physical possession of the Site and undertaking the associated activities in respect thereof at its own cost and expense.

10.3.2 Until the Transfer Date, the MDO shall maintain around-the-clock vigil over the Site and shall ensure and procure that no encroachment there on takes place, and in the event of



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any encroachment or occupation on any part hereof, the MDO shall report such encroachment or occupation forthwith to IREL and undertake its removal at its own cost and expense.

10.3.3 The MDO shall, if so required, procure any additional land required for the development, operations and maintenance of the Mines and WUPor for any other infrastructure, in accordance with this Agreement and upon procurement, such land shall vest in IREL and form part of the Site; provided that MDO shall be responsible for acquiring such additional land in accordance with Applicable Laws, and other provisions of the Agreement and such additional land so acquired by the MDO on behalf of IREL hereunder shall be deemed form part of the Site.

### **10.4. Protection of Site from Encumbrances**

During the Contract Period, the MDO shall protect the Site and the Mines from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the MDO to place or create any Encumbrance or security interest over all or any part of the Site, the Mines and/or the Project Assets, or on any rights of the MDO therein or under this Agreement, save and except as otherwise expressly permitted in this Agreement.

### **10.5. Special / temporary right of way**

The MDO shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The MDO shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Mines and the performance of its obligations under this Agreement.

### **10.6. Geological and archaeological finds**

Save and except as provided in this Agreement, it is expressly agreed that mining, geological or archaeological rights do not form part of the permission granted to the MDO under this Agreement and the MDO hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to IREL or the concerned Government Instrumentality. The MDO shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform IREL forthwith of the discovery thereof and comply with such instructions as IREL or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the MDO hereunder shall be not reimbursed by IREL.

### **10.7. Employment of PAFs**

No employment to any member of the PAFs shall be given by the IREL.

### **10.8. Existing infrastructural assets of the Site including the Mines**

The handed over assets may be utilized by the MDO, solely for the Project and without any additional payment to IREL, subject to the condition that a prior written notice regarding such utilization is provided by the MDO to the IREL. In this regard, it is hereby clarified that:

- a) the IREL shall continue to be the owner of such infrastructure or project facilities and any such utilization by the Mine Operator shall not create any right/interest in its favour;
- b) and pursuant to such utilization, the Mine Operator shall be responsible for compliance with Applicable Laws and maintenance (including continuation of validity of any Applicable Permit (if any) of such infrastructure and/or project facilities.





## **Article 11. Utilities, Roads and Trees**

### **11.1. Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the MDO shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the approval of the controlling body of that road or right of way, and IREL shall, upon written request from the MDO, initiate and undertake at the MDO's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

### **11.2. Shifting of obstructing utilities**

The MDO shall, subject to Applicable Laws and with assistance of IREL, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if, such utility causes or shall cause a Material Adverse Effect on the development, operation or maintenance of the Mines and WUP. The cost of such shifting shall be borne by the MDO.

### **11.3. New utilities**

If IREL requires the MDO shall provide access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities, but only if it does not affect the operations of the Mines and WUP. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the MDO of its obligation to develop, operate, and maintain the Mines and WUP in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

### **11.4. Felling of Trees**

During the execution of work, if the MDO requires any cutting or felling of trees to create a facility, MDO shall be responsible for obtaining prior permission from the concerned Authority for such felling of trees along with all other activities for procuring such permission on behalf of IREL.



## **Article 12. Construction Works and Commercial Operation Date**

### **12.1. Construction Works**

- 12.1.1 On or after the Appointed Date, the MDO shall design, finance and undertake all works for construction of WUP, deployment of Equipment and other machineries (“**Construction Works**”), in conformity with the Approved Mining Plan and Specification and Standards set forth in this Agreement.
- 12.1.2 The Construction Works shall be carried out in two different Phases of construction. The first Phase of Construction Works shall be undertaken for achieving 50% of Peak Rated Capacity. In the second Phase, further Equipment shall be deployed and WUP capacity shall be augmented for achieving 100% of Peak Rated Capacity.
- 12.1.3 MDO shall ensure that the manufacturing date of the Equipment deployed in a particular Phase of Construction Works, shall not be more than five years old from the day of commencement of the Phase.
- 12.1.4 The MDO shall deploy Equipment, construct plant(s) and units in conformity with the Specification and Standards as specified in the Approved Mining Plan, and as may be necessary for operation of the Mines in accordance with the provisions of this Agreement. Given below is the tentative list of Equipment to be deployed and plant(s) and other units to be constructed for this Project:
- (a) Wet Upgradation Plant(s)
  - (b) Dredger OR an excavator such as shovels / back-hoe / front end loaders or any similar equipment for excavation of Mineral Sand, as per the Approved Mining Plan.
  - (c) Pipelines with suction pump from dredger to Wet Upgradation Plant(s) OR a vehicle like tippers / dumpers / trucks for transportation of Mineral Sand into the WUP, as per the Approved Mining Plan.
  - (d) Pipelines with suction pump from Wet Upgradation Plant to the Delivery Point(s) for transportation of HM Concentrate. The MDO shall also arrange for tippers or dumpers or trucks for transportation of HM Concentrate in case of malfunctioning in the pipeline or suction pumps.
  - (e) “Mass-Flow meter” of suitable specification to be installed onto the pipeline, for measuring the quantity of Mineral Sand fed into the WUP, HM Concentrate output from WUP and tailings discharge from WUP.
  - (f) Weighbridge for measurement of quantity of Mineral Sand, when combination of excavator with any vehicle is used for excavation and transportation of excavated Mineral Sand to Wet Upgradation Plant.
  - (g) Portable office setups at the site of mining and WUP operation which can be moved along with the mining operation across the Mining Lease area.
  - (h) Pumping arrangement for backfilling of rejects from the Wet Upgradation back into the mined-out area.
  - (i) internal telecommunication infrastructure catering to basic telephony and other value-added telecom services.
  - (j) CCTV surveillance system.
  - (k) Power and water lines for supply.



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- (l) standby power back-up facility suitable to its requirements.
- (m) Any other Equipment or facility, required as per the the Approved Mining Plan and as may be necessary for the Project.

### **12.2. Obligations prior to commencement of construction**

Prior to commencement of Construction Works of the first Phase, the MDO shall undertake the following for the entire Construction Works i.e., for both the Phases of construction:

- 12.2.1 submit to IREL, its general arrangement, Drawings& Documents, and engineering designs for construction of the WUP and furnish a schedule for all the activities of Construction Works in accordance with the timelines specified in this Agreement;
- 12.2.2 undertake and perform all such acts, deeds and things as may be necessary or required before development of the Mines under and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits;
- 12.2.3 make its own arrangements for procurement of materials needed for the Mines under and in accordance with Applicable Laws and Applicable Permits;
- 12.2.4 The MDO shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project parameters, three copies each of all Drawings& Documents, as set forth in Schedule E for WUP to the IREL for review.
- 12.2.5 By submitting the Drawings& Documents for WUP for review to IREL, the MDO shall be deemed to have represented that it has determined and verified the design and engineering, including field construction criteria related thereto, which are in conformity with the Scope of Work, Specifications and Standards, Applicable Laws and Best industry practices.
- 12.2.6 Within 15 (fifteen) days of the receipt of the Drawings& Documents, IREL shall review the same and convey their observations to the MDO, which shall be communicated through IREL, with particular reference to their conformity or otherwise with the Scope of Work and the Specifications and Standards. The MDO shall not be obliged to await the observations of IREL on the Drawings& Documents submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works and/ or upgradation at its own discretion and risk.
- 12.2.7 If the aforesaid observations of IREL indicate that the Drawings & Documents are not in conformity with the Scope of Work or the Specifications and Standards, such Drawings& Documents shall be revised by the MDO and resubmitted to IREL for review. IREL shall give their observations, if any, within 7 (seven) days of receipt of the revised Drawings& Documents, and such observations shall be communicated to the MDO through IREL.
- 12.2.8 No review and/or observation of IREL, or their failure to review and/or convey their observations on any Drawings& Documents, shall neither relieve the MDO of its obligations and liabilities under this Agreement in any manner nor shall IREL be liable for the same in any manner.

### **12.3. Tests**

- 12.3.1 No later than 30 (thirty) days prior to the likely completion of Construction Works in a particular Phase, the MDO shall notify IREL of its intent to subject the Equipment and WUP to Tests. The date and time of each of the Tests shall be determined by IREL in



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consultation with the MDO, and IREL may designate its EIC to witness the Tests. The MDO shall provide such assistance as IREL may reasonably require for conducting the Tests.

- 12.3.2 All Tests shall be conducted in accordance with Schedule-Dat the cost and expense of the MDO. IREL shall observe, monitor and review the results of the Tests to determine compliance of the Mines with Specifications and Standards and WUP with Specifications and Standards and if it is reasonably anticipated or determined by IREL during the course of any Test that the performance of any Construction Works or Equipment does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the MDO to remedy and rectify the defects or deficiencies. Upon completion of each Test, the MDO shall provide to IREL copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that IREL may require the MDO to carry out or cause to be carried out additional Tests, in accordance with Best industry practices, for determining the compliance of the Mines with Specifications and Standards.
- 12.3.3 Upon successful completion of the Tests, IREL shall issue a completion certificate ("**Completion Certificate**") to the MDO for the completed Phase.

### 12.4. **Commercial Operation Date**

12.5.1 Subsequent to completion of Construction Works and Tests for the first Phase to be conducted as per Section 12.1 and 12.3, the day of the month in any Accounting Year when the following occurs:

- (a) excavation of Mineral Sand in accordance with the Approved Mining Plan schedule;
- (b) the excavated Mineral Sand is processed in the WUP;
- (c) the HM Concentrate output from the WUP is delivered at the Delivery Point; and
- (d) the above activities, specified in (a), (b) and (c), continues for a period of at least 3 months

then such date of commencement of the activities mentioned in (a), (b) and (c) shall be the "**Commercial Operation Date**" or "**COD**".

12.5.2 The MDO agrees and undertakes that the Construction Works for the first Phase shall be undertaken in a manner such that the Commercial Operations Date occurs on or prior to 18(Eighteen) months from the Appointed Date ("**Scheduled COD**").

12.5.3 In the event that the MDO fails to achieve Commercial Operations Date (COD) within the timeline set forth above in Clause 12.4.2, unless such failure has occurred due to Force Majeure or for reasons solely attributable to IREL, it shall pay Damages to IREL in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each week until Commercial Operations Date (COD) is achieved;

12.5.4 For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.3 shall be without prejudice to the rights of IREL under this Agreement, including the right of Termination thereof.

12.5.5 Within 90 (ninety) days of Commercial Operations Date, the MDO shall furnish to IREL a complete set of as-built drawings, in 2 (two) hard copies and in Digital form or in such other medium as may be acceptable to IREL, reflecting the WUP as actually designed, engineered and constructed.



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### 12.5. **Second Phase of Construction Works**

- 12.5.1 The second Phase of Construction Works for expansion of capacity to achieve 100% of Peak Rated capacity, shall be completed within 06 (six) years from the Appointed Date (“**Scheduled Completion of Second Phase**”).



## **Article 13. Change of Scope**

### **13.1. Change of Scope**

- 13.1.1 IREL may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services at the Mines and WUP, which are not included in the Scope of the Project as contemplated by this Agreement, or reduce the Scope of the Project (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with and subject to the provisions of this 12.5.
- 13.1.2 If the MDO determines at any time that a Change of Scope is necessary, it shall notify in writing either in physical form or in electronic form (email) to IREL to consider such Change of Scope with due justifications. IREL shall, within 90 (ninety) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings in accordance with this 12.5 or inform the MDO in writing either in physical form or in electronic form (email) of its reasons for not accepting such Change of Scope or for accepting such Change of Scope without any payment obligations hereunder, as the case maybe.
- 13.1.3 Any work or services which are provided under and in accordance with this 12.5 shall form part of the Scope of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

### **13.2. Procedure for Change of Scope**

- 13.2.1 In the event of IREL determining that a Change of Scope is necessary, it shall issue to the MDO, a notice specifying in reasonable detail, the change in works and services contemplated there under (the "**Change of Scope Notice**").
- 13.2.2 Upon receipt of a Change of Scope Notice, the MDO shall, with due diligence, provide to IREL such information as is necessary, together with preliminary documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the timelines of this Agreement if the change in works or services are required to be carried out during the Construction Period; and
  - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed break-up by work classification along with the cost implication for the same. However, for avoidance of any doubt, no separate payment/ reimbursement shall be made by IREL for such an event.
- 13.2.3 Upon receipt of information set forth in Clause 13.2.2, if IREL decides to proceed with the Change of Scope, it shall convey its preferred option to the MDO and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, IREL shall issue an order (the "**Change of Scope Order**") requiring the MDO to proceed with the performance thereof. In the event that the Parties are unable to agree, IREL may, by issuing a Change of Scope Order, require the MDO to proceed with the performance thereof pending resolution of the Dispute;
- 13.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the MDO under this 12.5;



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### **13.3. Payment for Change of Scope**

- 13.3.1 The MDO shall, after commencement of work, present to IREL bills for record purpose in respect of the works and services in progress or completed works and services, as the case may be, supported by such documentation as is reasonably sufficient for IREL to determine the accuracy thereof. However, for avoidance of any doubt, no separate payment/ reimbursement shall be made by IREL for such an event.

### **13.4. Restrictions on certain works**

- 13.4.1 IREL shall not require the MDO to undertake any works or services if such works or services are likely to delay completion of the development of Mines, WUP, and related infrastructure by the Scheduled COD; provided that in the event that IREL considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of, or affected by such Change of Scope Order, shall not be reckoned for purposes of determining completion of the Project.



## **Article 14. Safety Requirements**

### **14.1. Safety Requirements**

- 14.1.1 The MDO shall comply with the provisions of this Agreement, Applicable Laws (Mines Act 1952, Mines Rules 1955, Metalliferous Mines Regulation, 2019), Applicable Permits, Technical Circulars by Directorate General for Mines Safety (DGMS) and conform to Best industry practices for securing the safety of the Mines, Equipment and individuals on or about the Site (“**Safety Requirements**”). In particular, the MDO shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Mines.
- 14.1.2 The MDO shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, Contractors and agents. The MDO shall be responsible to provide statutory training under the Mines Vocational Training Rules, 1966.
- 14.1.3 The MDO acknowledges and agrees that IREL shall be entitled to inspect the Mines to verify adherence to Safety Requirements given by DGMS, and the MDO shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.
- 14.1.4 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that the appropriate Government Instrumentalities shall be entitled to issue directions to IREL and the MDO for complying with the provisions of the Mines Act, 1952 and the rules made there under and such directions shall be binding on them.

### **14.2. Guiding principles**

- 14.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on the Mines and Equipment, irrespective of the person(s) at fault.
- 14.2.2 Safety Requirements shall apply to all phases of development, operation and maintenance of the Mines with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 14.2.3 The MDO shall ensure that all personnel (whether direct or indirect employees of the MDO, employees of sub-contractors, visitors, others) within the Site shall at all times wear adequate personal protective equipment.
- 14.2.4 The liability of any accident (major or minor) and fatalities within the Mines shall be on the MDO. The MDO shall immediately inform IREL in the event of the occurrence of any major accidents or fatality.
- 14.2.5 The MDO shall be responsible for making appointments of competent persons as per the requirements of Rule 39 (1) and (2) of Metalliferous Mines Regulation, 2019.

### **14.3. Expenditure on Safety Requirements**

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the MDO.

### **14.4. Annual Safety Report**

- 14.4.1 The MDO shall submit to IREL before the <sup>15</sup>th (fifteenth) day of January of each calendar year, an annual report (in ten copies) containing, without limitation, a detailed list and





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analysis of all accidents of the preceding calendar year and the measures taken by the MDO for averting or minimizing such accidents in future ("**Annual Safety Report**"). The Annual Safety Report shall also cover all the details of the promotional activities being undertaken.

14.4.2 Once in every calendar year, a safety audit shall be carried out by IREL. It shall review and analyze the Annual Safety Report and accident data of the preceding calendar year and undertake an inspection of the Mine. IREL shall provide a safety report recommending specific improvements, if any, required to be made in the Mines and Equipment. Such recommendations shall be implemented by the MDO in accordance with Safety Requirements, Specifications and Standards and Applicable Laws in a time bound manner as specified by IREL in the recommendations. For the avoidance of doubt, the Parties agree that not more than 15 (fifteen) months shall elapse between two safety audits to be conducted by IREL hereunder.

14.4.3 Such safety audit conducted by IREL, either by itself or by third parties shall not relieve or absolve the MDO of its obligations and liabilities under this Article in any manner whatsoever.

### 14.5. **Safety management plan:**

MDO shall prepare a safety management plan as specified in and in accordance with Metalliferous Mines Regulation, 2019, and get it approved from IREL for implementation.



## **Article 15. Security of the Mines**

### **15.1. Security of the Mines**

- 15.1.1 The MDO shall at all times procure the safety and security of the Mines, Equipment, HM Concentrate, Mineral Sand and all persons in or about the Mines.
- 15.1.2 The MDO shall ensure at all times that the HM Concentrate produced by it shall be transported at the Delivery Point(s) either through the pipelines installed and commissioned for it or through trucks / dumpers / tippers.
- 15.1.3 The MDO shall be responsible for the security of HM Concentrate, till the delivery at the Delivery Point(s).

### **15.2. Installation of Security Equipment**

The MDO shall install security and surveillance equipment including CCTV in conformity with Applicable Laws and Best industry practices to ensure and procure the safety and security of its personnel, Mines, Equipment and HM Concentrate.

The MDO shall provide access to all such CCTV surveillance video footage as and when required by IREL.

### **15.3. Real Time Monitoring of Excavators and Vehicles**

- 15.3.1 The excavators, trucks and dumpers or any other vehicle for excavation and transportation of excavated Mineral Sand (if used), shall be monitored on real time basis to track their movement. The MDO shall, procure and install AIS 140 certified GPS tracking device /RFID devices in all the excavators, trucks and dumpers or any other vehicle used for excavation and transportation of excavated Mineral Sand.
- 15.3.2 All recording on such surveillance systems shall be classified and stored by the MDO for a period of at least 3 (three) months from the date of such recording.

### **15.4. Prevention of pilferage of HM Concentrate**

- 15.4.1 The MDO shall install fencing and security equipment, engage security guards installing CCTV and take such other measures as may be necessary to prevent pilferage of HM Concentrate during transportation and from the delivery point. The MDO shall launch criminal proceedings in cases of theft or unauthorized removal of HM Concentrate.



**Article 16. Production of Mineral Sand and HM Concentrate**

**16.1. Annual Production Programme**

16.1.1. The MDO shall excavate Mineral Sand in accordance with the production schedule in the approved Mining Plan for each Accounting Year ("**Annual Production Programme**"). The tentative planned production considering the phasing in Construction Works as per Clause 12.1, is detailed below:

Operation	Brahmagiri Mine Production Schedule	
	Mineral Sand excavation in terms of Peak Rated Capacity (%)	Quantity of Mineral Sand to be excavated (TPA)
Year 1	35%	2,625,000
Year 2	40%	3,000,000
Year 3	45%	3,375,000
Year 4	50%	3,750,000
Year 5	50%	3,750,000
Year 6	85%	6,375,000
Year 7	90%	6,750,000
Year 8	95%	7,125,000
Year 9	100%	7,500,000
Year 10	100%	7,500,000
Year 11	100%	7,500,000
Year 12	100%	7,500,000
Year 13	100%	7,500,000
Year 14	100%	7,500,000
Year 15	100%	7,500,000
Year 16	100%	7,500,000
Year 17	100%	7,500,000
Year 18	100%	7,500,000
Year 19	100%	7,500,000
Year 20	100%	7,500,000

- (a) The above Annual Production Program is tentative and may change in accordance with the Approved Mining Plan and its revision, if any.
- (b) The quantities specified in the Annual Production Programme for each Accounting Year shall be the "**Annual Capacity**", the "**Monthly Capacity**" for any month in an Accounting Year shall be the Annual Capacity for such Accounting Year pro rated for the months in such Accounting Year and the "**Quarterly Capacity**" for any quarter in an Accounting



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Year shall be the Annual Capacity for such Accounting Year pro rated for the quarter in such Accounting Year. Where an Accounting Year is less than 12 (twelve) months, then the Annual Capacity for such Accounting Year shall be prorated accordingly.

(c) The MDO shall ensure that it shall not exceed the operational limits imposed by Consent to Operate issued by the State Pollution Control Board for operation of the mine and the WUP.

16.1.2. Subject to the provisions of Clause 16.1.1, the MDO shall, on or before 1st January of each Financial Year, submit to IREL for its approval an annual work plan for the next Financial Year, which shall include details mentioned in Schedule B. IREL shall, within 45 (forty-five) days of receiving the annual work plan from the MDO, accept the annual work plan or make necessary changes to the same. The annual work plan thus finalized after making necessary changes, if any, shall be called as "Approved Annual Works Plan".

16.1.3. IREL may, by a notice modify the Annual Capacity in the annual work plan furnished by the MDO as specified in Clause 16.1.2 by up to 10% (ten per cent) thereof with respect to such Accounting Year. For the avoidance of doubt, the Parties agree that the Annual Production Programme in the Accounting Year in which the COD or Transfer Date occurs shall be proportionate to the period of operation in that Accounting Year.

16.1.4. IREL agrees and undertakes that it shall ordinarily not reduce the Annual Production Programme by more than 10% (ten percent) of the quantity specified in Clause 16.1.1;

16.1.5. Unless otherwise agreed to by the Parties, it is expressly agreed by the MDO that it shall, in no month of an Accounting Year, deliver more than 100% (one hundred percent) of the quantity of HM concentrate specified in the Approved Annual Works Plan for that month.

16.1.6. Any modification to the Annual Production Programme pursuant to this Clause 16.1 shall not be deemed to be a Change of Scope and shall not entitle the MDO to a Change of Scope Order pursuant to 12.5;

16.1.7. The compliance to Annual Production Plan and damages applicable for shortfall shall be assessed based on such quantities as measured pursuant to the clauses mentioned in Article 18.

### **16.2. Extension of Annual Production Programme**

In the event the Contract Period is extended in accordance with the provisions of this Agreement, the Annual Production Programme shall be deemed to be extended by a corresponding period on the terms and conditions specified in this Agreement, other than in respect of any extension of the Contract Period pursuant to Clause 3.1.2.



### 16.3. **Damages for shortfall**

#### 16.3.1. **Damage for shortfall in quantities**

At the beginning of every production year (Financial year) IREL (India) Limited and MDO will prepare an Annual/Quarterly /Monthly excavation, quality and dispatch plan which will be adhered to by MDO. In case, the MDO fails to mine 85% of the Annual targeted (Financial Year) Mineral Sand during any year (financial year) as notified by IREL, the MDO shall pay Damages for the shortfall in quantity as indicated below.

LD shall be calculated for the shortfall in quantity of Mineral Sand mined based on yearly (Financial year) target basis. In case of failure to mine 85% of the yearly targeted quantity of total Mineral Sand calculated from all WUPs except for reasons contributory to Force Majeure, Damages shall be imposed @ 10% of the awarded rate per tonne of HM concentrate for the shortfall in Mineral Sand quantity mined (Shortfall Quantity = Difference between 85% of yearly target and actual yearly quantity mined).

*Example for calculating Damages owing to shortfall in quantities:*

*MDO Fee in INR – A*

*Suppose, Financial Year Mineral Sand Target– 75,00,000 t*

*85% of the Financial Year Target –  $85\% \times 75,00,000 = 63,75,000 t$*

*Actual Quantity Mined and processed: 60,00,000 t*

*Shortfall in quantity =  $63,75,000 t - 60,00,000 t = 3,75,000 t$*

*Damages = 10% of A x 3,75,000 t in Rs*

#### Note:

- i. Mined out quantity in the above context means the corresponding Mineral Sand quantity mined and fed into WUP.
- ii. If in any Financial Year, particularly in the starting year of Agreement and at the ending year of the Agreement, 12months are not available, in such cases Annual Target will be calculated proportionately for the remaining months of that financial year.
- iii. Damages shall be calculated and deducted yearly only i.e., from the March month bill of every financial year.
- iv. In addition, in the event the actual quantity mined is below 60%, of the annual targeted quantity, such shortfall in quantity of sand mined shall be deemed to be MDO Default for the purposes of Clause 23.1 and IREL shall be entitled to appropriate 50% (fifty percent) of the Performance Security and the MDO shall replenish the Performance Security to its original level before such appropriation in accordance with Clause 9.2. The Agreement will be reviewed by a review committee duly constituted by IREL which may consider termination of the Agreement if the shortfall in annual targeted quantity is for reasons attributable to the MDO.

### 16.4. **Damages for loss in recovery**

The MDO shall ensure that maximum percentage of Heavy Minerals is recovered in the wet upgradation process and minimize the loss of Heavy Minerals in tailings. An Average Monthly Recovery of at least 84% of Heavy Minerals is desired in the wet upgradation process, wherein the Average Monthly Recovery shall be defined as follows:



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$$\text{Average Monthly Recovery} = \frac{\text{Quantity of HM Concentrate as output from WUP} \times \text{Average monthly grade of HM Concentrate}}{\text{Mineral Sand fed into WUP} \times \% \text{ content of Heavy Minerals in Mineral Sand fed into WUP}}$$

where,  $\text{Grade of HM Concentrate} = \frac{\text{Quantity of Heavy Minerals in HM Concentrate}}{\text{Total Quantity of HM Concentrate}}$

In case average monthly recovery falls below 84% and subject to clause 16.5, damages shall be imposed at 10% of the MDO Fee per tonne of HM concentrate for the loss in recovery multiplied with quantity of Heavy Minerals in feed to WUP.

*Example for calculating Damages owing to loss in recovery:*

Mineral Sand Mined and fed in WUP in a month	6,25,000 tonnes
% content of Heavy Minerals in Mineral Sand fed in the month	10%
Quantity of Heavy Minerals in feed to WUP in the month	$\% \text{ content of Heavy Minerals} \times \text{Mineral Sand fed}$ $= 10\% \times 6,25,000$ $= 62,500 \text{ tonnes}$
Average monthly recovery required to avoid damages	84%
Minimum Quantity of Heavy Minerals required in WUP output to avoid damages	$\text{Required average monthly recovery} \times \% \text{ content of Heavy Minerals} \times \text{Mineral Sand fed}$ $= 84\% \times 10\% \times 6,25,000 \text{ tonnes}$ $= 52,500 \text{ tonnes}$
Actual Quantity of HM Concentrate as output from WUP	57,649 tonnes
Average monthly grade of WUP output	88.90%
Actual Quantity of Heavy minerals in output from WUP	$\text{Actual quantity of HM Concentrate} \times \text{Average monthly grade of HM Concentrate}$ $= 57,649 \times 88.90\%$ $= 51,250 \text{ tonnes}$
Actual Recovery Achieved	$\frac{(\text{Quantity of HM Concentrate as output from WUP} \times \text{Average monthly grade of WUP output})}{(\% \text{ content of Heavy Minerals} \times \text{Mineral Sand fed})}$ $= \frac{(57,649 \times 88.90\%)}{(6,25,000 \times 10\%)}$ $= \frac{51,250}{62,500}$ $= 82.00\%$
MDO Fee	INR XXX
Damages Leviable	$10\% \text{ of MDO Fee} \times \text{loss in recovery} \times \text{Quantity of Heavy Minerals in feed to WUP}$ $= 10\% \times \text{INR XXX} \times (84\% - 82\%) \times 62,500$



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	$= 10\% \times \text{INR XXX} \times (52,500-51,250)$
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Note: Amounts and figures in the above table have been taken for illustration purpose only

In addition, in the event that the recovery is below 75%, such loss in recovery shall be deemed to be MDO Default for the purposes of Clause 23.1 and IREL shall be entitled to appropriate 50% (fifty percent) of the Performance Security and the MDO shall replenish the Performance Security to its original level before such appropriation in accordance with Clause 9.2. The Agreement will be reviewed by a review committee duly constituted by IREL which may consider termination of the Agreement if the shortfall in annual targeted quantity is for reasons attributable to the MDO.

### 16.5. Damages for loss in Grade

16.5.1 Monthly average grade of at least 88% is desired in the HM Concentrate (or output from WUP).

where, **Grade of HM Concentrate** = 
$$\frac{\text{Quantity of Heavy Minerals in HM Concentrate}}{\text{Total Quantity of HM Concentrate}}$$

For, monthly average grade below 88%, damages would be applicable at 10% of MDO Fee for the loss in grade multiplied with Quantity of output from WUP.

16.5.2 Notwithstanding anything, MDO shall not be liable for any payment for the month in which the monthly average percentage content of Heavy Minerals is below 85%. In such case, Damages as per clause 16.4 and 16.5 shall not be applicable.

*Example for calculating Damages owing to monthly average percentage content of Heavy Minerals below 88% and greater than equal to 85%:*

Quantity of output from WUP	60,000 tonnes
Required monthly average grade of WUP output to avoid damages	88%
Required quantity Heavy minerals in WUP output to avoid damages	$88\% \times 60,000 \text{ tonnes}$ $= 52,800 \text{ tonnes}$
Average monthly Grade of output from WUP achieved	87.50%
Actual quantity of Heavy minerals in output from WUP	$\text{Average monthly grade achieved} \times 60,000 \text{ tonnes}$ $= 87.5\% \times 60,000$ $= 52,500 \text{ tonnes}$
MDO Fee	INR XXX
Damages Leviable	$10\% \text{ of MDO Fee} \times \text{loss in grade} \times$ $\text{Quantity of output from WUP}$ $= 10\% \times \text{INR XXX} \times (88\%-87.5\%) \times 60,000$ $= 10\% \times \text{INR XXX} \times (52,800 - 52,500)$

Note: Amounts and figures in the above table have been taken for illustration purpose only



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- 16.5.3 The percentage content of Heavy Minerals shall be obtained through sampling and testing of the samples in accordance with Article 18. Adjustment of payment after the test results have been revealed, shall be made as per Clause 21.4.





## **Article 17. Monitoring of Operation and Maintenance**

### **17.1. Monthly status reports**

- 17.1.1 During the Construction Period, the MDO shall, no later than 7 (seven) days after the close of each month, furnish to IREL, a monthly report on progress of the Construction Works and installation of Equipment, and shall promptly give such other relevant information as may be required by the IREL.
- 17.1.2 During the Operation Period, the MDO shall, no later than 7 (seven) days after the close of each month, furnish to IREL, a monthly report which shall be a summary of:
- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
  - (b) key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
  - (c) Key operational statistics including monthly quantity of Mineral Sand fed into the WUP, tailings discharged and HM Concentrate delivered to IREL.

### **17.2. Reports of unusual occurrence**

- 17.2.1 The MDO shall, prior to end of the day, send to IREL, by fascimile or e-mail, a report stating accidents and unusual occurrences, if any, at the Mines or WUP relating to the safety and security of the Mines and persons affected by it. A summary of such reports shall also be enclosed in the monthly report as required in Clause 17.1. For the purposes of this Clause 17.2, accidents and unusual occurrences at the Mines shall include:
- (a) death or injury to any person;
  - (b) any damage or obstruction at the Site;
  - (c) disablement of any element of the Mines during operation thereof;
  - (d) flooding of the Mines;
  - (e) smoke or fire; or
  - (f) such other relevant information as may be reasonably required by IREL.
- 17.2.2 Any occurrence as mentioned under Metalliferous Mines Regulations, 1961 and Metalliferous Mines Regulations as amended upto 1961/ 2019 shall be reported immediately as required.

### **17.3. Inspection**

IREL shall have the right but no obligation to inspect the Mines, Equipment and WUP at least once a quarter. IREL shall thereafter make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements and Safety Requirements, and a copy thereof shall be sent by IREL to the MDO within 7 (seven) days of such inspection.

### **17.4. Tests**

For determining that the Mines, Equipment and WUP conform to the maintenance and safety requirements, IREL shall require the MDO to carry out, or cause to be carried out, tests specified by it in accordance with Best industry practices. The MDO shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of IREL and furnish the results of such tests forthwith to IREL. One half of



## IREL (INDIA) LIMITED

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the costs incurred on such tests, or to the extent certified by IREL as reasonable, shall be reimbursed by IREL to the MDO. Notwithstanding anything stated above, IREL has right to appoint an independent agency to carry out tests, and 50% of cost incurred by the independent agency in conducting tests, as specified by IREL, shall be reimbursed by MDO to IREL.

### 17.5. **Remedial measures**

The MDO shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 17.4 and furnish a report in respect thereof to IREL within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the MDO shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

### 17.6. **Maintenance Requirements**

- 17.6.1 The MDO shall, at all times, maintain the Mines and Equipment in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits ("**Maintenance Requirements**").
- 17.6.2 The MDO shall repair or rectify any defect or deficiency and any failure in this behalf shall constitute a breach of the Agreement.
- 17.6.3 The obligations of the MDO in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies, arising out of any breakdown in Equipment and machinery, or, intimated in writing either in physical form or on electronic form (email) during inspection, by:
  - (a) the Manager;
  - (b) any representative of IREL; or
  - (c) any other inspecting official belonging to any statutory or regulatory body, in accordance with Best industry practices.
- 17.6.4 If any defect, deficiency or deterioration in the Mines and Equipment poses a hazard to safety or risk of damage to property, the MDO shall promptly take all reasonable measures for eliminating or minimizing such danger.
- 17.6.5 All defects and deficiencies specified shall be repaired and rectified by the MDO so that the Mines Equipment and WUP conforms to the Maintenance Requirements on the Transfer Date.



## **Article 18. Testing and Weighment**

### **18.1. Testing of Mineral Sand and HM Concentrate**

18.1.1 For determining the percentage content of Heavy Minerals in the Mineral Sand fed into WUP for upgradation and in the HM Concentrate the samples shall be collected at various points in the following manners:

- a. Samples of Mineral Sand to be collected at the point right before it is fed into the WUP.
- b. Samples of HM Concentrate to be collected at the point right before it is stacked at the delivery point.
- c. In case, trucks / dumpers / tippers or any other vehicle used for transportation of sand into WUP(s), the samples shall be collected directly from such vehicle.
- d. Samples of tailings to be collected at the point after it is discharged from the WUP.

18.1.2 The representative samples so collected at various points shall be divided into three equal parts. The first part of the representative samples shall be used for the Tests. The second & third part of the representative samples shall be suitably packed, sealed and sent to IREL and the MDO respectively immediately after sampling and shall be treated as "**Referee Samples**".

18.1.3 The Tests for the representative samples collected shall be conducted by IREL itself. In case MDO is not satisfied with the Test results obtained by IREL, Umpire analysis can be invoked by MDO by using its referee sample. Such umpire analysis shall be conducted by an independent laboratory accredited to the National Accreditation Board of Laboratories (NABL), selected on mutual agreement basis by both the Parties (the "**Independent Laboratory**"). The Tests for umpire analysis shall be carried out in the presence of the representatives of IREL and the MDO and such representatives shall sign the results of the Tests. A copy of the reports of all such Tests shall be provided to IREL and the MDO forthwith.

18.1.4 The results of the Tests shall be final and binding on the MDO and IREL.

18.1.5 The costs and expense incurred on Tests carried out for umpire analysis under the Clause 18.1.3 shall be borne equally by IREL and MDO.

18.1.6 Sampling will be done by IREL or an agency appointed by IREL.

### **18.2. Weighment of Mineral Sand and Quantity of Produced Concentrate**

18.2.1 The quantity of Mineral Sand and the quantity of Heavy Minerals in it shall be done at the time when it is fed into the Wet Upgradation Plant. Such weighment shall be done through a Mass-Flow meter installed on the pipeline pumping the Mineral Sand from dredger to Wet Upgradation Plant. The calibration of such equipment shall be as per standards.

18.2.2 The quantity of Heavy Mineral in the HM Concentrate output shall be done right before it is delivered at the designated delivery point(s). Such weighment shall be done through a Mass-Flow meter installed on the pipeline transporting the concentrate to the delivery points.



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- 18.2.3 MDO shall install the Mass-Flow meter of the specifications as intimated by IREL and at such points on the pipeline, as identified by IREL. MDO shall install, operate & maintain the Mass-Flow meters along with all other equipment.
- 18.2.4 In case, trucks / dumpers / tippers or any other vehicle used for excavation and transportation of excavated Mineral Sand to Wet Upgradation Plant, the weighment of the Mineral Sand shall be made through weighbridge to be installed by the MDO itself.
- 18.2.5 The difference in quantity of Heavy Minerals in Mineral Sand fed into WUP and the quantity of Heavy Minerals in the concentrate shall be considered as the Heavy Mineral content in the tailings discharge.
- 18.2.6 All the weighments shall be in the presence of representatives of both IREL and the MDO representatives.
- 18.2.7 IREL shall be responsible for verification of weighment of Mineral Sand and concentrate. Access of the same shall be given to IREL offices for continuous monitoring.
- 18.3. Reconciliation of HM Concentrate**
- 18.3.1 After commencement of operations, the quantity of HM Concentrate delivered at the designated delivery point as measured via Mass-Flow meter or weighbridge shall be reconciled with the quantity of HM Concentrate loaded and measured by IREL from the delivery point.
- 18.3.2 Such reconciliation as stated in clause 18.3.1 shall be done on monthly basis at a mutually decided day every month.
- 18.3.3 MDO shall maintain separate record for the quantity of HM Concentrate is delivered at the designated delivery point.



## **Article 19. PERSONNEL AND SUBCONTRACTING**

### **19.1. Personnel**

- (a) The MDO shall ensure that all Mining Services are performed by, and under the supervision of appropriately qualified, experienced and skilled personnel.
- (b) The IREL Representative may by written notice require the MDO to remove from the Site, or from any activity connected with the Mining Services, any person employed/engaged by the MDO in connection with the provision of the Mining Services who, in the reasonable opinion of the IREL's Representative, is guilty of misconduct or is incompetent or negligent or who works in an unsafe manner that is likely to prejudice the safe operation at Brahmagiri mining project.

### **19.2. Subcontracting**

- (a) MDO shall not subcontract any of its obligations under this Agreement without prior written approval of IREL. ISO certified entities shall be preferably appointed as subcontractors by the MDO.
- (b) In case MDO would like to outsource/sub-contract the work of the Project Agreement, then it shall submit details of experience of parties to whom it would like to sub-contract the work involved during development stage and operation stage for approval of IREL.
- (c) After the Commercial Operation Date, MDO shall not sub-contract any of its work until 50% (fifty per cent) production of Peak Rated Capacity of the Mine is achieved. Moreover, not more than 25% of the mine and WUP operation work, shall be sub-contracted after the Commercial Operation Date. The MDO shall submit, within 06(six) months of issue of LOA, its detail plan of outsourcing/sub-contracting including the plan for hiring or leasing of HEMM & its O&M, plan for O&M along with experience details of likely parties to whom it may sub-contract the work, for approval of IREL. MDO may revise its plan for outsourcing/sub-contracting, as per its requirement with prior approval of IREL.
- (d) MDO shall not outsource/sub-contract any part of the work to any other bidders or their consortium, who take part in this tendering process.
- (e) The above sub-contracting provisions shall not apply to individual activities such as deployment of labour, provision of water/electricity/utilities, haul roads, sourcing and management of fuel/lubricants, security.
- (f) The MDO shall at all times remain solely responsible and liable for all acts, omissions, and other failures of any of its employees, personnel, or other persons that it subcontracts any of its obligations hereunder and any actions on the part of such person shall be attributable to the MDO.
- (g) The MDO shall ensure that such an entity shall not be sub contracted which has any conflict of their business interest with IREL's mining and mineral processing business of Mineral Sand.
- (h) The MDO shall at all times ensure that its subcontractors comply with all Applicable Laws including industrial relations, safety and environmental issues relevant to the Mining Services. For the avoidance of doubt, it is clarified that any and all subcontracting activities shall be in compliance with the Contract Labour (Regulation and Abolition) Act, 1970 along with any amendment/substitution thereof. It is expressly clarified that for the purposes of the Contract Labour (Regulation and Abolition) Act, 1970, the "principal employer" shall be deemed to be the MDO and not IREL. In this regard, the MDO agrees to indemnify and hold harmless IREL against any claims, costs, expenses, damages and charges levied or incurred by IREL in relation to any



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non-compliance by the MDO or any of its subcontractors, of any provision of the Contract Labour (Regulation and Abolition) Act, 1970 read along with any amendment/substitutions thereof.

- (i) In the event that the MDO appoints a subcontractor with the approval of the IREL, the MDO shall continue to be solely responsible for all its obligations. IREL shall interact only with the MDO for all matters related to the performance of this Agreement. IREL, if the situation so warrants, under emergency conditions, and in the event IREL, acting reasonably, believes that any act or omission is or potentially may result in (a) the commission of an illegal act; (b) safety or environmental issues relating to the Project; may interact, instruct and direct the sub-contractors and the MDO shall ensure that the sub-contractors are required to follow all such directions of the IREL. IREL shall at all times keep the MDO informed of any such direct interactions with the sub-contractors. It is clarified that such direct interactions will not absolve the MDO from its responsibilities and obligations specified in the Agreement. Further any direction, instruction given to the sub-contractor shall be complied by the MDO as if directly given to the MDO.
- (j) The MDO shall, in the event of any industrial disputes, labour unrests etc. involving the MDO's workforce on the Site (but not the IREL's employees), ensure that the continuous performance of the Mining Services is not affected.
- (k) The MDO shall ensure that in no way does it impacts other businesses of IREL.



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# ***PART IV***

# ***FINANCIAL COVENANTS***



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### Article 20. MDO Fee

#### 20.1 MDO Fee

20.1.1 The MDO Fee finalized after the Bid process is as follows:

Particulars	Amount (in INR per tonne)	Amount (in words)
<b>MDO Fee</b> (in INR per tonne of HM Concentrate produced from WUP and delivered to IREL at the delivery point)	XX	XX
<b>GST</b> (As applicable)	YY	YY
<b>Total</b>	XX + YY	XX + YY

20.1.2 Subject to and in accordance with the terms of this Agreement, MDO Fee shall mean the fees in Rs/ tonne as applicable for the payment to MDO for each tonne of HM Concentrate produced from WUP and delivered to IREL at the Delivery Point, after upgradation of Mineral Sand excavated from the Mine.

20.1.3 GST shall be payable over the MDO Fee by IREL as per the Applicable Laws.

#### 20.2 Escalation/ De-escalation

20.2.1 The MDO Fee payable to MDO shall be revised annually as outlined herein below.

- (a) For the purpose of this Agreement, frequency of the price adjustment for the MDO Fee shall be once every year.
- (b) The MDO Fee shall remain fixed as the Final Price Offer mentioned in the LoA issued by IREL to the Successful Bidder till the 31<sup>st</sup> March of the Financial Year of signing of this MSA. For Example - If the Integrated MDO Fee as on date of signing of MSA (01st October 2021) is INR 1000 per tonne, then, this Integrated MDO Fee of INR 1000 per tonne shall remain fixed till 31<sup>st</sup> March 2022.
- (c) The escalation on this MDO Fee shall commence from the next escalation date i.e., 01st April of the Financial Year immediately following the Financial Year of signing of the MSA and will be proportionately escalated for the period between date of signing of the MSA and next escalation date i.e., 01st April of the Financial Year immediately following the date of signing of MSA.
- (d) Subsequently, the Integrated MDO Fee shall be revised on April 1<sup>st</sup> of every year, in accordance with this Clause, to reflect the variation in Price Index occurring during the previous Accounting Year and the amount so determined shall be the applicable MDO Fee for that particular Accounting Year.
- (e) The escalated MDO Fee shall be computed up to 2 (two) decimal places.
- (f) Escalation here means variation and it can also be negative i.e., applicable MDO Fee for any Accounting Year can also be lesser than the applicable MDO Fee for previous Accounting Year based on the applicable escalation/ de-escalation.





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- (g) In case there is any delay on account of publication of the Price Index for any Financial Year by the Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India, the MDO Fee pertaining to the previous Financial Year shall be applicable till the publication of the Price Index for that Financial Year. Any amount thereof based on difference in MDO Fee of that Financial Year and previous Financial Year, shall be payable to/by the MDO without any interest.
- (h) In case of revision of the Base Year or basket of WPI, CPI Index as published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India, or revision in method of determination of power tariff by Odisha Electricity Regulatory Commission, the new Price Index shall be construed in the manner decided by IREL or the independent agency appointed by IREL, as the case may be.

The details of different components of escalation are provided in the table below

Particular	Weightage	Source of Index/ Price
Fixed	38%	
(A) Diesel	01%	WPI series for "HSD" as published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India (Base Year: 2011-12= 100)
(B) Power	10%	Power Tariff for "High Tension Service" as notified by Odisha Electricity Regulatory Commission
(C) Machinery Parts	08%	WPI series for "Mining/ Quarrying/ Metallurgical Machinery Parts" as published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India (Base Year: 2011-12= 100)
(D) Salaries & Wages	04%	"All India Consumer Price Index for Industrial Workers" (All India Monthly Average) published by Labour Bureau, Govt. of India
(E) Other stores and utilities	39%	WPI series for "All Commodities" as published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India (Base Year: 2011-12= 100)

The escalation for the MDO Fee shall be determined based on year on year price indexes and MDO Fee of preceding Financial Year as follows:

$$MF_{esc} = (MF_n) * \left( 0.38 + 0.01 * \frac{A_n}{A_o} + 0.10 * \frac{B_n}{B_o} + 0.08 * \frac{C_n}{C_o} + 0.04 * \frac{D_n}{D_o} + 0.39 * \frac{E_n}{E_o} \right)$$

Where,

$n$  = Financial Year (period counted as 1<sup>st</sup> April to 31<sup>st</sup> March) preceding to year for which escalated MDO Fee is to be calculated

$MF_{esc}$  = The escalated MDO Fee for the  $(n+1)$ <sup>th</sup> Financial Year

$MF_n$  = The MDO Fee for the  $n$ <sup>th</sup> Financial Year

**A, B, C, D and E** shall be the published Price Indices of corresponding major components, as mentioned in the table above



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For the Indices/ Prices, Subscript 'o' refers to the average of monthly Indices/ Prices during the (n-1) Accounting Year. Subscript 'n' refers to the average of monthly Indices/ Prices during the nth Financial Year.



## **Article 21. Billing and Payment**

### **21.1. Billing and payment**

21.1.1. IREL shall release the payment towards “quantity of HM Concentrate output received from WUP and delivered to IREL” in accordance with the following: The MDO shall submit complete and correct invoices and documents for services.

- i. All payments shall be made as specified in Terms of Payment, directly by IREL to the MDO unless otherwise provided in the agreement or agreed between the parties.
- ii. The MDO shall reimburse IREL all costs, charges, damages or expenses which IREL may have paid or incurred, if and to the extent to which the MDO is liable under this Agreement to pay within sixty(60) days upon written request of IREL, failing which such costs, charges, damages or expenses shall be deducted by IREL from any money due or becoming due to MDO from IREL under this Agreement or any other contract failing which such amounts shall be considered as debt of IREL to MDO and shall be recoverable accordingly.

### **21.2. Billing Period**

The bill(s) will be submitted to the Engineer In charge on monthly basis. The quantity to be considered in the bill would be equivalent to the quantity actually delivered during the month and accepted by IREL. The Engineer In charge shall pass the bill after the recovery of Damages or other recoverable sum(s), if any. The MDO needs to submit the invoice in triplicate in complete manner.

### **21.3. Mode of Payment**

The MDO will raise progressive monthly clear bill, based on the applicable Mining Fee for the Mineral Sand Mining done during the previous month as per the Logbook maintained jointly. IREL shall release 100% (Hundred per cent) of the MDO Fee, within Sixty(60) days. Payment shall be made in INR.

The amount towards GST will be paid after the same is reflected in the Form GSTR-2A in GST portal.

### **21.4. Payment adjustment**

21.4.1. The amount to be paid against the monthly invoice shall be adjusted for the following:

- I. Deduction towards “Damages” etc., if any as per Clause 16.3, 16.4 and 16.5 of MSA.
- II. Any excess payment made earlier which wasn’t supposed to be made, such as on account of Clause 16.5 of MSA.
- III. Any Statutory deduction such as “Income Tax” etc.

21.4.2. At the end of each Accounting Year, IREL shall furnish to MDO a summary of all the adjustments made in the payments made in that particular Accounting Year. The summary shall show the following:

- (a) The quantity of Mineral Sand fed into the WUP and quantity of HM concentrate delivered in each month.



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- (b) The Monthly Average Recovery achieved in each month and the applicable Damages against them.
- (c) The monthly average percentage content of Heavy Minerals in the HM Concentrate delivered in each month and applicable payment amount.
- (d) Cumulative Damages and payable amount in that Accounting Year.



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# ***PART V***

# ***FORCE MAJEURE AND TERMINATION***



## **Article 22. Force Majeure**

### **22.1. Force Majeure**

- 22.1.1 "Force Majeure" or "Force Majeure Event" is an event beyond the control of MDO and not involving the MDO's fault or negligence and which is not foreseeable. Such events may include but are not restricted to acts of IREL or MDO, either in their sovereign or contractual capacity, wars or revolution, hostility, acts of public enemy, civil commotion, floods, cyclones, tsunami, 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 which shall be final and binding.
- 22.1.2 If there is delay in performance or other failures by the MDO to perform obligations under its MSA due to event of a Force Majeure, the MDO shall not be held responsible for such delays/failures.
- 22.1.3 If a Force Majeure situation arises, the contractor 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 MDO shall continue to perform its obligations under the MSA as far as reasonable/practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure Event.
- 22.1.4 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 one hundred and twenty (120) days, IREL may at its option terminate the Agreement without any financial repercussion on either side.

### **22.2. Resumption of Normal Performance**

- 22.2.1. The Party whose performance is so affected by Force Majeure is called as the "**Affected Party**".
- 22.2.2. During the period of delay attributed to an event of Force Majeure (unless this Agreement has been terminated or cancelled in accordance with its terms):
- (a) the Affected Party shall use best efforts to overcome and minimize the effects of any event of Force Majeure and resume performance of obligations as soon as practicable after the effect of the Force Majeure Event ceases to exist;
  - (b) in order to resume normal performance of this Agreement within the shortest practicable time, the Affected Party shall take all measures to this end which are commercially reasonable in the circumstances, taking into account the consequences resulting from such Force Majeure Event and shall, every week thereafter, give the other Party a written statement on its progress; and

### **22.3. Notice when Force Majeure ends**

- 22.3.1 Upon resolution of the cause of delay, interruption or failure, the Party affected shall promptly within 3 (three) days of such resolution give notice to the other Party of such fact and the performance of such affected Party's obligations under this Agreement shall thereupon be resumed.
- 22.3.2 If the performance of the obligations is substantially prevented, affected or delayed for a single period of more than 3 (three) months or an aggregate period of more than 6 (six) months in any year, the Parties will attempt to develop a mutually satisfactory solution



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through good faith discussions, failing which the aggrieved party shall give termination notice in accordance with Article 23, as the case may be.

### **22.4. Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as per Clause 27.1, provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.



## **Article 23. Suspension, Event of Default and Termination**

The provision for termination contained in this Article 23 are in addition to the rights of termination provided to IREL or the MDO elsewhere in the Agreement.

### **23.1. Suspension**

- 23.1.1 IREL may suspend the Works in whole or in part at any time by giving the MDO a notice in writing, if the MDO shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the MDO to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the MDO of such notice of suspension.
- 23.1.2 On receiving the notice of suspension from IREL, the MDO 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 MDO specifying the part of work to be resumed and the effective date of suspension withdrawal. The MDO shall resume the suspended work on immediately upon receipt of such withdrawal of suspension notice. In the event of suspension of work, IREL shall not be liable to the MDO for any damage and loss.

### **23.2. MDO Default**

- 23.2.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, the MDO shall be deemed to be in default of this Agreement (the "**MDO Default**"), unless the default has occurred solely as a result of any breach of this Agreement by IREL or due to Force Majeure. The defaults referred to herein shall include:
- (a) the MDO 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 23.1 hereinabove, within 60 (sixty) days of receipt of such notice of suspension or within such further period as IREL may have subsequently granted in writing;
  - (b) The MDO fails to commence the Works;
  - (c) The MDO fails to ensure that COD is achieved as per schedule mentioned in the Agreement;
  - (d) Any representation made or warranties given by the MDO 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 MDO under the Agreement, or (b) all or material part of the MDO; except where such transfer in the reasonable opinion of IREL does not affect the ability of the MDO to perform, and the MDO has the financial and technical capability to perform. its material obligations under the Agreement;
  - (f) The MDO suspends or abandons the Works without prior consent of IREL, provided that the MDO 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 the Agreement by IREL;
  - (g) the MDO 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;





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- (h) the MDO fails to comply with any final decision reached as a result of arbitration proceedings hereof;
- (i) the MDO submits to IREL a statement which has a material effect on the rights, obligations or interests of IREL and which the MDO knows to be false;
- (j) any document, information, data or statement submitted by the MDO in its Bid, based on which the MDO was considered eligible or successful, is found to be false, incorrect or misleading; or
- (k) The MDO repudiates the Agreement or otherwise evidences an intention not to be bound by the Agreement.

### 23.3. **IREL Default**

23.3.1 In the event that any of the defaults specified below shall have occurred, IREL shall be deemed to be in default of this Agreement (the "**IREL Default**") unless the default has occurred as a result of any breach of this Agreement by the MDO or due to Force Majeure. The defaults referred to herein shall include:

- (a) IREL is in breach of the Agreement and has failed to cure such breach within sixty (60) days of receipt of notice regarding occurrence of IREL Default, from the MDO;
- (b) IREL repudiates the Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (c) Any representation made or warranties given by IREL under the Agreement is found to be false or misleading.

### 23.4. **Recourse to Event of Default**

23.4.1. In case of an event of default, the following recourse is available to IREL and the MDO or both as the situation may warrant:

- (a) In case of occurrence of an MDO Default as mentioned in Clause 23.2.1, and the MDO fails to cure the default within sixty (60) days of receipt of such notice regarding occurrence of MDO Default by IREL. The MDO shall have an option to ask for extension from IREL specifying the conditions that have restricted the MDO 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 an IREL Default mentioned above, the MDO shall have an option to seek Termination of this Agreement. In seeking the Termination of the Agreement, MDO would have to clearly demonstrate that the Event of Default has occurred despite all possible steps taken by MDO to avoid Termination. The Parties shall mutually decide the modalities of Termination.

### 23.5. **Termination Due to MDO Default**

- (a) Without prejudice to any other right or remedy which IREL may have in respect thereof under the Agreement, upon the occurrence of an MDO Default, IREL shall be entitled to terminate the Agreement by issuing a Termination Notice (the "**Termination Notice**") to the MDO, provided that before issuing the Termination Notice, IREL shall by a notice in writing inform the MDO 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 the Agreement by issuing the Termination Notice.



## IREL (INDIA) LIMITED

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- (b) Upon termination of the Agreement by notice of either Party to the other, the MDO 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.

### **23.6. Termination Payment**

- 23.6.1 Upon Termination on account of an MDO Default or IREL Default or Force Majeure during the Operation Period, IREL shall pay to the MDO by way of Termination Payment for an amount equal to all MDO Fees due and payable by IREL as on date of Termination after adjustment on account of Damages and other sums payable by the MDO to IREL under the Agreement.
- 23.6.2 Upon Termination on account of an MDO Default or IREL Default or Force Majeure during the Operation Period, the following shall be ensured:
  - (a) The MDO shall remove from the Mine all the MDO's employees, sub-contractors all the plants and machineries, goods and materials within one month from the date of termination of this Agreement or as decided by IREL subject to the clause 23.6.3 (d).
  - (b) In case of termination of Agreement due to Force Majeure, the performance Bank Guarantee and the Corporate Performance Guarantee shall be returned to the MDO.
- 23.6.3 Notwithstanding anything to the contrary in this Article 23, the MDO acknowledges, agrees and undertakes that:
  - (a) upon termination or expiry of this Agreement, IREL shall have the first right of refusal to purchase all Project Facilities of the MDO, at a value to be determined by an independent valuer to be appointed by IREL. The MDO shall provide assistance to IREL in this regard:
  - (b) in the event the MDO enters into any financing agreements or arrangements (including hire purchase) with respect to, or which affect, any of the Equipment, the MDO shall ensure that the financier or lender under such financing agreement or arrangement expressly recognizes and accepts the preferential right of IREL to purchase the Equipment (as the case may be); and
  - (c) no Termination Payment shall be due and payable prior to COD.
  - (d) In the event, IREL does not purchase the Project Facilities, within a period of 90 days from the date of termination or expiry of the Agreement, the MDO may sell the Project Facilities to any third parties.
- 23.6.4 Termination Payment shall be due and payable to the MDO within 60 (sixty) days of acceptance of demand being made by the MDO to IREL with the necessary particulars, IREL shall not be required to make any Termination Payment until the MDO has delivered to IREL possession of the Project Facilities in good condition or working order and free and clear of all Encumbrances, to the satisfaction of IREL, provided IREL decides to purchase the Project Facilities. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by IREL of its obligations hereunder. Further IREL shall be entitled to adjust all Damages payable by the MDO pursuant to the terms of the Agreement against the Termination Payment.
- 23.6.5 The MDO expressly agrees that Termination Payment under this Clause 23.6, shall constitute a full and final settlement of all claims of the MDO on account of Termination



## IREL (INDIA) LIMITED

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of this Agreement for any reason whatsoever and that the MDO or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.6.6 The MDO shall furnish a no dues and no claim certificate to the IREL upon full and final settlement to the MDO on account of Termination of this Agreement.

### **23.7. *Disputes about Events of Termination***

If either Party disputes whether an event specified in Clause 23.2 or in Clause 23.3 hereof has actually occurred, such Party may, within 30 (thirty) days after receipt of Termination Notice from the other Party, may refer the matter to arbitration pursuant to Clause 27.2 hereof.

### **23.8. *Survival of rights***

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 23.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance, proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.



IREL (INDIA) LIMITED

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# ***PART VI***

# ***OTHER PROVISIONS***



## **Article 24. Insurance**

### **24.1 Insurance during Contract Period**

The MDO shall affect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, with financially sound and reputable insurers, and such insurances as may be necessary or prudent in accordance with Standard Industry Practice. The MDO shall also affect and maintain such insurances as may be necessary for mitigating the risks that may devolve on IREL as a consequence of any act or omission of the MDO during the Contract Period. The MDO shall procure that in each insurance policy, IREL shall be a co-insured.

### **24.2 Insurance Cover**

24.2.1 Without prejudice to the provisions contained in Clause 24.1, the MDO shall procure and maintain Insurance Cover including, but not limited, to the following:

- (a) loss, damage or destruction of the Project Assets, including assets handed over by IREL to the MDO, at replacement value;
- (b) comprehensive third-party liability insurance including injury to or death of personnel of IREL or others caused by the Project;
- (c) the MDO's general liability arising out of the Agreement;
- (d) liability to third parties for goods or property damage;
- (e) community risk including loss and damages to life and property of community or village around the mining area;
- (f) workmen's compensation insurance; and
- (g) any other insurance that may be necessary to protect the MDO, IREL, and their employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.

### **24.3 Notice to IREL**

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the MDO shall by notice furnish to IREL, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this **Error! Reference source not found.** Within 30 (thirty) days of receipt of such notice, IREL may require the MDO to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **24.4 Evidence of Insurance Cover**

All insurances obtained by the MDO in accordance with this **Error! Reference source not found.** shall be maintained with insurers on terms consistent with Standard Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the MDO shall furnish to IREL, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the MDO to IREL.



## IREL (INDIA) LIMITED

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### **24.5 Remedy for failure to insure**

If the MDO shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, IREL shall have the option to either keep in force any such insurances and pay such premium and recover the costs thereof from the MDO.

### **24.6 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the MDO pursuant to this **Error! Reference source not found.** shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, IREL, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

### **24.7 MDO's waiver**

The MDO hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, IREL and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the MDO may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the MDO pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

### **24.8 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be applied by the MDO firstly, for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Mines, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

### **24.9 Payment of Premium**

The Mine Developer and Operator shall on or before the date when each premium becomes payable, pay all amounts necessary for maintaining such insurance.

### **24.10 Continuity**

If a Party fails to effect or maintain the insurances it is required to effect or maintain under this Agreement, the other Party may (at its absolute discretion) effect and maintain such insurances (or any of them) and all costs and expenses incurred by such other Party are recoverable from the defaulting Party along with the interest commencing from the date of incurring such cost and expenses to the date of recovery.



## **Article 25. Liability and Indemnity**

### **25.1. MDO Indemnification for Liabilities**

To the fullest extent permitted by Law, MDO assumes liability for and agrees to indemnify, protect, save and hold harmless IREL from and against any and all liabilities (including, any strict liability), arising out of acts or omissions of MDO or its personnel or its agents in the performance of its obligations under the MDO causing bodily injury, sickness, disease or death, damage to or loss of any property, and whether or not involving damage to Works or Site that may be imposed on, suffered or incurred by or asserted against IREL and in any way relating to or arising out of:

- (a) Work, any Equipment
- (b) the presence, discharge, treatment, storage, transportation, disposal, escape or release of any Hazardous Substance, or the threat thereof, at, to or from Site after commencement of work (any hazardous substance already existing at Site before commencement of Work excluded)
- (c) The performance of Work, or as a result of personal injuries (including wrongful death);
- (d) the violation by MDO or any Sub-Contractor/ Vendor of any Government Approval or applicable Law;
- (e) Any breach of Agreement with any Sub-Contractor/ Vendor.

### **25.2. Contractor Indemnification for Taxes**

It is specifically understood that MDO hereby accepts and assumes exclusive liability for and save and hold IREL harmless from and against of all Taxes arising from the performance of Work, and all such Taxes shall be deemed to be included in MDO Fee, except for GST. GST at applicable rate is payable extra.

### **25.3. Payments of amounts under this clause**

Except to the extent covered by insurance, all amounts payable and due by MDO to IREL under this clause shall be deducted from the monthly payments or any other amounts owed by IREL to MDO here under. If such amounts payable by IREL to MDO is less than the amounts payable and due by MDO under this clause, the MDO shall be liable to IREL for such excess and shall pay such amount to IREL immediately upon demand.

### **25.4. Survival on Termination**

The provisions of this Article 26 shall survive Termination.



## **Article 26. Rights to Work at the Site**

### **26.1. Rights to Work at the Site**

For the purpose of this Agreement, the MDO shall have rights to the use of the Site in accordance with this Agreement, and to this end, it may regulate the entry and use of the Mines by third parties in accordance with and subject to the provisions of this Agreement.

### **26.2. Access rights of IREL and others**

26.2.1 The MDO shall allow free access to the Site at all times for the authorized representatives of IREL and for the persons duly authorized by any Government Instrumentality to inspect the Mines and to investigate any matter within their authority, and upon reasonable notice, the MDO shall provide to such person's reasonable assistance necessary to carry out their respective duties and functions.

26.2.2 The MDO shall, for the purpose of operation and maintenance of any utility or road specified in Article 11 allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

### **26.3. Property Taxes**

Applicable property Taxes (if any) on the Site shall be payable by IREL as owner of the Site; provided, however, that any such Taxes payable by the MDO under Applicable Laws for use of the Site shall not be reimbursed or payable by IREL.

### **26.4. Restriction on sub-letting**

The MDO shall not lease, sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the MDO to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Mines and plants. Also, sub-contracting of work by MDO shall not discharge the MDO from any of its obligations and liability under this agreement and MDO shall remain bound to perform all its scope of work, duties and obligations under this agreement.





## **Article 27. Resolution of Disputes and Arbitration**

### **27.1. Resolution of Disputes**

- 27.1.1 IREL and the MDO shall make every effort to resolve amicably by direct informal, good faith negotiations any disagreement or dispute arising between them under or in connection with the Agreement.
- 27.1.2 If, after thirty days from the commencement of such informal, good faith negotiations, IREL and the MDO have been unable to resolve the disagreement or dispute, the same shall be referred for resolution as per the formal mechanism as specified hereunder shall be applicable.
- 27.1.3 The Agreement shall be, in all respects be construed and operated as an Indian Contract and in accordance with Indian Laws as in force for the time being.

### **27.2. Arbitration**

- (i) All disputes and differences of any kind whatsoever arising out of or in connection with the Agreement 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 and shall be made within a period of 30 days from the date of receipt of such reference to them.
- (ii) If the MDO 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 (CMD) at the registered office, Mumbai for the same to be referred to Arbitration by a Sole Arbitrator to be appointed by mutual consent and after due approval of CMD, IREL. The Arbitration proceedings shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996. It is made clear that this Arbitration Clause shall be applicable to any and all disputes and differences between the Parties arising out of and/or relating to this Agreement and the Parties shall be bound to refer the same to arbitration in accordance with the procedure contemplated herein.
- (iii) If the period of 30 days as stipulated in the preceding sub-clause (ii) above, has expired at any stage, without any response from the MDO before such expiry, the MDO 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.
- (iv) Notwithstanding the invocation, commencement and/or pendency any dispute resolution proceedings under this Article 27, including arbitration under Clause 27.2, the MDO shall continue to be bound by the provisions of the Agreement, if not terminated by IREL, and shall be obligated to discharge its obligations under the Agreement including continuation of the Works under the Agreement.
- (v) The MDO 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 dispute resolution under this Article 27, including arbitration under Clause 27.2.

### **27.3. Jurisdiction**

The courts only shall, subject to Arbitration Clause, have exclusive jurisdiction to deal with and decide any matter arising out of this Agreement.



## **Article 28. Miscellaneous**

### **28.1. Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Bhubaneswar, Odisha shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

### **28.2. Waiver of immunity**

Each Party unconditionally and irrevocably:

28.2.1 agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

28.2.2 agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

28.2.3 waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

28.2.4 consents generally, in respect of the enforcement of any judgment or award against it in any such proceedings and to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **28.3. Depreciation**

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the MDO in the Project Assets shall be deemed to be acquired and owned by the MDO. For the avoidance of doubt, IREL shall not in any manner be liable in respect of any claims for depreciation to be made by the MDO under Applicable Laws.

### **28.4. Delayed Payment**

28.4.1 The MDO hereto agree that payments due from MDO to IREL (wherever applicable) under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 60 (sixty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the MDO shall pay interest for the period of delay calculated at the Bank Rate and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

28.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on daily outstanding basis and shall be compounded on the basis of quarterly rests.

### **28.5. Waiver**

28.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of other provisions of, or obligations, under this Agreement;



## IREL (INDIA) LIMITED

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- (b) shall not be effective unless it is in writing either in physical form or in electronic form (email) and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

28.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### **28.6. Liability for review of Documents and Drawings**

28.6.1 Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by IREL of any Project Agreement, Document or Drawing submitted by the MDO nor any observation or inspection of the construction, operation or maintenance of the Mines nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the MDO from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) IREL shall not be liable to the MDO by reason of any review, comment, approval, observation or inspection referred to in sub-Clause (a) above.

### **28.7. Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

### **28.8. Survival**

28.8.1 Termination shall:

- (a) not relieve the MDO or IREL, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

### **28.9. Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing either in physical form or on electronic form (email) by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written form either in physical form or electronic form(email) or oral understandings, offers or other communications of every kind pertaining to this Agreement, save and except any obligations of the Parties arising out of the Tender Documents, shall stand superseded.



## IREL (INDIA) LIMITED

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### **28.10. Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

### **28.11. No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **28.12. Successors and assigns**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

### **28.13. Notices**

28.13.1 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing either in physical form or in electronic form (email) and shall:

- (a) in the case of the MDO, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for the attention of the person set out below or to such other person as the MDO may from time to time designate by notice to IREL; provided that notices or other communications to be given to an address outside the city specified in sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered post with acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the MDO may from time to time designate by notice to IREL:

Attention:  
Designation:  
Address:  
Fax No:  
Email:

**[NOTE: Details to be filled in]**

- (b) in the case of IREL, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to Engineer-In-Charge or such other person as IREL may from time to time designate by notice to the MDO; provided that if the MDO does not have an office in the same city as IREL, it may send such notice by facsimile or e-mail and by registered post with acknowledgement due, or by courier:

Attention:



## IREL (INDIA) LIMITED

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Designation:

Address:

Fax No:

Email:

**[NOTE: Details to be filled in]**

and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

### **28.14. Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing either in physical form or in electronic form (email) in English language.

### **28.15. Counterparts**

This Agreement may be executed in three counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement. The MDO shall within 15 days of signing of MSA, submit 15 hard copies of the entire agreement to IREL along with 1 signed scanned copy in Digital form in a Flash Drive.

### **28.16. Clause(s) violating/contradicting the conditions of 'Terms of Allocation'**

In case, any clause of the Agreement is violating or contradicting the conditions mentioned in LOI issued by Government of Odisha, Approved Mining Plan, Mining Lease or any other statutory approvals obtained for the Project, that particular clause shall be null and void, and hence not to be operated.

### **28.17. Applicable Laws:**

- (a) The MDO shall be governed by the Indian laws being in force from time to time.
- (b) The MDO shall be governed by and shall require sub-contractors to be governed by any applicable National, Municipal, Local or other law and any requirement or regulations of any Indian Governmental Authority or Agency in connection with the performance of the work.
- (c) The MDO would also be required to observe any condition or regulation imposed by the DGMS.
- (d) The MDO shall observe all the safety rules and regulations as required under the statutory Acts of the Government of India including specially Mine Safety Regulations of India. The MDO is expected to observe stipulations contained in all such laws applicable in India in connection with the performance of the Agreement and diligently observe and comply with all such laws.
- (e) IREL shall have the right to object to an unsafe practice followed by the MDO and direct that the work be carried out in a safe manner.



IREL (INDIA) LIMITED

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**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of

IREL by:

same in token thereof:

(Signature) (Name)

(Designation)

(Address) (Fax No.)(e-mail address)

The MDO (Signature) (Name)

(Designation)

(Address) (Fax No.) (e-mail address)

The Selected Bidder (Signature) (Name)

(Designation)

(Address) (Fax No.) (e-mail address)

**In the presence of:**

1. Signature

(Name)

(Designation)

(Address) (Fax No.) (e-mail address)

2. Signature

(Name)

(Designation)

(Address) (Fax No.) (e-mail address)

Pursuant to the resolution passed by the Board of Directors of the MDO **at its meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 20XX \_\_\_\_\_**, the Authorized Representative who has countersigned the Tender Document.



## **SCHEDULE – A**

*(See Clause 4.1)*

### **APPLICABLE CLEARANCES**

The MDO shall obtain, as required under Applicable Laws, required clearances, permits, licenses or consents on before the Appointed Date, save and except to the extent of a waiver granted by IREL in accordance with Clause 4.1 of the Agreement.

- (a) Environment Clearance from Ministry of Environment, Forest and Climate Change, Govt of India
- (b) Forest Clearance from Ministry of Environment, Forest and Climate Change, Govt of India
- (c) CRZ Clearance from Ministry of Environment, Forest and Climate Change, Govt of India
- (d) Consent to Establish (CTE) for mining and WUP unit to be obtained from Odisha State Pollution Control Board
- (e) Consent to Operate (CTO) for mining and WUP unit to be obtained from Odisha State Pollution Control Board
- (f) License for mining and handling of minerals containing prescribed substances and for handling such substances from the Department of Atomic Energy, Govt of India under the Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules, 1984
- (g) Electrical License
- (h) Any other clearances required for commencement of mining and WUP operations



## IREL (INDIA) LIMITED

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### **SCHEDULE – B**

**(Refer Clause 16.1.2)**

#### **Annual Work Plan**

MDO shall submit an Annual Work Plan to IREL within 2 months of signing of Agreement applicable for the running Accounting Year. Thereafter, Annual Work Plan shall be submitted by MDO at the beginning of each Accounting Year till the end of Contract Period with the following details:

1. Construction work proposed to be done in the financial year with details of such work (location, layout, design, drawing etc.)
2. Development work proposed to be done during the financial year including Land acquisition activities, R&R activities.
3. Statutory approvals, permissions and clearances expected to be taken throughout the year
4. Monthly scheduled quantity and the corresponding Annual Capacity
5. Coordinates of the area to be mined, layout and sequence of mining operations during the following financial year.
6. Summary of backfilling and mine closure activities to be done by MDO
7. Other activities which MDO considers to be important for smooth operations at the mine.





IREL (INDIA) LIMITED

**SCHEDULE – C1**

(To be executed on the Non-Judicial Stamp Paper of minimum amount of INR 300/- with an affixed revenue stamp of INR 1/-)

(See Clause 9.1)

**PERFORMANCE BANK GUARANTEE**

(To be executed on Non-Judicial Stamp Paper of appropriate value)

..... (Name of the Bank)

Address .....

Guarantee No. ....

A/c Messrs ..... (Name of MDO)

Date of Expiry .....

Limit to liability (INR & amount) .....

Contract No. ....

For ..... (Name of Project)

**Subject: Performance Bank Guarantee**

Date ..... 20..

**To**

IREL (India) Limited,

.....

.....

WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_ M/s \_\_\_\_\_ (MDO name & address), having its registered office situated at \_\_\_\_\_ (Postal address) (herein after referred to as 'The MDO') entered into an Agreement bearing reference no. \_\_\_\_\_ dtd. \_\_\_\_\_ with M/s IREL (India) Limited [CIN: U15100MH1950GOI008187], 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 Contract').

AND WHEREAS the Agreement provides that the tenderer shall furnish a Bank Guarantee for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) being \_\_\_\_% ( \_\_\_\_\_ percent ) of the Annual Average Contract Value as per the Agreement, as Guarantee for the due fulfillment by the tenderer of the



IREL (INDIA) LIMITED

terms and conditions contained in the Agreement, the guarantee remaining valid till the completion of the guarantee period.

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 by the said tenderer of any of the terms or conditions contained in the said Agreement or by reason of the Bidder's failure to perform 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. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

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

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

We \_\_\_\_\_ 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 bidder and accordingly discharges this Guarantee.

We also agree that the amount will be paid by us to the IREL within three working days from the date of demand for payment till the actual date of payment made by us.

Our Guarantee shall remain in force until and unless a demand or claim under this guarantee is made on us in writing within six months from the expiry of the Guarantee period, we shall be discharged from all liability under this Guarantee thereafter.

We \_\_\_\_\_ 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 tenderer from time to time or to postpone for any time or from time to time any of the distributions exercisable by IREL against the said tenderer and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said tenderer or for any forbearance, act or omission on the part of IREL or any indulgence by IREL to the said tenderer 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 bidder.

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

Notwithstanding anything to the contrary contained herein before:

- (a) Our Liability under this Bank Guarantee shall not exceed and restricted to Rs ..... (in words)
- (b) This Bank Guarantee shall be valid upto ....., unless extended on demand.



**IREL (INDIA) LIMITED**

---

(c) The bank is liable to pay the guaranteed amount or any part thereof under this bank Guarantee only if IREL serve a written claim or demand on or before ..... (Three months from the expiry of Guarantee period)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 201\_

\_\_\_\_\_ Bank

(Signature with name in Block letters with designation,

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

Bank's Common seal

**Note:**

1. Unit need to impress upon the bank/ tenderer, for a claim period of three months and the same should be stipulated in the tender. However, unit may also accept claim period of one month in exigencies where request for the same has been submitted by a party before bidding and issuing a corrigendum to the above effect.
2. In case of global tenders or public tenders involving foreign parties, no bank guarantee formats will be incorporated in the tender. However, an enabling clause will be incorporated indicating that the bank guarantee will be mutually agreed between the successful bidder and IREL.
3. After finalization of the successful bidder, Unit will take attempt to enforce the bank guarantee format as mentioned in the Purchase Procedure. However, in case the banker/ bidder does not accept the same, then unit may accept a mutually agreed bank guarantee format indicated by the bank/ successful bidder after due legal vetting (so as to ensure that interest of IREL is in no way affected) and with the approval of the Head of the Unit.



IREL (INDIA) LIMITED

**SCHEDULE – C2**

(To be executed on the Non-Judicial Stamp Paper of minimum amount of INR 300/- with an affixed revenue stamp of INR 1/-)

(See Clause 9.4)

**CORPORATE PERFORMANCE GUARANTEE**

..... (Name of the Bank)

Address .....

Guarantee No. ....

A/c Messrs ..... (Name of the Supporting Partner)

Date of Expiry .....

Limit to liability (INR & amount) .....

Contract No. ....

For ..... (Name of Project)

**Subject: Corporate Performance Bank Guarantee**

Date ..... 20..

**To**

IREL (India) Limited,

.....

.....

WHEREAS \_\_\_\_\_ (the "Supporting Partner") having its office at \_\_\_\_\_ and \_\_\_\_\_ (the "MDO") having its principal offices at \*\*\*\*\* have entered into an Joint Operating Agreement dated \_\_\_\_\_ (the "JoA") and subsequently, IREL (India) Limited ("IREL") has entered into this Ming Services Agreement (the "Agreement") with MDO and Successful Bidder (Name of Successful Bidder) <strikeout whichever is not applicable> whereby IREL has agreed to the Supporting Partner providing technical/ financial <strikeout whichever is not applicable> support to the <Name of the MDO> for undertaking the Development and Operation of Brahmagiri mine, Construction and Operation of WUP for Mineral Sandat Brahmagiri Tahasil, Puri District, Odisha, subject to and in accordance with the provisions of the Agreement.



## IREL (INDIA) LIMITED

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The Agreement requires the Supporting Partner to furnish a performance bank guarantee to IREL of a sum of [Rs. \* \* \* \* \* cr. (Rupees \* \* \* \* \* Crore)] (the "**Guarantee Amount**") as security for due and faithful performance of the <MDO's> obligations, under and in accordance with the Agreement, within 30 days of issuance of the LOA, which shall remain valid for 90 (ninety) days after the achievement of Peak Rated Capacity of Mine as certified by IREL (the "**Guarantee Period**").

Now therefore the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. We ..... (**Name of the Bank**) do hereby expressly irrevocably and unreservedly undertake to unconditionally pay to you merely on your written demand, without referring it to the SUPPORTING PARTNER/ MDO and without protest and demur an amount not exceeding Rs..... (**amount**). Any such demand made on us shall be conclusive as regards the amount due and payable by us under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.....
2. This Guarantee shall be operable / encashable at ..... (Name of Bank), ..... (Branch), (**Location**).
3. Notwithstanding anything to the contrary, we agree that your decision as to whether the SUPPORTING PARTNER/ MDO has committed a breach of any terms and conditions of the contract shall be final and binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but shall pay the same forthwith without any objection or excuse.
4. We undertake to pay to you any money so demanded notwithstanding any dispute or disputes raised by the SUPPORTING PARTNER/ MDO in any suit or proceeding pending before any court or Tribunal or arbitration relating thereto, our liability under these presents being absolute and unequivocal.  
The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment there under.
5. This guarantee shall come into force from the date of issue of this guarantee and shall remain irrevocably valid and in force initially up to \_\_\_\_\_ and the same shall be extended further till the expiry of the Contract Period.
6. This guarantee shall not in any way be affected by you taking any securities from the SUPPORTING PARTNER / MDO or by the winding up, dissolution, insolvency as the case may be of the SUPPORTING PARTNER/ MDO. We shall not be entitled to proceed against the assets of the SUPPORTING PARTNER/ MDO at your site.
7. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the SUPPORTING PARTNER / MDO, hereby guaranteed by us as aforesaid and we hereby expressly waive all our surety ship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
8. The Bank undertakes to renew this Bank Guarantee from time to time and in case Bank fails to extend the validity of the Bank Guarantee prior to its expiry, the same shall be deemed to be invoked by IREL.
9. This guarantee is in addition to any other guarantee or guarantees given to you by us.



## IREL (INDIA) LIMITED

10. This guarantee shall not be discharged by any change in the constitution of the SUPPORTING PARTNER/ MDO or us, nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for and be available to and effaceable by the absorbing or amalgamated company or concern.
  11. Notwithstanding anything contained herein before our liability under this guarantee is restricted up to a sum Rs..... (**amount**) and shall expire on ..... unless a claim or demand is made on us in writing within one year of the expiry date all your rights shall be forfeited, and we shall stand relieved and discharged from our liabilities hereunder.
  12. In order to give full effect of the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the SUPPORTING PARTNER/ MDO, hereby guaranteed by us as aforesaid and we hereby expressly waive all our surety ship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
  13. This Guarantee and the powers and provisions herein contained are in addition to and not by way of limitation of or substitution for any other guarantee or guarantees heretofore given to you by us (whether jointly with other or along) and now existing un-cancelled and that this Guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.
- We, the said Bank confirm that the Signatory(ies) of this Guarantee is/are authorized to issue this Guarantee on behalf of the Bank and the Bank undertakes the full responsibility to this effect.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 201\_ \_  
\_\_\_\_\_ Bank

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

Bank's Common seal

Note :

1. While issuing the Bank Guarantee, the issuing Bank must furnish following details :

Name & Address of the Bank :  
Contact Person:  
Telephone No. :  
Fax No. :  
E-mail address:

The SUPPORTING PARTNER/ MDO while getting the Bank Guarantee issued by the Banker must take care of the above details.

NOTES:

- I. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- II. The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.



## **SCHEDULE – D**

(See Clause 12.3.1)

### **TESTS**

#### **1. Schedule for Tests**

- (a) The MDO shall, no later than 60 (Sixty) days prior to the likely completion of the Construction Works and installation of Equipment at the Mines, notify IREL of its intent to subject the Equipment and WUP to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to IREL particulars of all works and Equipment forming part of the Project.
- (b) Upon receipt of such notice, IREL shall, in consultation with the MDO, schedule the date and time for each Test and designate its representative to witness the Tests. IREL shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-D.

#### **2. Agency for conducting Tests**

In pursuance of the provisions of Clause 12.3 of this Agreement, IREL shall require the MDO to carry out, or cause to be carried out, or IREL may appoint an independent agency for conducting Tests as specified in this Schedule-D.

#### **3. Common Tests**

- (a) Visual and physical Test  
IREL shall conduct a visual and physical check of the Equipment and WUP to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- (b) Safety review  
Safety audit of the WUP and Equipment shall have been undertaken by the safety officer, and on the basis of such audit, IREL shall determine conformity of the Mines with the provisions of this Agreement.
- (c) Environmental audit  
IREL shall carry out a check to determine conformity of the WUP and Equipment with the environmental requirements set forth in Applicable Laws and Applicable Permits.

#### **4. Tests for Safety Certification**

Tests for determining the conformity of the Mines and WUP with the Safety Requirements shall be conducted in accordance with Best industry practices and in conformity with Applicable Laws.

#### **5. Performance Guarantee Test Run for WUP**

- (a) The Performance Guarantee Tests for WUP shall be conducted in accordance with professional engineering practices, plant safety, operating standards and licensors recommendations.
- (b) The performance test-runs shall be carried out by such agency or person as may be specified by IREL.

#### **6. Cost of Tests**

- (a) The costs of conducting Tests shall be borne by the MDO.
- (b) In the event any Test is required to be repeated by IREL for reasons not attributable to the MDO, the cost of such Test shall be borne by IREL.



## **SCHEDULE – E**

*(Refer Clause 12.2.4)*

### **Drawings& Documents**

In compliance with the obligations set forth in Clause 12.2.4 of the Agreement, the MDO shall furnish to IREL, free of cost, all Drawings& Documents listed below:

- (a) Location plan of the Mines
- (b) Process flow diagrams (PFD) of WUP
- (c) Piping and Instrument Diagram (P&ID)of WUP
- (d) Design basis/design criteria of WUP
- (e) List of equipment and BOQ for WUP
- (f) Plan, section and elevation drawings for WUP

### **Additional drawings**

If IREL determines that for discharging IREL's duties and functions under this Agreement, IREL requires any drawings or documents other than those listed in Annex-I, IREL may by notice require the MDO to prepare and furnish such drawings or documents forthwith. Upon receiving a requisition to this effect, the MDO shall promptly prepare and furnish such drawings or documents to IREL, as if such drawings or documents formed part of Annex-I of this Schedule-E.

### **Vetting of Drawings**

The MDO shall get all the Drawings & Documents vetted through a third party, with prior approval from IREL in writing.





## IREL (INDIA) LIMITED

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### **SCHEDULE – F**

**(See Clause 18.1)**

#### **Sampling Procedure**

- a) Sampling of Mineral Sand, HM Concentrate and Tailing for analysis as per clause 18.1 of MSA shall be carried out in the presence of representative of both MDO and IREL.
- b) The design and operation of such sampling system and the procedures used for sample preparation is to be followed as per **AS 2884.3** sampling standards or any other applicable sampling standards approved by IREL in writing. Any modifications in the sampling standards shall be adopted by both MDO and IREL after mutual discussion and taking prior approval of IREL.
- c) As per clause 18.1.2, the representative samples so collected at various points shall be divided into three equal parts. The first part of the representative samples shall be used for the Tests. The second & third part of the representative samples shall be suitably packed, sealed and sent to IREL and the MDO respectively immediately after sampling and shall be treated as “**Referee Samples**”.
- d) The testing /analysis of samples shall be carried out as per clause 18.1 of CMSA.
- e) The MDO and IREL shall have the right to demand umpire analysis of referee sample (if required), within 07 (seven) days from the date of declaration of result by IREL for first part of representative sample.



## **SCHEDULE –G**

### **Procedure for Short-term leasing of land within the Mining Lease area**

- I. Prior to undertaking any surface operation within the Mining Lease area, consent shall be obtained in the format prescribed in Annexure-I to this Schedule, from the landowner in case of private land which is mandatory as per Rule 16 of Atomic Mineral Concession Rules, 2016/2019. However, in case of Government land no such consent is warranted. Land documents with regards to establishing land ownership shall be verified from the revenue records.
- II. In addition to the consent rendered, the landowner(s)/ their legal successor(s) have to furnish an undertaking towards resolving the land dispute issues, if any arising during the course of mining operations.
- III. If a landowner is denying consent for surface operation, the matter shall be taken up with District Administration by MDO on behalf of IREL to deal with such issues. No surface operation shall be undertaken without obtaining consent.
- IV. Temporary leasing of the lands will be carried out in accordance with the proposed dredge path/ area earmarked for mining as detailed in the approved Mining Plan.
- V. Based on the annual target of raw sand to be mined, the MDO in consultation with IREL shall calculate the quantum of land required in a given Financial Year and accordingly prepare the plan and schedule for leasing in a Financial Year. The activities for obtaining consent and leasing lands required for a given Financial Year shall be undertaken in the preceding Financial Year, simultaneously with the operations. Henceforth the schedule of land shall be prepared and furnished as part of the annual works plan submitted for the preceding Financial Year as per Clause 16.1.2.  
*Example: Schedule for land requirement in FY 2029-30 shall be prepared and furnished as part of annual works plan submitted on 1<sup>st</sup> January 2028 (FY 2027-28) to be approved by IREL as Approved Annual Works Plan, as per Clause 16.1.2. The same land shall be consented and leased as per the provisions of this agreement and Applicable Laws in FY 2028-29 along with operations.*
- VI. If any land owner is found to be having large chunk of land (more than 10 Acres), consent will be obtained for the entire patch of land owned by it, however temporary leasing will be done in a phased manner based on the mutual understanding between the landowner and IREL. Possession of the land will be taken by MDO on behalf of IREL only on such extents which is required for surface operation in phased manner.
- VII. Schedule of land to be leased out on short term basis after finalization by IREL in the Approved Annual Works Plan will be put up to the officer deputed for the purposes of compensation (“**Compensation Officer**”) for leasing of surface, as per Rule 16 of Atomic Minerals Concession Rules, 2016/2019. A requisition shall be given by MDO on behalf of IREL to the Compensation Officer for deputing Revenue and Forest Officials for undertaking joint field verification for enumeration of tress in the land to be leased.
- VIII. Upon orders from the Compensation Officer, demarcation and enumeration shall be conducted by Revenue and Forest fields staffs jointly on the scheduled date in presence of the landowner(s)/ their legal successor(s), witness on behalf of landowner & representatives of IREL. After enumeration and assessment of land, the Revenue and Forest officials shall prepare an assessment sheet with amount to be paid to landowners or encroachers of government land, as the case maybe. In case of private land, the assessment sheet shall be signed by IREL’s representative and landowner/legal successor. In case of encroached government land, same shall be signed by IREL’s representative and occupiers of the land. Finally, the assessment shall be issued by the Compensation Officer. The MDO shall assist IREL in all related activities.
- IX. Encroachers of government land (as declared in govt records) shall be paid the amount as directed



## IREL (INDIA) LIMITED

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by Compensation Officer in the assessment sheet.

- X. The compensation amount for the private land which includes annual lease rent, value for vegetation, compensation amount for any damage which is likely to arise from the operation and any other payment related to the same shall be disbursed as per the mutual understanding between the landowner and IREL or as per the directions of Compensation Officer.
- XI. After assessment of the land jointly, it will be the sole responsibility of landowner(s)/ encroacher(s)/ their legal successor(s)/ their representatives to clear off the tree growth for establishing their physical possession. Prior to commencement of mining, land will be prepared devoid of vegetation. If the occupier of such land fails to clear off the vegetations over his/her/their plot(s), the MDO on behalf of IREL shall clear off the vegetation, with due intimation to the occupier(s) including Compensation Officer in this regard.
- XII. In case of any dispute after receipt of consent with regard to the ownership or physical possession of the land or stoppage of surface operations by landowner(s)/ their legal successor(s)/ their representatives or trespassers; landowner(s)/ their legal successor(s) will be communicated by IREL to resolve the issue immediately. MDO shall assist in expediting resolution of any such issue. Upon failure in resolving the matter, it will be taken up with the District Administration and compensation payment will be made as per the directions of the Compensation Officer.
- XIII. The MDO shall collect the following documents on behalf of IREL from owners of private land/encroachers of government land for certifying payment:
- Identity proof (Voter id/ Aadhar card/ Pan card)
  - Bank Passbook with Account No. & IFSC code.
  - Legal heir certificate issued by Tahsildar / Affidavit of authorization
  - Encumbrance certificate (EC)
  - Indemnity bond (for Private & Govt, land)
  - Any other land document supporting the ownership(if required)
- XIV. In Case of land disputes which are under subjudice, effort will be made for out of court settlement between the parties and IREL. The MDO shall assist IREL in arriving at an out of court settlement.
- XV. The date of commencement of annual lease rent shall start w.e.f. date of clearing of vegetation over the land ready for surface operations. MDO shall demarcate and communicate the consented lands with the date of completion of cleaning of vegetation in writing based to IREL. IREL shall verify the same and permit the MDO to enter such leased land for operations, within one week from the date of receipt of such communication. Only after permission from IREL shall the MDO enter such leased land for operations.
- XVI. The MDO shall be responsible for restricting any kind of illegal trespassing in the area leased for operations. Nevertheless, in case of any illegal trespassing into the active mining area or forceful stoppage of surface operations, the MDO shall immediately convey the matter to IREL and take necessary action including lodging of FIR, etc. on behalf of IREL.
- XVII. In case of any dispute leading to stoppage of operations by landowner(s)/ their legal successor(s)/ their representatives/ trespassers, the period of annual lease rent will not be reckoned from date of vegetation clearance. In such cases the disrupted period will not be taken into consideration for calculating annual lease rent payment. The issue of such disruption shall be brought to the knowledge of officer deputed for compensation. Henceforth, the MDO shall maintain records of the date from which any land was consented for use after clearance of vegetation and periods of disrupted period, if any. The said dates and period shall be intimated to IREL immediately by the MDO for record and reference.



IREL (INDIA) LIMITED

**ANNEXURE-I: Format for obtaining consent from owners of private land within the Mining Lease area**

CONSENT LETTER

To

M/S IREL (India) Limited

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sir,

I/We Sri/Smt..... S/o /D/o/W/o .....

resident of village ..... P.O : ....., P.S : .....,

District....., the legal owner of land more fully described in the schedule below intimate as follows:

I/We have come to understand that M/s IREL(India) Limited, is availing private land(s) on short term lease basis existing within its mining lease hold area for undertaking surface operations which will be returned back to the landowners after completion of mining, backfilling and restoration followed by plantation activities.

It is noteworthy that I/We am/are the rightful owner(s) of the following land(s).

**Schedule of Land**

Sl. No	Khata No	Plot No	Extent of Land (in acres)	Village/Mouza

I/We am/are furnishing the land documents in support of my/our ownership which includes

- i) Copy of Records of Right (RoR) (duplicate copy of patta)
- ii) Encumbrance Certificate

| Signature of the MDO and IREL with date & seal



## IREL (INDIA) LIMITED

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- iii) Updated land revenue receipt
- iv) Aadhar Card copy
- v) Any other land documents in support of establishing ownership

I We do swear that the above information shared by me/us is/are completely flawless and correct to the best of my/our knowledge and belief.

I/We am/are agreeable to existing compensation package which relates to rate of annual lease rent as well as the vegetation of tree growth or at any other rate as may be fixed by the Compensation Officer, Govt, of Odisha from time-to-time. I/We am/are also agreeable to other terms and conditions annexed herewith.

In this regard, I/We render my/our consent for transfer of above land on short term lease basis to IREL (India) Limited for undertaking surface operations. I/We don't have any objection if the compensation is decided by the District Collector/Compensation Officer, Govt. of Odisha.

I/We do hereby declare that any land disputes arise during the course of surface operations will be resolved by me/us to facilitate smooth surface operations by IREL (India) Limited.

The short-term lease period may be finalized based on mutually agreed terms and conditions between IREL (India) Limited and Landowner.

Yours Truly

My Address:

Contact No.:

### TERMS AND CONDITIONS FOR LEASING OF LAND ON SHORT TERM LEASE BASIS TO IREL (India) Limited:

1. Landowner(s) or his/her/their representatives shall identify the plot boundary/area(s) to be leased out to IREL and clear off all the vegetations and other belongings over it.
2. Payment of compensation to the landowner(s) is subject to establishing (i) a clear title & possession free from all sorts of encumbrances/legal complications (ii) extension of all support towards smooth surface operations by IREL (India) Limited.
3. Date of annual lease rent for the area will be reckoned from the date of complete clearance of tree growth and other belongings, if any by the landowner(s) over his/her/their whole plot(s) or part thereof.
4. In case of any dispute leading to stoppage of surface operations due to landowner(s)/ their legal successor(s)/ their representatives/ trespassers, the period of annual lease rent will not be reckoned from date of vegetation clearance. In such cases the disrupted period will not be taken into consideration for calculating annual lease rent payment.
5. In case the landowner(s) is consenting large chunk of land, temporary leasing will be done in a phased manner based on the mutual understanding between the landowner(s) and IREL (India) Limited. Possession of the land will be taken by IREL (India) Limited only on such extents which is required for surface operations in phased manner.
6. After completion of tree enumeration and assessment of the land jointly, based on the communication received from IREL (India) Limited, it will be the sole responsibility of landowner(s)/their legal successor(s)/their representatives to clear off the tree growth for establishing their physical possession.



## IREL (INDIA) LIMITED

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7. After completion of surface operations, land(s) will be returned back to the landowner(s)/their legal successor(s) with due reclamation & rehabilitation followed by plantation.
8. The landowner(s) shall allow IREL (India) Limited for watering of the plants for ensuring better survival rate after handing over of the land. In this regard further consent is not required.

### **Declaration**

I/We do hereby declare that I/We am/are agreeing to the above terms and conditions for leasing out my/our land(s) to IREL (India) Limited on short term lease basis.

Landowner(s):

Name:

Signature

Address:



IREL (INDIA) LIMITED

**SCHEDULE –H**

(Refer Clause 2.2)

**SCOPE DIVISION BETWEEN MDO AND IREL**

**A. Mining Plan**

<b>PROPOSED SCOPE DIVISION BETWEEN MDO AND IREL w.r.t MINING PLAN</b>	
<b>MDO</b>	<b>IREL</b>
<ul style="list-style-type: none"><li>❑ MDO shall undertake G1 level of exploration of the Mineral Sand deposit in accordance with Schedule B of the Atomic Minerals Conservation Rules, 2016/2019 and prepare a Geological Report for estimation and reporting of Mineral Resources integrating all data of exploration, sampling and testing generated through processes including but not limited to drilling, logging, laboratory analysis, technological studies etc. All such data generated through these processes and the geological report shall be submitted to IREL.</li><li>❑ MDO shall be responsible for preparation of the Mining Plan along with the Progressive Mine Closure Plan, updation in the scheme of mining every 5 years and for procuring approval on them, on behalf of IREL in accordance with the provision of Atomic Mineral Concession Rules, 2016/2019.</li><li>❑ The MDO shall at all times conform to the provisions of the approved Mining Plan, or any modification thereof, as may be approved in accordance with Applicable Laws.</li></ul>	<ul style="list-style-type: none"><li>❑ Provide necessary support to MDO and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and applicable laws.</li><li>❑ Provide access to the Mine as per agreement.</li><li>❑ Furnish extracts of the approved Detailed Project Report with technical details which are relevant to deployment of equipment and construction of WUP.</li><li>❑ IREL has right to Supervision and monitoring of preparation and implementation of Approved Mining Plan and Mine Closure Plan and persuasion of the approval to the respective authorities.</li></ul>



## IREL (INDIA) LIMITED

### B. Statutory clearances

<b>PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t STATUTORY CLEARANCES</b>	
<b>MDO</b>	<b>IREL</b>
<ul style="list-style-type: none"> <li>❑ MDO shall undertake all activities for obtaining all statutory clearances, permits and approvals on behalf of IREL for the commencement of mining, WUP operations and for mineral separation plant (MSP) as well. CTO/CTE for MSP shall not be MDO's responsibility.</li> <li>❑ Any technical study required for the grant of such statutory clearance shall be under the scope of the project for MDO.</li> <li>❑ the MDO at its own cost, shall also, specifically make appointment for each of the statutory manpower positions i.e., deploy persons holding requisite statutory competency certificates issued by the concerned statutory authorities for conducting different mining activities/ operations safely abiding by the relevant laws and statute.</li> </ul>	<ul style="list-style-type: none"> <li>❑ IREL, if required, depute its representatives for participation in public hearings and attending the meetings with the officials and representatives of the Ministry of Environment, Forests and Climate Change, Government of India for the purposes of procuring environmental and forest clearance in accordance with Applicable Laws;</li> <li>❑ IREL as the owner of the mine, shall at its own costs appoint the statutory manpower (including Mine Manager) of the mine as per Applicable Laws including in relation to the qualification requirements set out under the Mines Act, 1952, the Metalliferous Mines Regulation, 2019, directions by the Director General of Mines Safety (DGMS) and other Applicable acts, laws, and regulations.</li> <li>❑ IREL shall make statutory payment directly to Government Instrumentalities, State/Central Government related to clearances, approvals, licenses and permits, including the approval for Mining Plan.</li> <li>❑ Statutory payments including payments towards Royalty, NMET, DMF, and any other cess or statutory taxes for mining from the Mine Lease shall be directly made by IREL.</li> </ul>

### C. Consent for surface plots within Mining Lease area and Land acquisition

<b>PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t CONSENT FOR SURFACE PLOTS WITHIN MINING LEASE AREA AND LAND ACQUISITION</b>	
<b>MDO</b>	<b>IREL</b>
<ul style="list-style-type: none"> <li>❑ The MDO shall perform all activities on behalf of IREL related to the acquisition of the land required to perform activities within the Scope of the Project. The surface plots within the Mining Lease area shall be leased on a short-term basis in phased manner across the lease area. The MDO shall facilitate and Assist IREL with the foregoing:</li> <li>❑ In case of private land within the Mining Lease</li> </ul>	<ul style="list-style-type: none"> <li>❑ Provide necessary support to MDO as per Contract Agreement.</li> <li>❑ IREL shall consult the MDO in preparation of the land schedule for surface within the Mining Lease area which is to be leased on temporary basis for each Financial Year based on the targeted quantity for that respective Financial Year. Upon receipt of such land schedule, IREL shall finalize the same with</li> </ul>





## IREL (INDIA) LIMITED

### PROPOSED SCOPED DIVISION BETWEEN MDO AND IREL w.r.t CONSENT FOR SURFACE PLOTS WITHIN MINING LEASE AREA AND LAND ACQUISITION

MDO	I R E L
<p>area, it shall undertake activities on behalf of IREL relating to obtaining consent from the landowners for operating over such land(s) on a short-term leasing, as per the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019.</p> <ul style="list-style-type: none"><li>❑ Liaisoning and coordination on behalf of IREL, with the officer appointed by the State Government for the purposes of compensation for leasing of surface within the Mining Lease area for short term leasing, as per the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019.</li><li>❑ In case of government land, it shall assist IREL in obtaining consent from the District Administration for operating over such land(s).</li><li>❑ if needed, assist and facilitate IREL in acquiring any land area required for the Project and obtain physical possession of such acquired land(s) on behalf of IREL.</li><li>❑ MDO shall refer the procedures for such land leasing which has been described in Schedule G.</li><li>❑ The MDO shall ensure that particulars of land acquisition, if required shall be finalized during the Development Period and It shall be the responsibility of MDO to assist IREL to complete land acquisition for this Project within 5 years from the Appointed Date</li></ul>	<p>changes if required. Procedure for such land leasing has been described in Schedule G.</p> <ul style="list-style-type: none"><li>❑ As the Owner, a representative from IREL shall be undertake its responsibilities as mentioned in Schedule G for determining the compensation amount for leasing of surface within the Mining Lease area, in a particular Financial Year.</li><li>❑ Upon written request from the MDO, IREL shall discuss with MDO during the Development Period, upon the particulars of land acquisition for the Project. IREL on being of the opinion that such acquisition is necessary for the Project, shall convey its approval for land acquisition within three months from the date of such discussion.</li><li>❑ IREL shall make payment towards compensation for leasing of surface within the Mining Lease area in accordance with the provisions of Rule 16 of Atomic Minerals Concession Rules, 2016/2019 directly. This shall include the annual lease rent for the surface, value of vegetation over such surface, compensation amount for any damage which is likely to arise from the operation and any other payment related to the same.</li><li>❑ Payments for acquisition of either private, government or forest land (only if needed), shall be directly made by IREL.</li><li>❑ IREL has right to provide administrative support to MDO in procurement of consent from owners of private land within the Mining Lease area and in activities related to demarcation and assessment of such land.</li></ul>



## IREL (INDIA) LIMITED

### D. Rehabilitation & Resettlement

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t R&R	
MDO	IREL
<ul style="list-style-type: none"> <li>❑ The MDO shall be primarily responsible for undertaking all R&amp;R Obligations, including rehabilitating and resettling the PAFs related to such land including construction of R&amp;R houses for them, as applicable under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016.</li> <li>❑ R&amp;R compensation as one-time allowance in lieu of house (if applicable under relevant R&amp;R laws), if opted by any PAF shall be borne by the MDO as construction of R&amp;R houses is under the scope of MDO (Clause 2.2.5 and Clause 5.13.2 (b) of this MSA).</li> </ul>	<ul style="list-style-type: none"> <li>❑ IREL shall make direct payment for R&amp;R compensation to PAFs with respect to lands to be acquired, as applicable under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Odisha Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016.</li> </ul>

### E. Project Agreements

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t PROJECT AGREEMENTS	
MDO	IREL
<ul style="list-style-type: none"> <li>❑ The MDO shall submit to IREL, the drafts of all Project Agreements (for the purpose of this clause, Project Agreement does not include this Agreement) or any amendments or replacements thereto, for its review and comments.</li> <li>❑ Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the MDO shall submit to IREL a true copy thereof, duly attested by the managing director/ whole time director of the MDO, for its record.</li> <li>❑ The MDO shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Site, as the case may be, without prior written approval of IREL.</li> <li>❑ The MDO shall ensure that each of the Project Agreements contain provisions that entitle IREL to step into such agreement, in its sole</li> </ul>	<ul style="list-style-type: none"> <li>❑ IREL shall have the right but not the obligation to undertake such review and provide its comments, if any, to the MDO within 15 (fifteen) days of the receipt of such drafts.</li> <li>❑ Any failure or omission of IREL to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by IREL. Any failure on part of IREL to review, comment and/or convey its observations on any document shall not relieve the MDO of its obligations and liabilities under this Agreement in any manner nor shall IREL be liable for the same in any manner whatsoever.</li> <li>❑ IREL may, in its discretion, deny if such sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of IREL under this</li> </ul>



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**PROPOSED SCOPE DIVISION BETWEEN MDO AND IREL  
w.r.t PROJECT AGREEMENTS**

MDO	IREL
<p>discretion, in substitution of the MDO in the event of Termination or Suspension (the "Covenant").</p> <ul style="list-style-type: none"><li>❑ In case, the MDO further sub-contracts few of its work like O&amp;M, then selection or replacement of such sub-contractor shall be subject to the prior approval of IREL.</li><li>❑ The MDO shall not undertake or permit any Change in Ownership in it except with the prior written approval of IREL. The MDO shall not undertake or permit any Change in Ownership to an acquirer which is not a legally registered entity in India.</li><li>❑ In case the Selected Bidder is a Sole Bidding entity, and it forms a Special Purpose Vehicle to sign the Agreement to act as the MDO, it shall hold 100% of the equity in the MDO SPV till the achievement of Peak Rated Capacity of the Mine and thereafter at least 51% of equity in the SPV during the Contract Period. Any change in the shareholding of the SPV, can be made only after obtaining the prior written consent of IREL. Notwithstanding the formation of the SPV, the Selected Bidder shall be jointly and severally responsible with the SPV for performance of the obligations contemplated under the Agreement.</li><li>❑ In case the Agreement is signed by JV of winning Bidding Consortium, Lead Member of the Consortium must maintain minimum 51% equity at all times in the JVC and the Other Member shall have to maintain at least 26% of the equity in JVC for at least till 10 years from the Appointed Date as mentioned in this MSA. Any change in the shareholding of the members of the Consortium shall require the prior written consent of IREL.</li></ul>	<p>Agreement or under Applicable Laws.</p> <ul style="list-style-type: none"><li>❑ If the MDO is found to be in violation of the agreement then IREL may exercise its right to terminate this Agreement and also forfeit the Performance Security to make good, any of its losses and damages caused due to such Change in Ownership.</li></ul>



## IREL (INDIA) LIMITED

### F. Mineoperation

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t MINE OPERATION	
MDO	IREL
<ul style="list-style-type: none"><li>❑ The MDO shall, at its own cost, deploy appropriate Equipment for mining and WUP operation, and shall procure adequate after sales maintenance support and comply with the standard recommendations for operations and maintenance of the Equipment. The size and capacity of Equipment to be deployed by MDO shall be as per the Approved Mining Plan.</li><li>❑ Any change in the size/ configuration of Equipment being deployed at the Mines shall be done only with the consent of IREL. If any approval is required from any statutory Authorities due to the change in the Equipment deployment plan and/ or equipment configuration, the same shall be procured by the MDO at its own costs.</li><li>❑ The Equipment configuration deployed by the MDO shall at all times during the Contract Period comply with the Applicable Laws, including those imposed by any government agencies or authority such as the MoEF&amp;CC, Atomic Minerals Directorate (AMD), and Directorate General of Mines Safety (“DGMS”).</li><li>❑ Construction and commissioning of the Wet Upgradation Plant.</li><li>❑ Excavation of Mineral Sand from the Mine and feeding the excavated Mineral Sand into the WUP.</li><li>❑ Processing the excavated Mineral Sand in WUP to produce HM Concentrate.</li><li>❑ Transportation of HM Concentrate from WUP and delivery of HM Concentrate at the Delivery Point.</li></ul>	<ul style="list-style-type: none"><li>❑ IREL either directly or through its nominated agency shall have the right to monitor or supervise development &amp; operations of Brahmagiri Mine and construction &amp; operation of WUP during the Contract Period. The rights of IREL including but not limited to:-<ul style="list-style-type: none"><li>❑ Supervision and monitoring of mining and WUP related activities.</li><li>❑ Supervision and monitoring of excavation of Mineral Sand as per Approved Mining Plan and its transportation till WUP.</li><li>❑ Supervision and monitoring of processing of Mineral Sand in WUP.</li><li>❑ Supervision and monitoring of transportation of HM Concentrate output from WUP to the Delivery Point(s).</li><li>❑ Certifying the monthly quantity of Mineral Sand excavated and HM Concentrate delivered and Heavy Mineral content in HM Concentrate produced.</li></ul></li></ul>



## IREL (INDIA) LIMITED

### G. Infrastructure Development

PROPOSED SCOPE DIVISION BETWEEN MDO AND IREL w.r.t INFRASTRUCTURE DEVELOPMENT	
MDO	IREL
<ul style="list-style-type: none"><li>❑ Installation of weighing equipment as per the provisions of this Agreement.</li><li>❑ Roads-Construction &amp; Maintenance:<ul style="list-style-type: none"><li>• the MDO shall progressively construct &amp; maintain approach roads along with the progressively moving mining activity across the Mining Lease area.</li><li>• the MDO shall construct and maintain all roads required for the purpose of transportation between location of mining operation, WUP and the Delivery Point.</li><li>• the MDO shall construct and maintain any other roads as may be required for the development and maintenance of the Mine.</li></ul></li><li>❑ The MDO shall deploy and continuously operate sufficient number of water sprinklers of capacity as per the Approved Mining Plan for suppression of dust.</li><li>❑ Illumination: MDO shall make its own arrangement for illumination of Mine and the facilities erected as per the requirement of mining activity, complying industry standard practices and Applicable Laws.</li><li>❑ Water: MDO shall make its own arrangement for all the water requirement of operations including that of drinking water, water to be used in the Wet Upgradation Plant, dust suppression etc.</li><li>❑ Power: MDO shall make arrangement for drawing power and electrification of all facilities needed for the Project. The cost of power to be borne by the MDO itself. Secondary source of power supply for emergency purposes shall be arranged by the MDO at Mines and WUP.</li><li>❑ MDO shall employ energy saving and conservation initiatives, improvement in energy efficiency initiatives including adoption of renewable energy.</li><li>❑ CCTV monitoring system at the location of mining operation, WUP and the Delivery</li></ul>	<ul style="list-style-type: none"><li>❑ IREL has right to supervision and monitoring of infrastructure development work.</li></ul>



## IREL (INDIA) LIMITED

Point(s) as per relevant safety norms and industry practice. Access to the CCTV monitoring system shall be provided to IREL offices for continuous monitoring.

- ❑ Communication: - Radio frequency/ telephonic communication systems shall be installed, operated and maintained in the Mines, WUP and the Delivery Point(s) covering all working areas.

### H. Mine Water Pumping and drainage

#### PROPOSED SCOPED DIVISION BETWEEN MDO AND IREL w.r.t MINE WATER PUMPING AND DRAINAGE

MDO	IREL
<ul style="list-style-type: none"><li>❑ Construction and maintenance of garland drains along the peripheries of quarries, dumps, storm water drainage.</li><li>❑ Regular pumping of mine water from sump to settling pits, Raw water storage tank/WTP/settling pits/nalla after chemical dosing and sedimentation.</li><li>❑ Procurement, installation, operation and maintenance of pumps, pipes and other fittings etc.</li><li>❑ Any other work/activity/ permissions not specifically included above but required for mine dewatering &amp; pumping or compliance of any statutory/govt. orders.</li><li>❑ Ensuring safety and Statutory compliance.</li></ul>	<ul style="list-style-type: none"><li>❑ Checking of Statutory compliance.</li><li>❑ Supervision of MDO's work through Independent Engineers Consultant.</li></ul>



## IREL (INDIA) LIMITED

### I. Reclamation

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t RECLAMATION	
MDO	IREL
<ul style="list-style-type: none"><li>❑ The MDO shall be responsible for all reclamation activities including backfilling/dumping of tailings into the mined-out area in mining lease.</li><li>❑ Plantation on excavated areas and dumps for reclamation purposes and to bring back to the state of normal ground/ altered ground in accordance with the Mining Plan and Mine Closure Plan.</li><li>❑ The MDO, on behalf of IREL shall facilitate in handing over the backfilled areas after plantation to the owners of the land including intimating the landowner through post and obtaining its acknowledgement. The concerned officer deputed by the State Government shall also be intimated of the same through post for updation of records.</li></ul>	<ul style="list-style-type: none"><li>❑ IREL has right to supervision and monitoring of backfilling of tailings discharged from WUP, in the mined-out area.</li></ul>

### J. Corporate Responsibility

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t CORPORATE RESPONSIBILITY	
MDO	IREL
<ul style="list-style-type: none"><li>❑ MDO shall perform all its obligations with respect to Corporate Environment Responsibility (CER) activities as per the guidelines issued by MOEF&amp;CC.</li><li>❑ Corporate Social Responsibility (CSR) Activities: MDO shall perform all its obligations with respect to CSR activities as per Companies Act 2013 and shall be responsible for the funding towards it. Such activities shall also include, but not limited to, health checkup in the R&amp;R colony and project affected area.</li><li>❑ The MDO shall ensure compliance of all Applicable Laws, regulations, acts and government orders/circulars or guidelines for public procurement, during Contract Period and Extended Contract Period.</li><li>❑ Performance and fulfillment of all other obligations of the MDO in accordance with the provisions of the Agreement and matters</li></ul>	<ul style="list-style-type: none"><li>❑ IREL has right to assistance and guidance in CSR activities.</li><li>❑ CSR policy and plan of MDO shall be approved by IREL.</li></ul>



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PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t CORPORATE RESPONSIBILITY	
MDO	IREL
<p>incidental thereto or necessary for the performance of any or all of the obligations of the MDO under the Agreement.</p> <ul style="list-style-type: none"> <li>□ The MDO shall ensure that sustainable mining practices are followed with usage of state-of-the-art technologies, energy efficient equipment and clean energy source for low carbon footprint.</li> </ul>	

**K. General Obligation**

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t GENERAL OBLIGATIONS	
MDO	IREL
<ul style="list-style-type: none"> <li>□ The MDO shall, at its own cost and expense, procure, finance for, and undertake all the activities related to the design, engineering, procurement, construction, development, operation, and maintenance of the Mines and WUP for excavation of Mineral Sand and its upgradation in the WUP, Delivery of HM Concentrate at the designated delivery point, and shall observe, fulfill, comply with and perform all its obligations set out in this Agreement.</li> <li>□ Compliance with the terms and conditions of the Mining Lease and the Approvals relating to the Site and hold harmless IREL from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violations of such Applicable Laws by the MDO or its officials or personnel including the subcontractors and their personnel;</li> <li>□ Comply with all the relevant directions and guidelines issued by any Government Instrumentality and relevant Indian standards in respect of the Site or the performance of the mining services and its other obligations under this Agreement including any direction issued by IREL’s Mine Manager; and</li> <li>□ Promptly give the IREL's representative/IREL's Mine manager copies of all relevant documents issued by or</li> </ul>	<ul style="list-style-type: none"> <li>□ IREL either directly or through its nominated agency shall monitor or supervise Mine development &amp; operations of Brahmagiri Mine and construction &amp; operation of WUP during the Contract Period.</li> </ul>





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presented to any Authority.

- ❑ The MDO shall ensure compliance in all respects with all Applicable Laws in relation to its employees, independent contractors, sub-contractors, or other persons providing services or on behalf of the MDO, including all laws relating to wages, hours of work, employment standards, collective bargaining, discrimination, civil rights, safety and health, compensation etc.
- ❑ The MDO shall discharge its obligations in accordance with Best industry practices and as a reasonable and prudent person.
- ❑ The MDO shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- ❑ Make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, Clearances and Approvals obtain and keep in force and effect such Applicable Permits, Clearances and Approvals in conformity with Applicable Laws;
- ❑ Procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the development & operations of Brahmagiri Mine and construction & operation of WUP;
- ❑ Procure issuance of all necessary and required clearances, approvals, permits and licenses if not available;
- ❑ Maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement and shall ensure that in no way does it impacts other businesses of IREL;
- ❑ Comply with, ensure and procure that its contractors, and sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the MDO's obligations under this Agreement.
- ❑ Always act in a manner consistent with the provisions of this Agreement and not cause



## IREL (INDIA) LIMITED

or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement;

- ❑ Ensure that all equipment and facilities at the Mine and WUP are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Best industry practices;
- ❑ Support, cooperate with and facilitate IREL in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- ❑ Take all reasonable precautions for the prevention of accidents at the Mine and WUP and provide all reasonable assistance and emergency medical aid including 24 hours a day ambulance service to accident victims;
- ❑ Establish a fully-fledged office equipped with computers, fax, e-mail, telephone at the Site, including communication facilities for day-to-day communication and for data transfer from one point to another;
- ❑ Submit soft copies of all data relating to quantity of Mineral Sand excavated, quantity of HM Concentrate delivered to IREL, recovery from the WUP, per centage content of Heavy Minerals in the Tailings, documents of equipment, plant & machinery installed at mines and plant, and furnish various returns/statements to IREL, as may be required by IREL from time to time;
- ❑ Shifting of all existing public and private infrastructure and diversion of road and its maintenance and repairs from within and outside the Mine Lease Boundary;
- ❑ Set-up and maintain a well-organized management having experienced and qualified personnel for efficient administration and supervision of various activities to be undertaken as per the Agreement and shall employ all personnel as may be required by the IREL or as per Applicable Law.
- ❑ Abide by all instructions and directions issued by IREL, any Government Instrumentality or statutory authorities in relation to the performance of its obligations under this Agreement;



## IREL (INDIA) LIMITED

- ❑ Facilitation in obtaining consent from owners of private land within the Mining Lease area and in acquisition of land and resettlement & rehabilitation works;
- ❑ Obtaining the right of way for transportation of Mineral Sand and HM Concentrate
- ❑ Construction of electrical lines, water pipelines or any other infrastructure activity;
- ❑ Necessary infrastructure to draw water either from surface/ underground.
- ❑ Comply and fulfill in welfare and corporate social responsibility activities/ obligations.
- ❑ Transfer the Project Assets to IREL upon Termination of this Agreement, in accordance with the provisions thereof;
- ❑ Compliance for applicable labor law, minimum wages act, gratuity act;
- ❑ Construction and maintenance of approach roads, connecting the main state highway with the mining premises to be utilized for transportation of equipment, consumables or any other miscellaneous works;
- ❑ All other planning, development, operation, and maintenance activities related to the Project as stated in the Scope of the Project;
- ❑ Agree to be liable for all the residuary obligations relating to the Project if not specifically stated herein in the scope of any of the parties and undertake to fulfil such residuary obligations at its own risk and cost;

### L. Manpower & Training

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t MANPOWER & TRAINING	
MDO	IREL
<ul style="list-style-type: none"> <li>❑ The MDO shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the requirements of Applicable Laws and Best industry practices.</li> <li>❑ The MDO shall ensure that the scope of work and its obligations are performed by, and under the supervision of appropriately</li> </ul>	<ul style="list-style-type: none"> <li>❑ IREL as the owner of the mine, shall at its own costs appoint the statutory manpower (including Mine Manager) of the mine as per Applicable Laws including in relation to the qualification requirements set out under the Mines Act, 1952, the Metalliferous Mines Regulation, 2019, directions by the Director General of Mines Safety (DGMS) and other Applicable acts, laws, and regulations.</li> </ul>



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**PROPOSED SCOPE DIVISION BETWEEN MDO AND IREL  
w.r.t MANPOWER & TRAINING**

MDO	IREL
<p>qualified, experienced and skilled personnel.</p> <ul style="list-style-type: none"><li>❑ The representative of IREL may, by written notice require the MDO to remove from the Mine, deny access/ entry to the Mine or from any activity connected with this Agreement, any person employed/ engaged by the MDO, including any sub-contractor, in connection with the provision of this Agreement who, in the reasonable opinion of the IREL's representative, is guilty of misconduct or is incompetent or negligent or who works in an unsafe manner that is likely to prejudice the safe operation at Mines and Concentrator Plant.</li><li>❑ Employment of foreign personnel by the MDO and/or its Contractors and their subcontractors shall be subject to grant of requisite Applicable Permits under Applicable Laws, including employment/ residential visas and work permits.</li><li>❑ All the employees and manpower engaged by MDO shall be competent as per the Mines Act 1952, the Metalliferous Mines Regulation, 2019, Factories Act, 1948, as may be directed by DGMS from time to time and other Applicable Laws for discharging their duties in safe and efficient manner.</li></ul>	



## IREL (INDIA) LIMITED

### M. Safety

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t SAFETY	
MDO	IREL
<ul style="list-style-type: none"><li><input type="checkbox"/> Comply with all safety stipulations and requirement of DGMS as well as other applicable laws concerning mine safety.</li><li><input type="checkbox"/> Preparation and submission of mine safety plan to IREL.</li><li><input type="checkbox"/> Compliance of recommendations by IREL during safety audit and submission of monthly safety report to IREL.</li><li><input type="checkbox"/> Carry out all mining operations as per extent all applicable laws.</li></ul>	<ul style="list-style-type: none"><li><input type="checkbox"/> Review and approval of mine safety plan submitted by MDO.</li><li><input type="checkbox"/> Audit of safety practices and safety management plan.</li><li><input type="checkbox"/> Deploy statutory manpower for safety, blasting etc.</li><li><input type="checkbox"/> Compliance of provisions of all safety acts, rules, regulations and other stipulations of DGMS etc.</li></ul>

### N. Security of Mines

PROPOSEDSCOPE DIVISION BETWEEN MDO AND IREL w.r.t SECURITY OF MINE	
MDO	IREL
<ul style="list-style-type: none"><li><input type="checkbox"/> Ensure safety and security of mines, equipment and manpower deployed in and around the mines.</li><li><input type="checkbox"/> Supervision and monitoring of loading in authorized vehicles.</li><li><input type="checkbox"/> Installation of security and surveillance equipment in conformity with applicable law and industry practice.</li><li><input type="checkbox"/> Installation, operation and maintenance of real time online monitoring system for monitoring movement of mining equipment in the mines and HM transportation up to delivery point.</li><li><input type="checkbox"/> Installation, operation and maintenance.</li><li><input type="checkbox"/> of CCTV camera at strategic locations as required by IREL with monitors at IREL office and MDO Premises.</li><li><input type="checkbox"/> All trucks for HM transportation should be provided with real time tracking system with</li></ul>	<ul style="list-style-type: none"><li><input type="checkbox"/> Deployment of security guards, safety equipment at strategic locations incl. weighbridges, main gate, office premises of IREL etc.</li></ul>



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monitors at IREL office and MDO Premises.

- Deployment of security guards, security.
- equipment to prevent theft of the assets of mining project.



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### **SCHEDULE - I**

Illustration for important dates and events and their timelines as per MSA:

<b>Milestones for the Project</b>	<b>Party responsible for the milestone</b>	<b>Expected timelines within which such milestones shall be achieved</b>
Signing of Mining Services Agreement i.e., Commencement Date	MDO and IREL	$T_0$
Submission of Performance Security to IREL	MDO	$T_1 = T_0 + 30$ days
Prepare and procure approval of Mining Plan from Atomic Minerals Directorate, for Exploration and Research, under the Applicable Laws.	MDO	$T_2 = T_0 + 730$ days
Procure all statutory clearances as required for commencement of operations.	MDO	$T_2 = T_0 + 730$ days
Procure consent from private landowners, take physical possession of such consented land and ensure completion of all activities as specified in Schedule G for the private land within the Mining Lease area required for the first year of mining as per the Approved Mining Plan.	MDO	$T_2 = T_0 + 730$ days
Procure consent from District Administration, take physical possession of such consented land and ensure completion of all activities as specified in Schedule G for the government land within the Mining Lease area required for the first year of mining as per the Approved Mining Plan.	MDO	$T_2 = T_0 + 730$ days
Finalize with IREL the particulars of land acquisition (if required for the Project) and on behalf of IREL, undertake complete acquisition of such land which would be required for the first year of operations from Commercial Operation Date.	MDO	$T_2 = T_0 + 730$ days
Complete Rehabilitation & Resettlement of PAFs (if required for the Project) which shall be displaced from the land, consented and acquired for the first year of operations from Commercial Operation Date.	MDO	$T_2 = T_0 + 730$ days
Issuance of CP satisfaction notice i.e., Appointed Date	MDO	$T_2 = T_0 + 730$ days
Commencement of mining and WUP operations i.e., COD	MDO	$T_3 = T_2 + 18$ months
Completion of second Phase of Construction Works	MDO	$T_4 = T_2 + 06$ years
Termination of Mining Services Agreement, if the contract is not extended and if mineral reserves do not exhaust within the Mining Lease	MDO and IREL	$T_5 = T_3 + 20$ years