

**REQUEST FOR PROPOSAL (RFP)**  
**FOR**  
**SELECTION OF CONTRACTOR**  
**FOR**  
**CONSTRUCTION OF RARE EARTH THEME PARK**  
**(RETP)**

**Tender No: IREL/CO/PT/RFP/57/2020 dated 23.06.2020**



**IREL (India) Limited**

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

**Plot No. 1207, Veer Savarkar Marg, Near Siddhi Vinayak Temple, Prabhadevi, Mumbai-400028. Website: <http://irel.co.in>  
(CIN No. U15100MH1950GOI008187)**

## **DISCLAIMER**

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

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

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

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

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

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

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# 1 Introduction

## 1.1 Background

IREL (India) Limited (the “**IREL**”), a Mini-Ratna Category-I company, is a public sector enterprise of the Government of India under the administrative control of the Department of Atomic Energy. The company is engaged in mining and separation of beach sand minerals and produces different rare earth compounds. The operating units of the company are located at Chavara, Kerala; Manavalakurichi, Tamil Nadu; Chatrapur, Odisha and Aluva, Kerala. The corporate office is located at Mumbai.

## 1.2 Objective

IREL aims to develop and establish indigenous technologies in the value chain of Rare Earth (RE) & Titanium through this project. In view of the same, IREL intends to set up a RE & Titanium Theme Park providing facility for -

- a) Skill Development cum Training Centre
- b) R&D centre
- c) Pilot Plants such as –
  - Lanthanum/ Cerium/ Praseodymium/ Neodymium metal
  - NdFeB Alloy/ Magnets
  - Recovery of Rare Earths from E-Waste
  - Gd Separation process
  - Dy Separation process
  - Rare Earth based FCC/ Auto Catalyst
  - Titanium Sponge
  - Any other process technologies developed in due course

In this regard, IREL had appointed an Architectural Consultant for undertaking Design, layout and preparing specifications and supervision of civil works for RE & Titanium Theme Park in discussion with IREL. A Project Monitoring Unit (PMU) has also been appointed for monitoring the project progress.

Now, for facilitating construction work, IREL intends to select a Contractor to undertake construction for civil works for RE & Titanium Theme Park as per the design, layout and other specifications, terms of reference prepared by the Architectural Consultant and in discussion with IREL.

## 1.3 Brief description of Bidding Process

- 1.3.1 IREL invites applications (the “Pre-Qualification Application”) from interested parties (the “Bidders”) for Pre-Qualification pursuant to Clause 2.3, Clause 2.4 and 4.1 of this Bidding Document, and subsequently Techno-Commercial and Price bids (the “Bid”) (subject to Pre-Qualification) for qualification and selection pursuant to Clause 3.3 and 3.4 of this Bidding Document for selection of a technically competent contractor (the “Contractor”) for Construction of RETP (collectively called the or “Assignment” or the “Work”).

- 1.3.2 IREL intends to select the Contractor through an open competitive bidding process in accordance with the procedure set out herein.
- 1.3.3 IREL has adopted a Two-stage bidding process (collectively referred to as the “Bidding Process”) for selection of the Bidder for award of the Work. The Bidding Process will involve Pre-Qualification of interested Bidders in accordance with the Clause 2.3, 2.4 and 4.1 of this RFP. The Bidders will also sign and submit the Secrecy Agreement attached at Appendix – 4 of this RFP at Pre-Qualification Stage along with all other necessary documents as indicated in the RFP for Pre-Qualification Application. At the end of this stage, IREL will inform the Technically Eligible Bidders (the “Technically Eligible Bidders”) who are eligible for participation in the subsequent **Qualification** stage.
- 1.3.4 IREL will provide to the Technically Eligible Bidders the detailed scope of work including Bill of Quantities (BOQ) for all the civil works, utilities etc. (the “Technical Information”) relevant to the Assignment. Discussion on the technical Information provided by IREL will be held between IREL and the Technically Eligible Bidders prior to submission of Techno-Commercial and Price bid.
- 1.3.5 The Bidder shall submit its Techno-commercial Bid and Price Bid (the “**Bid**”) as per Clause 3.3.
- 1.3.6 The Bidders will submit their Pre-Qualification Applications and Bids in accordance with the RFP provided by IREL (the “Bidding Documents”). The Pre-Qualification Applications shall be valid for a period of not less than 360 days (the “Application Validity”) from the due date of submission of Pre-Qualification Applications (“Application Due Date”). The Bid shall be valid for 180 days (the “Bid Validity”) from the due date of submission of Bid (“Bid Due Date”).
- 1.3.7 IREL shall receive Pre-Qualification Applications and Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by IREL, and all Pre-Qualification Applications and Bids shall be prepared and submitted in accordance with such terms on or before the date specified for submission in accordance with Clause 1.3 of this RFP.
- 1.3.8 The Selected Bidder (the “Contractor”) shall be responsible for the Work under and in accordance with the provisions of an agreement (the “Agreement”) to be entered into between the Contractor and IREL in the form provided by IREL (at Appendix 13- Draft of Agreement) as part of the Bidding Documents pursuant hereto. The Agreement sets forth the detailed terms and conditions for the Work.

## 1.4 Schedule of Bidding Process

1.4.1 IREL shall endeavor to adhere to the following schedule:

S. No.	Event Description	Date (Approximate time from last event)
1.	Date of Issue of RFP	23.06.2020
2.	Last date for receiving Pre-Bid queries	30.06.2020
3.	Pre-Bid conference with IREL over video conferencing <sup>#</sup>	03.07.2020
4.	Issuance of pre-bid clarifications	07.07.2020
5.	Last Date for submission of Pre-Qualification Application	22.07.2020 upto 15.00 hrs
6.	Opening of Pre-Qualification Application	22.07.2020 upto 16.00 hrs
7.	Intimation to the Technically Eligible Bidders for participating in Qualification Stage	To be intimated separately
8.	Collection of Technical Information from IREL	To be intimated separately
9.	Technical Discussion	To be decided
10.	Last date for submission of Bid	To be decided
11.	Opening of Techno-Commercial Bids of Technically Eligible Bidders	To be decided
12.	Declaration of Technically Qualified Bidders	To be decided
13.	Opening of Price Bids	To be decided
14.	Issuance of Letter of Intent (LoI)	To be decided

**# All the parties interested in attending the Pre-Bid Conference on 03.07.2020 shall send a mail request with mail IDs of all the participants to Mr. Anuttam Mishra, DGM (Technical Services) on [anuttammishra@irel.co.in](mailto:anuttammishra@irel.co.in) by 01.07.2020 so that links can be shared.**

## 2 Instructions to Bidders

### 2.1 Mode of Bidding

- 2.1.1 Bidder is allowed to participate in the Bidding Process, as a single entity only, Consortium with any other party is not allowed.

### 2.2 General terms of Bid

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



## 2.3 Conditions of Eligibility of Bidders

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

- 2.3.1 To be eligible for evaluation of its Bid, the Bidder should be a Company registered in India under Companies Act 2013 or a Limited Liability Partnership under the Limited Liability Partnership Act of India, 2008. The Bidder should submit certificate of incorporation, GSTIN certificate, Articles of Association/ Memorandum of Association as applicable as documentary evidence
- 2.3.2 The bidder should meet the Technical & Financial Pre-qualification Criteria as mentioned in Clause 2.3 and 2.4
- 2.3.3 Any entity that has been barred by the Central/ State Government in India, or any entity controlled by it, from participating in any project, and the bar subsists as on the Application Due Date or Bid Due Date, would not be eligible to submit the Pre-Qualification Application and Bid.
- (i) A Bidder should, in the last three (3) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder.
  - (ii) Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this clause is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to IREL for seeking a waiver from the disqualification hereunder and IREL may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the project.

## 2.4 Pre-Qualification Criteria

The Bidders who qualify as per the following criteria are only eligible to participating in submission of Techno-Commercial and Price Bid. Bidders who meet these criteria and submit supporting documents as detailed shall only be accepted.

Proposals submitted by the Bidders who qualify as per the following criteria shall be technically and commercially evaluated. All other proposals are liable to be rejected. Therefore, Bidders are requested to carefully read the Pre-Qualification Criteria and furnish authentic and complete information in support of the same.

To pre-qualify in this Bid, the Bidder shall fulfil the following:

### 2.4.1 Technical Criteria -

- a. Bidders during the preceding 7 years reckoned from the bid due date should have completed

One Similar Work in a single order of costing not less than the amount equal to INR 24 crore.

OR

Two Similar Works in two orders of each not costing less than INR 15 crore

- b. **Definition of Similar Work:** Similar Works shall have the following meaning:

- i. Civil works involving construction of Industrial/ Office/ Commercial/ Institutional or Composite Buildings in India
- ii. Exclusive experience in Residential Buildings/ quarters/ construction of roads. Mere Industrial Sheds such as ware houses, etc. shall not be considered as Similar Work for the purpose of Pre-Qualification.

- c. The Bidder shall enclose in its Pre-Qualification Application the following with Form III of Appendix-1:

- Completion certificate indicating the details called for in the PQ / Work order and completion certificate of the projects specified in Pre-Qualification Criteria.

OR

- The bidder may submit certificate(s) from practicing chartered accountants stating the payments received and works completed, as the case may be, along with declaration on the letter head of the Bidder in respect of the projects specified in Pre-Qualification Criteria.
- In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support the claim for the share in work done for that particular job/ contract by producing the consortium agreement indicating the scope of work of the Bidder in that specific job, its role, responsibility and share in the total assignment value in such contract.

#### 2.4.2 Financial Criteria-

- Annual Turnover- The Bidder should have a minimum average annual turnover from construction works of not less than INR 15 crore over the last three (3) audited financial years (i.e. FY 2016-17, FY 2017-18, FY 2018- 19).
- Net Worth- The Bidder should have a positive net worth as on 31<sup>st</sup> March 2019.
- The Contractor should have a solvency of at least INR 12 crore duly certified by any bank registered with RBI as per format given in the Form IV of Appendix -1. The solvency certificate should not be more than 90 days old from the Application Due Date.

#### 2.4.3 The Bidder shall enclose in its Bid the following with Form IV of Appendix-1:

Certificate(s) from practicing chartered accountant specifying the Net Worth as at the close of the preceding financial year and average Turnover of the preceding three years of the Bidder, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this RFP. For the purposes of this RFP, annual turnover (the "Turnover") shall mean the gross amount of revenue recognized in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year and net worth (the "Net Worth") shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

#### 2.4.4 Pre-qualification shall be carried out based on the documents submitted by the bidders for past performance, technical and financial capability, available resources and shall be subject to verification, if required, of all statements submitted by applicant to establish his capacity to execute the work.

### 2.5 Conflict of Interest

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

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

- a. the Bidder, or its Associate (or any constituent thereof), and any other Bidder, or its any Associate thereof (or any constituent thereof) have common controlling

shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder or Associate, as the case may be) in the other Bidder or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- b. such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or any Associate thereof; or
- c. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- d. such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- e. such Bidder, or any Associate thereof has participated as a consultant to IREL in the preparation of any documents, design or technical specifications of the Project.

For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with

respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- 2.5.3 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of IREL in relation to the Project is engaged by the Bidder, or its Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the issuance of the LOI or execution of the Agreement. In the event any such adviser is engaged by the Selected Bidder or Agency, as the case may be, after issue of the LOI or execution of the Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOI or the Agreement and without prejudice to any other right or remedy of IREL, including the forfeiture and appropriation of the Bid Security or Security Deposit, as the case may be, which IREL may have thereunder or otherwise, the LOI or the Agreement, as the case may be, shall be liable to be terminated without IREL being liable in any manner whatsoever to the Selected Bidder or Agency for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or its Associate in the past but its assignment expired or was terminated prior to the date of issuance of RFP. Moreover, this disqualification shall not apply where such adviser is engaged by the Bidder, or its Associate in any work not related to the Project; the Bidder or Selected Party or Agency will however keep IREL informed in any such case(s). This disqualification will not apply where such adviser is engaged by the Agency after a period of 6 (six) months from the date of issue of Lol of the Project or by the unsuccessful Bidders after the issuance of Lol to the Selected Bidder.

## 2.6 Change in ownership

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

## 2.7 Site Visit

- 2.7.1 Technically Eligible Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction and operation, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.7.2 Technically Eligible Bidders are invited to examine the Project Site in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Price Bids for award of the Project.
- 2.7.3 Technically Eligible Bidders may send a request to IREL for site visit as per their interest, at least one week prior to the schedule of site visit. IREL will have the right to either accept the request or suggest alternative dates suitable based on availability of concerned officials at the site.

## 2.8 Amendment of the RFP

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

## 2.9 Cost of Bid and RFP Document

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

## 2.10 Acknowledgement by Bidder

- 2.10.1 It shall be deemed that by submitting the Pre-Qualification Application and the Bid, the Bidder has:
- a. made a complete and careful examination of the RFP;
  - b. Understood the entire scope of work to be carried out under the RFP
  - c. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of IREL relating to any of the matters referred to in this Clause; and
  - d. agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.10.2 IREL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by IREL.
- 2.10.3 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, including the Project thereby granted by IREL, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any

materially incorrect or false information, the Bidder shall be disqualified and shall be liable to be terminated, as the case may be, without IREL being liable in any manner whatsoever. In such an event, IREL shall be entitled to forfeit and appropriate the Bid Security or Security Deposit, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to IREL under the Bidding Documents and/ or the Agreement or under Applicable Law, or otherwise. Further, IREL reserves right to take any other action which it may deem appropriate.

## 2.11 Verification and disqualification

2.11.1 IREL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by IREL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by IREL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of IREL thereunder.

2.11.2 IREL reserves the right to reject any Bid and appropriate the Bid Security if:

- a. at any time, a material misrepresentation is made or uncovered, or
- b. the Bidder does not provide, within the time specified by IREL, the supplemental information sought by IREL for evaluation of the Bid.
- c. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder.

## 2.12 Right to accept/reject any or all Bids

2.12.1 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 therefor.

## 2.13 Fraud and corrupt practices

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

2.13.2 Without prejudice to the rights of IREL under above Clause hereinabove, if a Bidder is found by IREL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by IREL during a period of 2 (two) years from the date such Bidder is found by IREL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice,



undesirable practice or restrictive practice, as the case may be.

2.13.3 For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of IREL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOI or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of IREL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause 2.5.3 of Clause 2.5, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOI or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOI or the Agreement, who at any time has been or is a legal, financial or technical adviser of IREL in relation to any matter concerning the Project;
- b. “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c. “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by IREL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 2.14 Ethics in Tendering and Other Business Dealings

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

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



7.

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

<p><b>Sri D Singh</b> <b>Chairman &amp; MD</b> IREL (India) Limited 1207 VS Marg, Prabhadevi, Mumbai 400 028 Ph.022-24225778 Email: <a href="mailto:cmd@irel.co.in">cmd@irel.co.in</a></p>	<p><b>Sri M. Salman Khan</b> <b>Chief Vigilance Officer</b> IREL (India) Limited 1207 VS Marg, Prabhadevi, Mumbai 400 028  Email: <a href="mailto:cvo@irel.co.in">cvo@irel.co.in</a></p>
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2.14.4 We assure you those complaints, if any, made by you on the subject will be kept confidential and fair investigation will be conducted and appropriate action will be taken. Similarly, we expect your commitment to the under taking and its violation will have consequences as per prevailing rule of the company.

## 2.15 Integrity Pact

2.15.1 The Bidder is required to enter into an “**Integrity Pact**” with IREL.

- a. The Bidder is required to submit the signed Integrity Pact in the form and manner described in the RFP. The Integrity Pact has to be signed by the authorised signatory of the Bidder.
- b. In case of failure to submit the Integrity Pact along with the Bid, duly signed by the authorised signatory, IREL shall have the right to disqualify the Pre-Qualification Application or Bid.

## 2.16 Tender/ RFP Documents

2.16.1 This RFP comprises the disclaimer set forth hereinabove, the contents as provided in the appendix and annexure and enclosed herewith, and will additionally include any addenda or corrigendum or clarification issued by IREL.

## 3 Preparation and submission of the Bid

### 3.1 Language

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

### 3.2 Bid Security

- 3.2.1 In terms of the RFP, a Bidder will be required to deposit, along with its Pre-Qualification Application, a bid security for **INR 30 (thirty) lakhs** (the “**Bid Security**”). The Bidders will have to provide Bid Security in the form of a bank guarantee acceptable to IREL (the format for Bank Guarantee is provided at Appendix 2). The validity of the Bid Security shall not be less than 360 (three hundred and sixty) days from the Application Due Date, with an additional claim period of 30 (thirty) days, and may be extended as may be mutually agreed between IREL and the Bidder from time to time. The Bid Security will issued by any Indian Nationalised Bank, in favour of “IREL (India) Limited”, payable at Mumbai.
- 3.2.2 The genuineness of bank guarantee shall be checked by IREL from the issuing bank.
- 3.2.3 IREL shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 3.2.4 Any Pre-Qualification Application not accompanied by the Bid Security shall be summarily rejected by IREL as non-responsive.
- 3.2.5 Post declaration of Technically Eligible Bidders, IREL shall have the right to return the Bid Security of Bidders who could not meet the Pre-Qualification Criteria.
- 3.2.6 The Bid Security of unsuccessful Technically Eligible Bidders will be returned by IREL, without any interest, within 30 (thirty) days from the LOI issuance to the Selected Bidder.
- 3.2.7 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Agency signing the Agreement and Selected Bidder furnishing the Security Deposit in accordance with the provisions thereof.
- 3.2.8 IREL shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in the RFP. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that IREL will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid Validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 3.2.9 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to IREL under the Bidding Documents and / or under the Agreement, or otherwise, if

- a. A bidder submits a non-responsive Price Bid at Selection Stage of the Bidding Process.
- b. a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in this RFP;
- c. a Bidder submits false/fabricated documents;
- d. a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and IREL;
- e. a Bidder changes the terms and conditions or prices or withdraw its Bid subsequent to the date of opening.
- f. A Bidder fails to accept the order when placed or fails to commence supplies/ works/ services/ after declared as Selected Bidder.
- g. the Selected Bidder fails within the specified time limit-
  - i. to sign and return the duplicate copy of LOI; or
  - ii. to sign the Agreement; or
  - iii. to furnish the Security Deposit within the period prescribed therefor in the Agreement
- h. the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Security Deposit.

### 3.3 Structure of the Bid

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

The following conditions shall be adhered to while submitting the Pre-Qualification Application and the Bid:

- i. Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

## **PRE-QUALIFICATION APPLICATION**

### **OUTER COVER OF PRE-QUALIFICATION APPLICATION:**

The outer cover of Pre-Qualification Application will consist of the Original Pre-Qualification Application with all documents, Hard Copy 1, Hard Copy 2 and one soft copy in Pen drive. All the hard copies and soft copies of the Pre-Qualification Application should contain copies of all the documents comprising Pre-Qualification Application.

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

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

- a) Cost of RFP Document
- b) Forms I to V of Appendix 1 to this RFP along with all supporting documents required as mentioned in the RFP
- c) Bid Security in form of Bank Guarantee as per Appendix 2
- d) Power of Attorney(s) as per Appendix 3
- e) Secrecy agreement as per Appendix 4
- f) Undertaking by the Bidder as per Appendix 5
- g) Integrity Pact as per Appendix 6
- h) Signed copy of RFP and draft Agreement including all addenda, corrigenda and clarifications
- i) Certificate of Registration, Incorporation, along with Memorandum and Articles of association
- j) Declaration on letter head of Bidder confirming no Conflict of Interest that affects the Bidding Process in accordance to the Form 1 of Appendix 8
- k) Any other document required to be submitted as per RFP for Pre-Qualification

## **TECHNO-COMMERCIAL BID (Envelope 2) AND PRICE BID (Envelope 3) (together called as the "BID")**

**OUTER COVER OF BID:** The outer cover of Bid will comprise of

- Sealed Envelope 2 (Techno-Commercial Bid), Hard Copy 1, Hard Copy 2 and one soft copy of Envelope 2 in Pen Drive. All the hard copies and soft copies of the Techno-Commercial Bid should contain copies of all the documents comprising Envelope 2 only.
- Sealed Envelope 3 (Price Bid) with all duly filled formats. No additional copy of Price Bid in hard copy form or soft copy form shall be submitted by the bidder.

### **Envelope 2: TECHNO-COMMERCIAL (Post collection of Technical Information from IREL)**

This envelope will comprise:

- a) Techno-Commercial Bid according to details given in Technical Information and this RFP
- b) Signed copy of Technical Information, addenda/corrigenda/ clarifications/other documents

issued by IREL post Application Due Date, as a token of acceptance of all the tender terms and conditions. Acceptance to carry out all the activities as per RFP, TOR and all the details provided in and along with Technical Information, to be provided by IREL to the Technically Eligible Bidders.

- c) Any other document as mentioned elsewhere in the RFP.
- d) Acceptance by that bidder to carry out all the activities mentioned in the technical information. The technical information will be provided to the technically qualified bidders by IREL.
- e) The Techno-commercial Bid shall be prepared in line with the details given in Appendix-12: Indicative Scope of Work and other information sought under this RFP. The Techno-commercial Bid shall include Bidder's understanding of the project, its proposal for the proposed facilities, and compliance to the scope of work as well as its adherence to project Implementation Schedule.

**Envelope 3: (Price Bid):**

This envelope will comprise of the Price Bid and filled up BOQs formats as per format provided in Appendix 9 of the RFP. Details will be shared with Technical Information.

### 3.4 Price Bid

- 3.4.1 The Bidder will be required to quote Total Price (in INR) as part of the Price Bid.
- 3.4.2 The Bidder will submit their Price Bids in the format provided at Appendix 9 of the RFP.
- 3.4.3 The Price Bid should be furnished clearly indicating the bid amount in both figures and words in INR only and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall prevail.
- 3.4.4 The Bidder will be required to submit detailed price breakup of Total Price as per BOQ corresponding to the value for supply of material (including civil, structural and other components and any other utilities required for the Work) and services, if any, as mentioned in the Price Bid format.
- 3.4.5 The unit rates stated in the Bill of Quantities shall continue to be applicable for any variation in quantities stated therein even when the actual quantities are over and above that stated in the Bill of Quantities. The unit rates quoted in the bill of Quantities shall be firm throughout the period of Contract including extension of time, if any.
- 3.4.6 In case certain items are missed out/not mentioned separately/explicitly in the BOQ, it shall not absolve the Bidder of any of its responsibilities under the Agreement. The Bidder will be responsible to complete the entire scope of work as brought out in the RFP and Agreement without any price addition.

### 3.5 Format and signing of documents

- 3.5.1 The Bidder shall provide all the information sought under this RFP. IREL will evaluate only those Pre-Qualification Applications and Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.

- 3.5.2 The Bid and its copy shall be typed or written in indelible ink. It shall be signed by the authorised signatory of the Bidder who shall also initial each page of the Bid (including each Appendix and Annex). In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

### 3.6 Sealing and marking of Bid

- 3.6.1 The Bidder shall submit the Pre-Qualification Application and the Bid in the formats together with the documents specified in this RFP, and seal it in an envelope and mark the envelope as follows:

Pre-Qualification Application:

Envelope 1: "PRE-QUALIFICATION APPLICATION FOR SELECTION OF CONTRACTOR FOR CONSTRUCTION OF RETP (RFP NUMBER DATED XXXXX)".

Techno-Commercial and Price Bid (or Bid):

Envelope 2: "TECHNO-COMMERCIAL BID FOR SELECTION OF CONTRACTOR FOR CONSTRUCTION OF RETP (RFP NUMBER DATED XXXXX)".

Envelope 3: "PRICE BID FOR SELECTION OF CONTRACTOR FOR CONSTRUCTION OF RETP (RFP NUMBER DATED XXXXX)".

- 3.6.2 Each envelope shall clearly indicate the name and address of the Bidder along with the identification as indicated in Clause 3.6.1. In addition, the Bid Due Date should be indicated on the right hand corner of each of the envelopes.
- 3.6.3 The Envelope I should be titled with name of Project, name of Bidder, date of submission and disclaimer "TO BE OPENED ON THE APPLICATION DUE DATE XX/YY/2020"
- 3.6.4 The Envelope II should be titled with name of Project, name of Bidder, date of submission and disclaimer "TECHNO-COMMERCIAL BID (RFP NUMBER DATED XXXX)".
- 3.6.5 The Envelope III should be titled with name of Project, name of Bidder, date of submission and disclaimer "DO NOT OPEN ALONG WITH ENVELOPE II"
- 3.6.6 Each of the envelopes shall be addressed to:
- ATTN. OF: Mr. K.V.R.Subudhi
- DESIGNATION: GM (Projects)
- ADDRESS: IREL(India) Limited, 1207, VS Marg, Prabhadevi, Mumbai 400028
- E-MAIL ADDRESS: [purchase-ho@irel.co.in](mailto:purchase-ho@irel.co.in)
- 3.6.7 If the envelopes are not sealed and marked as instructed above, IREL assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.
- 3.6.8 Bidders may submit their bids either by hand or by registered post/courier/speed post.

Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

### 3.7 Pre Qualification Application Due Date

- 3.7.1 Bids should be submitted before 1500 hours IST of 22.07.2020, at the address provided, in the manner and form as detailed in this RFP.

Address for Bid Submission: IREL (India) Limited,  
1207 VS Marg,  
Prabhadevi Mumbai-400028

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

### 3.8 Late Bid

- 3.8.1 Bids received by IREL after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected. Such Bids will be returned to the parties in the same condition as received by or at IREL.

### 3.9 Modification/substitution of Bids

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

### 3.10 Validity of Bids

- 3.10.1 The Pre-Qualification Application shall be valid for a period not less than 360 (Three Hundred and Sixty) days from the Application Due Date.
- 3.10.2 The Bids (Techno-Commercial and Price Bid) shall be valid for a period of not less than 180 (one hundred and Eighty) days from the Bid Due Date.
- 3.10.3 The validity of Bids may be extended by mutual consent of the respective Bidders and IREL.

### 3.11 Confidentiality

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



## 4 Bid Evaluation and selection of Bidder

### 4.1 Opening and Test of responsiveness

4.1.1 IREL shall open the Pre-Qualification Applications at 1600 hours of 22.07.2020, at the place specified below and in the presence of the Bidders who choose to attend.

Address for Opening: IREL (India) Limited,  
1207 VS Marg, Prabhadevi Mumbai-400028

4.1.2 Post Pre-Qualification and sharing of technical & other information by IREL, the Bidder shall submit Techno-commercial & Price bid. IREL shall open the Techno-Commercial Bids at the place specified below and in the presence of the Bidders who choose to attend, the date of which will be intimated at the time of sharing the technical & other information..

Address for Bid Opening: IREL (India) Limited,  
1207 VS Marg, Prabhadevi Mumbai-400028

4.1.3 Prior to evaluation of both Pre-Qualification Application and Bid, IREL shall determine whether each Pre-Qualification Application and Bid is responsive to the requirements of the RFP. A Pre-Qualification Application / Bid shall be considered responsive if:

- a) it is received by Application Due Date or Bid Due Date (as applicable) including any extension thereof) as per format prescribed along with all filled up forms, data/ details/ documents requested in this RFP;
- b) it does not contain any condition or qualification; and
- c) it is not non-responsive in terms hereof.

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

### 4.2 Evaluation of Bids

4.2.1 Following evaluation process will be adopted by IREL:

- IREL will open the Pre-Qualification Application (Envelope 1) on the Application Due date
- After evaluation of Envelope I, IREL will declare Technically Eligible Bidders. Subsequently, IREL will provide Technical Information to the Technically Eligible Bidders. Based on the Technical Information, the Technically Eligible Bidders shall submit Envelope II and III
- Post Bid Due Date, IREL will open Envelope II: Techno-commercial Bids of Technically Eligible Bidders.
- After evaluation of Techno-Commercial Bid in Envelope II, IREL will open Envelope III Price Bids only of the Technically Qualified Bidders.

- 4.2.2 Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 4.2.3 IREL reserves the right not to proceed with the Pre-Qualification or Techno-Commercial Stage at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 4.2.4 Any information contained in the Pre-Qualification Application or Bid shall not in any way be construed as binding on IREL, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information. IREL reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 4.2.5 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, IREL may, in its sole discretion, seek clarification from the Bidder or exclude the relevant project from Bid evaluation.
- 4.2.6 In the event that a Bidder claims credit for an eligible project, and such claim is determined by IREL as incorrect or erroneous, IREL shall reject such claim and exclude the same from Bid evaluation. Where any information is found to be patently false or amounting to a material misrepresentation, IREL reserves the right to reject the Bid.

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

- 4.3.1 Certificate of Registration/Incorporation of the Bidders along with their Memorandum and Articles of Association will be provided with Pre-Qualification Application. In case the Bidder is not a company, equivalent documents will be provided by the Bidder in support of its Eligibility under Clause 2.3 as per the RFP.
- 4.3.2 The Bidder should submit a Power of Attorney as per the format at Appendix-3, authorizing the signatory of the Bid to commit the Bidder with Pre-Qualification Application.
- 4.3.3 The Bidder shall also enclose with its Pre-Qualification Application, to be submitted as per the format at Appendix-1, the following:

The Pre-Qualification Application must be accompanied by the Audited Annual Reports/Financial Statements of the Bidder for the last three (3) financial years, preceding the year in which the Pre-Qualification Application is made. Audited copies of Balance Sheet, Profit Loss Statement for the last three Financial Years and certificate from a practicing chartered accountant for the Bidder specifying the Net Worth and Turnover of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this RFP.

#### 4.4 Selection of Bidder

- 4.4.1 Subject to the provisions of Clause 2.3 and 2.4, the Bidder whose Bid is adjudged as responsive in terms of Clause 4.1 and meets all the other requirements of the RFP and who quotes the lowest Total Price with Taxes shall be declared as the Selected Bidder (the “**Selected Bidder**”).
- 4.4.2 After selection, a Letter of Intent (the “**LOI**”) shall be issued, in duplicate, by IREL to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the

LOI, sign and return the duplicate copy of the LOI in acknowledgement thereof. In the event the duplicate copy of the LOI duly signed by the Selected Bidder is not received by the stipulated date, IREL may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Selected Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOI.

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

## 5 Miscellaneous

### 5.1 Jurisdiction

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

### 5.2 General

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

### 5.3 Proprietary data

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

### 5.4 Contacts during Bid Evaluation

- 5.4.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time IREL makes official intimation of award/ rejection to the Bidders. While the

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

### 5.5 Correspondence with the Bidder

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

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## Appendix

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## Appendix 1- PRE-QUALIFICATION APPLICATION

### Form-I to Appendix-1: LETTER COMPRISING THE PRE-QUALIFICATION APPLICATION

Dated:

To:

-----  
-----

Subject: Pre-Qualification Application for ----- project

Dear Sir,

1. With reference to your RFP document dated \*\*\*\*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Pre-Qualification Application for the aforesaid Project. The Pre-Qualification Application is unconditional and unqualified.
2. All information provided in the Pre-Qualification Application and in the Appendices is true and correct.
3. This statement is made for the express purpose of qualifying as a Bidder for the development and construction of the aforesaid Project.
4. I/ We shall make available to IREL any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of IREL to reject our Pre-Qualification Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. We certify that in the last three years, we have never failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
  - a. I/ We have examined the Bidding Documents and project site and have no reservations including any Addendum issued by IREL.
  - b. I/ We do not have any conflict of interest in accordance with the RFP document.
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or 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. I/ We hereby certify that we have taken steps to ensure that in conformity with the

provisions of Clause 2.13 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Pre-Qualification Application or Bid that you may receive nor to invite the Bidders to bid for the Project, without incurring any liability to the Bidders.
9. I/ We believe that I/we satisfy the Eligibility requirements as specified in Clause 0 of the RFP document and are/ is qualified to submit a Pre-Qualification Application.
10. I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/ employees.
13. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of ineligibility in terms of the provision of the RFP, we shall intimate IREL of the same immediately.
14. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement but prior to Commencement Date of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without IREL being liable to us in any manner whatsoever.
15. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by IREL in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the abovementioned Project and the terms and implementation thereof.
16. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Application Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
17. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set-forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by IREL or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Work.
18. I/We offer a Bid Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to IREL in accordance with the RFP Document.



19. The Bid Security in the form of a Bank Guarantee is attached.
20. I/We agree and understand that the Pre-Qualification Application and the Bid (if applicable) is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Pre-Qualification Application or Bid (if applicable) is not opened.
21. I/We hereby submit our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.
22. I/We agree to keep this Pre-Qualification Application valid for 360 (Three hundred and Sixty) days from the Application Due Date specified in the RFP.
23. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

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

Yours faithfully,

(Signature of the Authorised signatory)

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder

Date:

Place:

**Form-II to Appendix-1 – PARTICULARS OF BIDDER****Particulars of the Bidder**

<b>S. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of Bidder's entity	
2.	Country of origin	
3.	Legal Status	
4.	Registration number of the Company (under relevant Act of the Country)	
5.	a) Postal address of the Registered office b) Telephone no.(s) c) Fax no(s) d) Web Site, e-mail, if any e) Address of Regional / Local Office, if any	
6.	Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in this Project	
7.	a) Name of the authorized representative b) Designation c) Postal address d) Telephone no.(s) e) Fax no(s) f) E-mail	
8.	Permanent Account No. (PAN), if applicable	
9.	GSTIN number in India, if applicable	
10.	Whether the Bidder is from the country where as a matter of law or official regulations, the commercial relation with India is prohibited	
11.	Any other information	

12. The following information shall also be provided for the Bidder:

Name of Bidder:

<b>S. No.</b>	<b>Criteria</b>	<b>Yes</b>	<b>No</b>
<b>1</b>	Has the Bidder been barred by the Central/ State Government/ Public Sector Undertaking (PSUs), or any entity controlled by it, from participating in any project (EPC or otherwise)?		
<b>2</b>	If the answer to 1 is yes, does the bar subsist as on the Application Due Date?		

Signature of Authorised Signatory with seal

Name, Designation, Date, Place

**Form-III to Appendix-1 – TECHNICAL CAPACITY OF BIDDER**

**Details of project for fulfilling Technical Criteria as per Clause 2.4.1**

Name of Project:

Name of Bidder:

Title/Name of project		Documentary Proof for verification
Assignment Name:		
Value (in INR Crore)		
Country:		
Location within Country:		
Type of project,		
Name of Client:		
Address of the Client:		
Date of commencement of the Project/ contract		
Date of completion/ commissioning of the project		
Equity shareholding (with period during which equity was held), In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium).		

Signature of Authorised Signatory with seal

Name, Designation, Date, Place

**Notes:**

- Use separate sheet for each Project.
- The Applicant may attach proofs on separate sheets as mentioned in the RFP.
- Mention the supporting document such as LOA/ Work Order/ Completion Certificate indicating scope of work and other details as indicated in the RFP. Kindly indicate the page reference nos. for easy identification/ traceability.

**Format for Certificate from practicing chartered accountant for Eligible projects**

**Certificate from the practicing chartered accountant**

Based on its books of accounts and other published information authenticated by it, this is to certify that ..... (name of the Bidder) was engaged by ..... (title of project company) for ..... (name of project).

The total fees received by the Bidder for the projects is .....

We further certify that the project was completed on ..... (date).

Name of the audit firm:

Seal of the audit firm:

Date:

License/registration no:

(Signature, name, designation of the authorized signatory of the audit firm)

**Form-IV to Appendix-1 – FINANCIAL CAPACITY OF BIDDER**

**Financial Capacity of the Bidder**

Name of Bidder:

**Net-worth of the Bidder**

**Net-worth of the Bidder** \_\_\_\_\_

**As per last Financial Year's audited statements** (in figures) \_\_\_\_\_ **(in words)** \_\_\_\_\_  
**financial statements dated** \_\_\_\_\_

**Currency** \_\_\_\_\_

**Turnover of the Bidder**

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

Signature of Authorised Signatory with seal  
Name, Designation,  
Date,  
Place

Note:

- The Bidders will provide all necessary documents in support of the financial strength including audited financial statements and certificate from practicing chartered accountant.
- .

**Format for certificate from the practicing chartered accountant**

**Certificate from the practicing chartered accountant**

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

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

**Format for Solvency Certificate**

**Solvency Certificate  
(On Bank's Letterhead)**

**Date:**

We, [Name of the bank], do hereby certify that [Name of the bidder] located at [Address of the bidder], are solvent to the extent of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as disclosed by the information and records which are available with the Bank.

It is further notified that this certificate is issued based on specific request from [Name of the bidder].

Name of the bank:

Seal of the bank

Date:

(Signature, name and designation of the authorised signatory)

**Form-V to Appendix-1 – STATEMENT OF LEGAL CAPACITY**

**Statement of Legal Capacity**

(To be forwarded on the letterhead of the Applicant)

Ref.

Date.

To,

.....  
.....

Dear Sir,

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

\$ Please strike out whichever is not applicable



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

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

B.G. No.

Dated

In accordance with RFP No. \_\_\_\_\_ Dated \_\_\_\_\_ for the work of \_\_\_\_\_ (herein after referred to as “the said Works”), under \_\_\_\_\_ (Corporate Office) of 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 Bidder (s)] wish /wishes to participate in the said tender and a Bank Guarantee for the sum of Rs. \_\_\_\_\_ (in words) valid for a period of \_\_\_\_\_ days (in words) is required to be submitted by the Bidder towards the Bid Security.

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

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

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

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

RFP for selection of Contractor for RETP

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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2020

\_\_\_\_\_ Bank

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

Bank's Common seal

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

#### Power of Attorney for signing of Bid

(To be executed on non-judicial stamp paper of INR 200)

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

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

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

For \_\_\_\_\_

(Signature)

(Name, Title and Address)

Witnesses:

1.

2.

Accepted

[Notarised]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the

executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

## Appendix 4 – FORMAT FOR SECRECY AGREEMENT

Secrecy Agreement to be executed on a Non-Judiciary Stamp paper of Rs.200/- (Rupees Two Hundred only).

### SECRECY AGREEMENT

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

### WITNESSETH:

#### WHEREAS:

**WHEREAS, IREL** intends to select Contractor for Construction of RETP.

**WHEREAS,** \_\_\_\_\_ [Bidder] had participated in the RFP and now will be Constructing the RETP.

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

1. The term “Confidential Information” means:
  - 1) All details supplied by IREL on technical, commercial and other information and data on the Process.
  - 2) All details supplied by IREL on technical, commercial and other information and data relating to the products.
2. Each party hereto shall keep secret and confidential any and all confidential information it receives from any other party or parties hereto under this Agreement, and shall not use such Confidential Information for any purposes except for the said tender purpose hereunder. The obligations under this Article shall not apply to any information or data that:
  - i. at the time of its disclosure hereunder is in the public domain,
  - ii. after disclosure hereunder becomes part of the public domain by publication or otherwise through no fault of the party to whom such information or data is disclosed hereunder (“Receiving party”) (but only after it is published or otherwise becomes part of the public domain),
  - iii. the Receiving Party can show in its possession at the time of disclosure hereunder and which the Receiving party, without breach or any obligation is free to disclose to others, or
  - iv. was received by the Receiving Party after the time of disclosure by a party hereto (“Disclosing Party”) hereunder from a third party who did not acquire it, directly or indirectly, from the Disclosing Party under an obligation of confidence and which

the Receiving party, without breach of any obligation, is free to disclose to others.

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

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

RFP for selection of Contractor for RETP

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

Witness:

1. (Name)  
Designation

2. (Name)  
Designation

2. For IREL (India) Limited  
(Name)  
Designation

Witness:

1. (Name)  
Designation

2. (Name)  
Designation

## Appendix 5 – UNDERTAKING BY THE BIDDER

Date

M/s. IREL (India) Limited Ltd.,  
1207, V.S. Marg, Prabhadevi,  
Mumbai 400028

I / We ..... am / are a Vendor / Customer  
of

IREL (India) Limited (now onwards to be referred as Company). I / We agree and undertake:

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

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

Signature.....

.....

Name.....

.....

Title.....

..

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



## **Appendix 6 – FORMAT OF 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 “IREL” 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” which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS IREL proposes Selection of Contractor for Construction of RETP and the Bidder is willing to offer/ has offered the services 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 IREL 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 IREL 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 IREL 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:

#### **1. Commitments of IREL**

- 1.1. IREL undertakes that no official of IREL, 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. IREL 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 IREL 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 IREL with full and verifiable facts and the same is prima facie found to be correct by IREL, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by IREL 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 IREL the proceedings under the contract would not be stalled.

### **3. Commitments of Bidders**

The Bidder commits 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 IREL, 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 IREL 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 IREL 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 IREL 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 IREL 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 IREL 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 IREL, or alternatively, if any relative of an officer of IREL 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 IREL.

#### **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. Bid Security**

- 5.1.1. While submitting the Bid, the Bidder shall deposit an amount \_\_\_\_\_ (as specified in RFP) as Bid Security, with IREL through a confirmed bank guarantee by an Indian Scheduled Bank, as applicable, promising payment of the guaranteed sum to IREL on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by IREL shall be treated as conclusive proof of payment.
- 5.2. The Bid Security shall be valid upto complete conclusion of the contractual obligations to the complete satisfaction of both the Bidder and IREL.
- 5.3. In case of the successful Bidder, a Clause would also be incorporated in the article pertaining to Security Deposit in the contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Security Deposit in case of a decision by IREL to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

5.4. No interest shall be payable by IREL to the Bidder on Bid Security 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 IREL to take all or any one of the followings actions, wherever required:-

6.1.1. 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.

6.1.2. The Bid Security / Security Deposit (after the Agreement is signed) shall stand forfeited either fully or partially, as decided by IREL and IREL shall not be required to assign any reason therefore.

6.1.3. To immediately cancel the Agreement, if already signed, without giving any compensation to the Bidder.

6.1.4. To recover all sums already paid by IREL, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of Bidder from a country other than India with interest thereon at 2% higher the LIBOR. If any outstanding payment is due to the Bidder from IREL in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

6.1.5. To encash the Security Deposit, if furnished by the Bidder, in order to recover the payments, already made by IREL, along with interest.

6.1.6. To cancel all or any other contracts with Bidder. The Bidder shall be liable to pay compensation for any loss or damage to IREL resulting from such cancellation / rescission and IREL shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

6.1.7. 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 IREL.

6.1.8. 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.

6.1.9. In cases where irrevocable Letters of Credit have been received in respect of any contract signed by IREL with the Bidder, the same shall not be opened.

6.1.10. Forfeiture of Bid Security/Security Deposit in case of a decision by IREL to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2. IREL 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 IREL 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 Monitor(s)**

7.1. IREL has appointed Independent Monitor(s) (hereinafter referred to as Monitors) for this Pact.

Shri A. Vijay Anand, IRS (Retd.),  
303, Salarpuria Paradise,  
31, Aga Abbas Ali Road  
Ulsoor, Bangalore - 560042

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 Monitors notices, or have reason to believe, a violation of this Pact, they will so inform the Authority designated by IREL.

7.6. The Bidder(s) accepts that the Monitors has the right to access without restriction to all Project documentation of IREL including that provided by the Bidder. The Bidder will also grant the Monitors, upon its request and demonstration of a valid interest, unrestricted and unconditional access to its project documentation. The same is applicable to Subcontractors. The Monitors shall be under contractual obligation to treat the information and documents of the Bidder/Subcontractor(s) with confidentiality.

7.7. IREL will provide to the Monitors 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 Monitors the option to participate in such meetings.

7.8. The Monitor will submit a written report to the designated Authority of IREL with 8 to 10 weeks from the date of reference or intimation to him by IREL/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, IREL 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 IREL.

**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 IREL and the Bidder, 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 \_\_\_\_\_.

	IREL	Bidder
Signature		
Name of Officer		
Designation		
	<u>Witness</u>	<u>Witness</u>
	1	1
	2	2

## **Appendix 7 – FORMAT FOR UNDERTAKING BY THE BIDDER**

### **Undertaking by the Bidder**

Date:

To,

M/s. IREL (India) Limited  
1207, V.S. Marg, Prabhadevi,  
Mumbai 400 028

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

I / We agree and undertake:

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

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

Signature.....

Name.....

Title.....

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

## Appendix 8 – TECHNO-COMMERCIAL PROPOSAL

### Form 1- Letter Comprising Bid

Dated:

To:

Subject: Bid for ----- project

Dear Sir,

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



- d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 2.15 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
9. I/ We believe that we satisfy the Eligibility requirements as specified in Clause 2.3 of the RFP document and are/ is qualified to submit a Bid.
10. I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/ employees.
13. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of ineligibility in terms of the provision of the RFP, we shall intimate IREL of the same immediately.
14. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, I/We shall inform IREL forthwith along with all relevant particulars and IREL may, in its sole discretion, disqualify us or withdraw the Letter of Intent, as the case may be.
15. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement but prior to Commencement Date of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without IREL being liable to us in any manner whatsoever.
16. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by IREL in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
17. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and

agree to abide by the same.

18. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set-forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by IREL or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Project.
19. The Bidding Parameter has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.
20. I/We offer a Bid Security of Rs. \_\_\_\_\_  
(Rupees \_\_\_\_\_ only) to IREL in accordance with the RFP Document.
21. The Bid Security in the form of a Bank Guarantee (strike out whichever is not applicable) is submitted.
22. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened.
23. I/We hereby submit our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.
24. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
25. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

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

Yours faithfully,

(Signature of the Authorised signatory)

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder Firm

Date:

Place:

## **Appendix 9 – PRICE BID**

### **Form-1 Covering Letter**

To be provided along with Technical Information

### **Form 2: Format for Price Bid**

To be provided along with Technical Information

**Appendix 10 – CHECK LIST**

Check list for Submission of Bid:

S.No.	Document	Reference
<b>1</b>	<b>Pre-Qualification Application (Envelope 1)</b>	
1.1.	Cost of RFP Document	General
1.2	Pre-Qualification Application (along with all supporting documents)	Appendix 1 (Form I to V)
1.3	Bid Security	Appendix 2 (for bank guarantee)
1.4	Power of Attorney(s)	Appendix 3
1.5	Secrecy agreement	Appendix 4
1.6	Undertaking	Appendix 5
1.7	Integrity Pact	Appendix 6
1.8	Undertaking by the Bidder	Appendix 7
1.9	Signed copy of RFP and draft Agreement including all addendum, corrigendum and clarification	General
1.10	Certificate of Registration, Incorporation, along with Memorandum and Articles of association	General
<b>2</b>	<b>BID</b>	
<b>A</b>	<b>Techno-Commercial bid (Envelope 2)</b>	
2.1	Letter comprising the bid	Appendix 8 – Form 1
2.2	Techno-Commercial Proposal	Appendix 8 – Form 2
2.3	Any other document/ data/ details to be submitted as mentioned in the RFP	General
2.4	Signed copy of Technical Information, addenda/corrigenda/ clarifications/other documents issued by IREL post Application Due Date, as a token of acceptance of all the tender terms and conditions.	General
<b>B</b>	<b>Price bid (Envelope 3)</b>	
3.1	Covering Letter	Appendix 9 – Form 1
3.2	Filled in format of Price Bid mentioning the fees and applicable taxes	Appendix 9 – Form 2

## Appendix 11 – PROJECT DETAILS

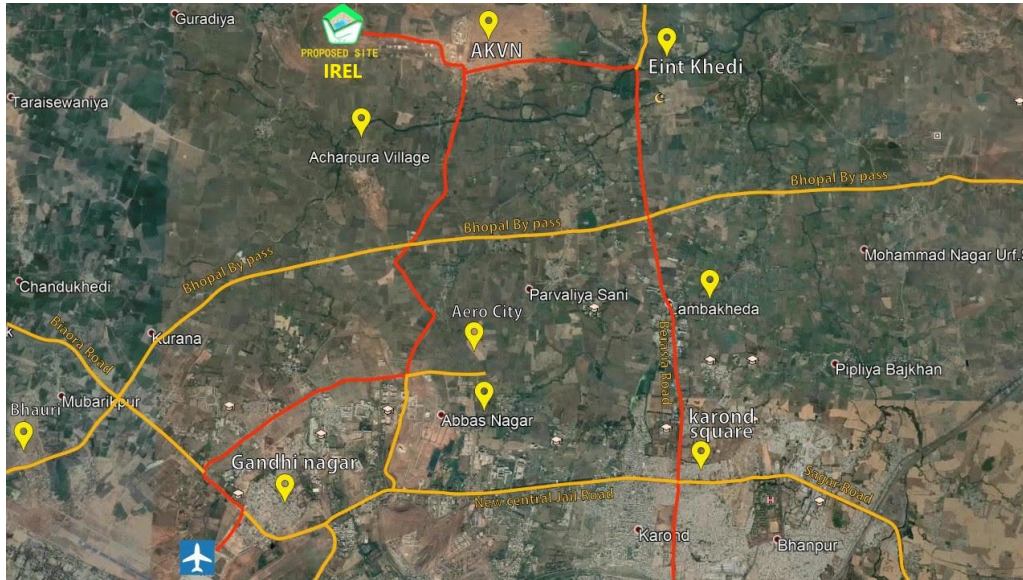
### Introduction

IREL intends to set up a Rare Earth Theme Park located at Acharpura industrial area, at a distance of about 9 km from the city of Bhopal in Madhya Pradesh.

### Project Location

PLOT NO.49, INDUSTRIAL AREA, ACCHARPURA, BHOPAL (M.P)

### Location & Connectivity



**Nearest Airport:** Raja Bhoj International Airport, Bhopal, 12 Km

**Nearest Railway Station:** Bhopal Station, 12 Km

**Distance from major cities:** Jabalpur – 350 KM Indore -240 KM

## **Appendix 12 – INDICATIVE SCOPE OF WORK**

The detailed scope of work will be shared with the Technically Eligible Bidders along with Technical Information. The broad scope of work to be undertaken by the Contractor shall include, but not be limited to the following:

### **12.1 GENERAL**

- i. Clearing of Site
- ii. Barricading the site area by using GI sheets supported suitably by MS Structures up to 6mt height
- iii. Name Boards for safety and site development display
- iv. Excavation and Top soil preservation
- v. R.C.C Foundation
- vi. Anti-termite Treatment
- vii. PCC and soling
- viii. Backfilling and Compaction
- ix. RCC Substructure and Superstructure including staircase
- x. Plinth beam and plinth area construction
- xi. Masonry in AAC Blocks/Fly Ash bricks
- xii. Internal and External plaster
- xiii. Water supply including water meters, sewage disposal system, plumbing fittings and sanitary fixtures
- xiv. Waterproofing of toilets, terrace, chajjas, balconies, refuge area, and other sunk areas etc.
- xv. Flooring, Bathroom and kitchen tiling
- xvi. Wooden Doors, Anodized Aluminum windows, ventilators including locks and associated accessories
- xvii. Storm water drainage
- xviii. Rain water harvesting
- xix. Internal and external painting,
- xx. Electrical Conduiting, Wiring, switchboards, Electrical Fittings & fixtures
- xxi. Fire-fighting wet riser, sprinkler, smoke detection system, Fire extinguishers, exit signage, Sand Buckets etc. as per Fire department NOC
- xxii. HVAC system and Ducting etc.
- xxiii. Lifts with Machine room as per local municipality (NMC) norms
- xxiv. Roof top grid connected solar panel system. Developing and maintaining automatic dust cleaning system (like wiper or water sprinkler or automatic cleaning system along with sensors) on the inclined roof solar roof panel.
- xxv. Underground and overhead tanks including fire water tanks with associated plumbing works
- xxvi. Telephone, DTH Cabling and data cabling works
- xxvii. Fire Pumps, Water Supply pumps, panels and pump room
- xxviii. Meter room, feeder pillar, main cabling, Earth pits, and Lightning arrester etc.
- xxix. Stilt lighting, External lighting and electrical works
- xxx. Landscaping, Horticulture work etc.

- xxxi. Glass Reinforced Concrete (GRC) works for duct areas and external part elevation
- xxxii. Site office, site laboratory, temporary store room, Construction Machineries, First aid box, safety material, sanitary facilities for labour, temporary lighting for site area while executing works and water supply arrangements.
- xxxiii. Associated works related to GRIHA
- xxxiv. Obtaining all statutory NOC/approvals as applicable in the Bhopal City

Above items are only indicative and for guidance & brief description of jobs but should not be considered limited to this list. Bidder should refer to the detailed tender documents, technical specifications and drawings for detailed items and scope of work included in this project. Any discrepancy in the above shall be brought to the notice of IREL in the pre-bid meeting

## **GENERAL SCOPE/COMPLAINE FOR GRIHA WORKS**

### **INTRODUCTION:**

Ministry of New and Renewable Energy, Govt. of India (MNRE) has developed a comprehensive building rating system called Green Rating for Integrated Habitat Assessment (GRIHA). The proposed building envisages incorporation of eco-concepts at all levels. It is an endeavor to achieve best standards as per Green building norms for the proposed building. IREL intends to acquire a minimum of GRIHA 4- STAR RATING for the proposed project. IREL has registered the proposed project with GRIHA Council; institution authorized by MNRE to process and evaluates the buildings under GRIHA.

IREL has engaged consultant for providing Comprehensive services for Architectural, Green building Consultancy services, herein further referred as Architect-Consultant. The contractors have to follow the instruction given by Architect-consultant. Proposed project is comprehensively designed in association with the Architect- Consultant and their Green Building Consultants by suitably incorporating green building requirements to achieve desired Green Building Rating. However, if there are certain items which are not detailed out or mentioned in the tender shall also be required to be executed as per the instructions of IREL and Architect- Consultant in order to get the Green Building rating.

IREL along with Architect-Consultant and their consultants has incorporated possible GRIHA criterion the design, specification, BOQ and scope of work. However, the achievement of GRIHA 4 Star rating is possible only upon contractor's commitment and compliance of relevant GRIHA criteria.

The bidders shall understand the GRIHA rating system and its evaluation process concept, the scope of their works and assist IREL in all aspects to achieve the proposed rating. For a more detailed understanding the bidders are advised to refer to the relevant portions of the GRIHA manuals. Most of the activities under GRIHA are already included in tender. The specifications for activities are already covered under different sections up to certain extent. However, contractor should evaluate his own requirements for the same and assess his costs to comply with GRIHA requirements.

Contractor to submit a narrative, supported with Invoices and certificate from manufacturer and test certificate and Photographs for the same for showing the compliance of GRIHA Conditions.

**1. Commitment, Compliance & Appraisal of GRIHA Criteria:**

The contractor shall commit and comply with the GRIHA guidelines, advice and instructions of IREL, Architect-Consultant and their Green Building Consultants. Photos to be taken daily and especially to support the GRIHA conditions and submitted along with narratives. Failure to do so will be considered as non-compliance to GRIHA and result in charging of penalty. Some of the important GRIHA Criteria's along with their requirements have been briefly indicated hereunder:-

**2. Preserve and protect landscape during construction/compensatory depository forestation:**

Construction activities to be planned in a way that excavation & construction work, up top plinth level is not coinciding with rainy season and the site disruption is restricted to pre-designated areas. Construction work and erosion control applications to be scheduled and sequenced during dry weather periods when the potential for erosion is the lowest.

Measures such as collecting runoff from construction areas and material storage sites; diverting water flow away from such polluted areas, so that pollutants do not mix with storm water runoff undisturbed areas.

Temporary drainage channels, perimeter dike/swale, etc. shall be constructed to carry the pollutant laden water directly to treatment device or facility. The plan shall indicate how the above is accomplished on site, well in advance of the commencing of the construction activity.

Topsoil removal and preservation to be compulsorily done. Topsoil shall be stripped to a depth of 200 mm from areas proposed to be occupied by buildings, roads, paved areas and external services. Topsoil is rich in organic content and is essential to establish new vegetation. It shall be stockpiled to a height of 400 mm in designated areas and shall be reapplied to site during plantation of the proposed vegetation. Topsoil shall be separated from sub-soil debris and stones larger than 50 mm diameter. The stored top soil may be used as finished grade for planting areas. If the topsoil is not stored on site, it can be alternatively given to the nursery or for gardening purposes.

Documentation of topsoil preservation has to be maintained at site as per the requirement of Architect- Consultant/IREL.

Spill prevention and control plans to be made and submitted, clearly stating measures to stop the source of the spill, to contain the spill, to dispose the contaminated material and hazardous wastes, and stating designation of personnel trained to prevent and control spills. Hazardous wastes include pesticides, paints, cleaners, petroleum products, fertilizers and solvents.

Protect & Preserve existing trees, if any, as per directions of Engineer-in-charge. Slope construction techniques to control erosion to be used when construction during wet season is unavoidable. Sedimentation collection systems, drainage systems and run-off diversion systems shall be installed before construction activity. The Architect-Consultant/ Engineer-in-charge shall monitor the site conditions and progress of work and schedule appropriate timing and sequencing of construction.

Soil erosion to be avoided by maintaining a protective cover on the soil, and creating a barrier to the erosive agent (i.e., wind and water). Stabilize bare soils on the site: by using erosion control mats, seeding / planting. Remove sediment from runoff before it leaves the site: use stabilized



construction entrances/exits, silt fences, sediment traps, check dams etc. Plan soil disturbance activities for the dry season. Making Silt fences to hold water, allowing sediment to settle out as an effective sediment control measure.

**3. Provide minimum level of sanitation/safety facilities for construction workers:**

Ensure the health and safety of workers during construction, with effective provisions for the basic facilities such as sanitation and drinking water, and safety PPEs/equipment's for workers, first aid box, etc. at site. Ensure cleanliness of workplace with regard to the disposal of waste and effluent; provide clean drinking water and latrines and urinals as per applicable standard.

**4. Reduce Air and Noise pollution during construction:**

Cover skips and trucks loaded with construction materials and continually damp down with low levels of water. Segregate, tightly cover and monitor toxic substances to prevent spills and possible site contamination. Cover up and protect all drains on site.

Collect any wastewater generated from site activities in settlement tanks, screen, discharge the clean water, and dispose of remaining sludge according to environmental regulations.

Use low-sulphur diesel oil in all vehicle and equipment engines and incorporate the latest specifications of particulate filters and catalytic converters. PUC of vehicles to be submitted. No burning of materials on site.

Noise pollution to be reduced through careful handling of materials; modern, quiet power tools, equipment and generators; low impact technologies; and wall structures as sound shields.

**5. Efficient water use during construction: -**

The use of potable water during construction to be minimized. Materials such as pre-mixed concrete for preventing loss during mixing or use recycled treated water and control the waste of curing water to be used. Gunny bags to be used for column, plinth beams concrete curing and slabs to be cured by water ponding.

**6. Utilization of fly ash in the building structure:**

Use of low-embodied energy industrial-waste fly ash as the construction material. Use fly ash for RCC (reinforced cement concrete) structures, brickwork, plaster, screed, mortar, block-work, etc. in the building.

**7. Reduce volume, weight, and time of construction by adopting an efficient technology:**

Use pre-cast systems, ready-mix concrete, etc.

Replace a part of the energy-intensive materials with less energy-intensive materials and/or utilize regionally available materials, which use low- energy/energy-efficient technologies.

**8. Use low-energy material in the interiors:**

Out of the total quantity of all interior finishes and products used in each of the categories mentioned below, a minimum of 70% should be low-energy finishes/ materials/ products, which minimize wood as a natural resource or utilize industrial waste by using products in any category as listed.

Sub-assembly/internal partitions/false ceiling/in-built furniture, Flooring/Doors/windows and frames Before ordering materials contractor to ask Green Building Certificate from manufacturer or dealer and submit the same to Architect-Consultant and IREL for approval or While ordering materials following should be considered: -

- Purchasing materials that have a recycled content
- Ordering paints with low odour and VOC emissions
- Minimize packaging
- Ordering in standard sizes to minimize on site cutting and wastage
- Provide adequate storage that is weatherproof and secure
- Follow suppliers' storage instructions
- Keep harmful chemicals in secure areas
- Protect lightweight materials from wind
- Store liquids and sand away from drains and watercourses

**9. Water recycle and reuse (including rainwater):**

Rainwater storage and recharge system to be implemented at site including ground water recharge where potable municipal water is normally used, to reduce the load on municipal supplies and to improve the ground water level.

**10. Reduction in waste during construction:**

Ensure maximum resource recovery and safe disposal of wastes generated during construction and reduce the burden on landfill.

Keep record of the waste generated and take pictures.

Designate separate areas for storage of recyclables Submit records tabulating the total waste material generated and the quantities which were diverted from landfills.

A minimum of 4% of the total site area should be allocated for storage of the waste. This storage area should be covered and the pollutants from the waste should not affect the surrounding.

**11. Efficient waste segregation:**

Different types of waste to be segregated in different categories of waste sections /areas during construction to promote the segregation of waste.

**Use of low-VOC (volatile organic compounds) paints/ adhesives /sealants:**

**VOC Limits for Materials**

Please follow the type of material & their VOC Limit as mentioned below:-

- **Paints:-** Non-flat paints - 150 g/L  
Flat (Mat) paints - 50 g/L  
Anti-corrosive/ anti-rust paints - 250 g/L  
Varnish - 350 g/L
- **Adhesives:**  
Tile adhesives - 65 g/L  
Wood - 30 g/L

**12. Reduce the water use by the building:**

➤ **Flow rates of Water Fixtures: -**

Select water fixtures whose average flow rates / capacities should not exceed the values mentioned below. Baseline Flow Rates / Capacity for Water Fixtures in a Typical Household are: -

Flush fixtures - LPF 6/3

Flow fixtures - LPM 12 At a flowing water pressure of 3 bar

➤ **Flow fixtures include faucets, basin mixer, taps, showers, shower mixers.**

The baseline flows can be demonstrated at flowing water pressure of 3 bars. Flowing water pressure of 3bar does not mean that the water supply in the building is at 3 bars. The building fixtures can operate at lower pressures but to show compliance under this credit, the design flow rates are to be submitted at 3 bars. The average flow rate is a simple arithmetic average of all the respective flush / flow fixtures.

**13. Minimize ozone - depleting substances:**

Halon-free fire suppression and fire extinguishing systems to be used to eliminate or control the release of ozone-depleting substances into the atmosphere wherever applicable.

**14. Ensure water quality:**

Ensure groundwater and municipal water meet the water quality norms as prescribed in the Indian Standards for various applications (Indian Standards for drinking [IS 10500- 1991], irrigation applications [IS 11624-1986]. In case the water quality cannot be ensured, provide necessary treatment to raw water for achieving the desired concentration for various applications.

**15. Energy efficient lighting:**

The lighting fixtures installed should meet the required Lighting Power Densities. The selected fixtures shall be approved by the Architect- CONSULTANT/IREL before installation.

Ensure that the external lighting sources are 100% on automatic controls and as per the below mentioned specifications:

- Minimum allowable values of luminous efficiency of outdoor lighting system Light

Source	Minimum allowable luminous efficiency (lm/W)
CFL (compact florescent lamp)	50
FL (Fluorescent lamps)	75
MH (Metal Halide)	75
HPSV (High Pressure Sodium Vapour lamp)	90
LEDs	50

- The Lighting power densities in internal lighting shall have minimum allowable values as follows:

Space	LPD (W/m <sup>2</sup> )

Office	5.0
Corridors	4.0
Staircases	6.5
Reception Lobby	8.0
Parking Area Lightning	2.2

**16. Optimize energy performance of building:**

Ensure that the glass used for the project has a minimum thickness of 6mm. The glass shall not exceed the U value of 5.5 W/m<sup>2</sup>K and SC of 0.62. A minimum VLT (Transmittance) of 50% shall be required.

Ensure that energy efficient Pumps and motor are installed which would follow efficiency not less than mentioned in IS12615.

**17. Renewable energy:**

Solar panels of 80 kW or 15% of connected load for Air-conditioning and Interior Area Lighting (whichever is more) shall be installed on the rooftop on a MS erected structure.

The Solar PV's shall be of approved make and as required by Architect- Consultant/IREL However, the project shall not provide battery storage and the excess energy generated shall be given back to the grid through net-metering/ as decided by Architect Consultant/ IREL.

**18. Metering and Monitoring:**

Ensure that Electrical meters are used to measure energy units purchased from utility and energy generated on site. Energy sub-metering should be opted to measure energy consumption of indoor lighting, outdoor lighting, Lifts and common areas, etc Provision of Water meter to be installed at all main supply points to measure total water consumption of building.

**19. Documentation, Evaluation & Appraisal:**

The facilitation with GRIHA Council/Secretariat shall be undertaken by Architect Consultant and their Green Building Consultant on behalf of the IREL. All necessary cooperation shall be extended to them.

The contractor shall submit documents, photographs, narratives, certificates and any documents from statutory authorities, and any other proof in requisite formats, demonstrating compliance to the GRIHA norms both in hard copy and soft copy forms as per requirement and as decided by IREL Engineer-In-charge/ Architect-Consultant and their Green building Consultant.

The evaluation team from GRIHA Council/Secretariat or their authorized representative shall be conducting periodic and surprise checks at site for assessing compliance to GRIHA norms. The contractor shall demonstrate compliance through actual site situation, documents, photographs and certificates as per their requirements.

The contractor shall take all necessary actions to ensure that there are no adverse remarks on compliance.

Upon completion of the building, all documents, photographs, narratives and also certificates if any from statutory authorities shall be submitted for evaluation and appraisal to GRIHA Council/Secretariat, who shall issue provisional rating. This provisional rating shall be ratified finalized upon suitable audit and verification upon occupation of the building.

## **12.2 TIME SCHEDULE**

Time schedule for completion of entire work is 12 months from the effective date.

## **Appendix 13- Draft Agreement**



Draft Agreement for Contractor of RETP

# **DRAFT AGREEMENT FOR CONSTRUCTION OF RARE EARTH THEME PARK (RETP)**



## **IREL (India) Limited**

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

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



Draft Agreement for Contractor of RETP

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

## DRAFT AGREEMENT

### CONSTRUCTION OF RARE EARTH THEME PARK

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

#### BETWEEN

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

#### AND

..... (**Name of Company of Selected Bidder**), an agency organized and existing under Companies Act 1956/2013<sup>1</sup> and having its Registered / Principal Office at (hereinafter referred to as "**Contractor**"), which term or expression unless excluded by or repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns, OF THE OTHER PART,





## AND WHEREAS

- A. IREL intends to set up an RE & Titanium Theme Park, in view of the same IREL has decided to appoint a contractor (hereinafter called “**Contractor**”) for construction of Rare Earth Theme Park; IREL has appointed an Architectural Consultant (the “**Architectural Consultant**”) for undertaking design, layout, preparing specifications and supervision of Civil works. Now, IREL intends to carry out Construction of the Rare Earth Theme Park through the Contractor;
- B. IREL had floated tender vide Tender no. \_\_\_\_\_ dated \_\_\_\_\_ along with corrigenda (hereinafter referred to as “RFP”) wherein \_\_\_\_\_ (Selected Bidder) had submitted its Pre-Qualification Application and subsequently Techno-Commercial Bid and Price Bid (the “**Bid**”);
- C. The Pre-Qualification Application submitted by \_\_\_\_\_ (Selected Bidder), having met the requirements as per Clause 2.3 (Eligibility) and 2.4 (Pre-Qualification) along with all other requirements of RFP and subsequently, the Techno-Commercial Bid and Price Bid, was considered further as per Clause 4.4 (Selection of Bidder) of RFP as Technically Qualified Bidder for Price Bid opening stage, wherein \_\_\_\_\_ emerged as the Selected Bidder with lowest Total Price as per Clause 4.4.1 of RFP;
- D. IREL has accepted the Pre-Qualification Application and the Bid submitted by the \_\_\_\_\_ (Selected Bidder) to act as the Contractor, on the terms and conditions for the aforesaid arrangement as specified in the RFP and Agreement for Construction of RETP (hereinafter referred to as “**Works**”);
- E. IREL having issued the Letter of Intent (Lol) no \_\_\_\_\_ dated \_\_\_\_\_ to \_\_\_\_\_ (Selected Bidder) as per Clause 4.4.2 of RFP;
- F. The Contractor is having requisite competence in the business, inter-alia of, and intends to undertake Construction of RETP, and as per the terms and conditions more particularly appearing hereinafter;
- G. The Contractor has satisfied itself to the site conditions and has acquainted itself in general with all local conditions, workability on the site, facility for transport & storage of materials, and all its responsibilities for compliance to Applicable Laws and regulations and has obtained all other information on its own both as to risk, contingencies & other circumstances which may influence or affect the work and other requisites for proper execution of the Agreement after due inspection of site and surrounding and scrutiny of other related factors, and probable contingencies.



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

## **Article 1 Definitions**

- 1.1. **“Agreement”** shall mean, this Agreement between IREL and the Contractor duly signed by both for Construction of RETP, as may be amended, modified or supplemented from time to time;
- 1.2. **“Agreement Value”** shall mean the total sum for which tender is accepted by IREL exclusive of GST;
- 1.3. **“Agency”** shall mean the Architectural Consultant appointed by IREL for undertaking design, engineering and supervision of construction of RETP;
- 1.4. **“Contractor Event of Default”** shall have the meaning set forth in Sub-clause 28.4.1;
- 1.5. **“Applicable Law”** shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision, or determination, or any interpretation or adjudication having the force of law in India;
- 1.6. **“Arbitration”** shall have the meaning set forth in Clause 29.2
- 1.7. **“Change in Applicable law”** shall mean if, after Effective Date of this Agreement, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or amended (which shall be deemed to include any change in interpretation or application the competent authorities). Such changes will not invalidate the Agreement but the impact of the changes will be settled on mutually agreed terms.
- 1.8. **“Conciliation”** shall have the meaning set forth in Clause 29.1;
- 1.9. **“Construction”** include, unless the context otherwise requires, survey and investigation (if required), supply of materials, equipment, tools, labour, delivery, transportation, civil works, structural works including erection, mechanical, electrical, piping works and all other activities undertaken for construction of RETP, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the Construction and **“construct”** shall be construed accordingly;
- 1.10. **“Contractor”** shall mean firm or company that was declared the Selected Bidder through the bidding process specified in this RFP and subsequent corrigenda/addenda issued by IREL, and includes the firm’s or company’s employees but does not include a person who has entered into an agreement for providing financial assistance to the Contractor. The Contractor shall be responsible for providing services in accordance to Article 15.1 (Scope of Work) of this Agreement
- 1.11. **“Dimensions”** shall mean the dimension as per metric system;
- 1.12. **“Defect”** means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards;



Draft Agreement for Contractor of RETP

- 1.13. **“Defect Liability Period”** means the period of validity of the warranties given by the Contractor commencing from the date of issuance of Final Acceptance Certificate of the Works, during which the Contractor is responsible for defects with respect to the Works as detailed in Article 21 (Defect Liability) hereof.
- 1.14. **“Detailed Project Report” or “DPR”** shall be the detailed project report prepared for RETP project.
- 1.15. **“Drawings”** means all of the drawings, calculations and documents pertaining to the Project as set forth in Terms of Reference in Annexure-III, and shall include ‘as built’ drawings of the Project as well;
- 1.16. **“Engineer-in-charge”** means the person appointed by IREL in the manner provided in Article 9 hereof and to perform the duties delegated by IREL.
- 1.17. **“Effective Date”** shall mean the date of signing of Agreement;
- 1.18. **“Final Acceptance Certificate”** shall mean the certificate issued by IREL as per Article 11
- 1.19. **“Financial Year”** shall refer to the Indian financial year commencing April 1<sup>st</sup> and ending on the following March 31<sup>st</sup> or as notified and amended by the Government of India. It shall refer to a fiscal year or the accounting period of 12 months;
- 1.20. **“Good Industry Practice”** means the practices, methods, techniques, designs, standards, workmanship, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;
- 1.21. **“Governmental Approval”** shall mean all permits, licenses, authorizations, consents, clearances, decrees, waivers, privileges, no-objection certificate or approvals from and the Government of India and/or the Government of Madhya Pradesh or the respective nodal agencies necessary for development and Construction of the RETP and the completion of the Project;
- 1.22. **“GOI” or “Government”** shall mean the Government of India including any and / or all ministries thereof and /or departments thereof having duly constituted authorities to grant approvals under any applicable statutes, rules and regulations enforced from time to time;
- 1.23. **“Implementation Plan”** shall cover, but will not be limited to key tasks to be undertaken, Annexure of these tasks, associated costs, responsibility allocation, monitoring mechanism, etc. for executing the Scope of the Work as per Clause 15.1 of this Agreement;
- 1.24. **“Indemnifying Party” and “Indemnified Party”** shall have the meaning set forth in Clause Article 25;
- 1.25. **“IREL Event of Default”** shall have the meaning set forth in Clause 28.4.2;



Draft Agreement for Contractor of RETP

- 1.26. **"Letter of Intent"** or **"LOI"** means based on the offer of Bidder, IREL issues its acceptance to the said offer requesting Selected Bidder to sign the Agreement;
- 1.27. **"Material"** are all the supplies used by the Contractor for Construction of the RETP Works;
- 1.28. **"Metric tonne"** or **"t"** for the purpose of this Agreement shall be used for the weighment;
- 1.29. **"Parties"** shall mean the parties to this Agreement collectively and **"Party"** shall mean any of the parties to this Agreement individually;
- 1.30. **"PCB"** shall mean Pollution Control Board of Government of Madhya Pradesh/ Government of India;
- 1.31. **"Performance Bank Guarantee"** shall have the meaning set forth in Clause 7.1.
- 1.32. **"Preliminary Notice"** shall have the meaning set forth in Sub-clause 28.6.1;
- 1.33. **"Project"** shall mean the Works to be undertaken for RETP in Acharpura industrial area, 9 kms from the city of Bhopal in Madhya Pradesh as detailed in Terms of Reference in Annexure-III;
- 1.34. **"Project Milestone"** means the completion of all scheduled activities and includes the Works Completion Date;
- 1.35. **"Scope of Work"** or **"Scope of the Project"** shall mean the work specified in Clause 15.1 of the Agreement and shall include all the activities towards construction of RETP for production beach sand minerals.
- 1.36. **"Security Deposit"** shall have the meaning set forth in Clause 6.1 Article 10;
- 1.37. **"Site"** of the Project shall include the land, buildings, structures, road works, etc., as described in the RFP and this Agreement;
- 1.38. **"Specifications and Standards"** shall mean, the technical specifications, standards, schedules, statements of technical data, performance characteristics, values and all such particulars relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Terms of reference in Annexure-III, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Contractor to, and expressly approved by, IREL;
- 1.39. **"Technical Information"** shall mean the detailed scope of work including Bill of Quantities (BOQ) of civil works, utilities etc. and all other details provided by IREL prior to the Technical Discussion as per RFP.
- 1.40. **"Termination Notice"** means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement;
- 1.41. **"Third Party"** means any person or entity other than IREL or the Contractor
- 1.42. **"Time"** shall be reckoned by months, day and hours. Month being equivalent to the calendar month according to the Gregorian calendar. The day or days unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each;
- 1.43. **"Works"** shall mean the works required to be executed in accordance with the contract/work order or parts thereof as the case may be and shall include other



## Draft Agreement for Contractor of RETP

necessary works as specified in Article 10 all extra or additional, altered or substituted works or any work of emergent nature, which in the opinion of IREL, become necessary during the progress of the works to obviate any risk or accident or failure or become necessary for security.

1.44. **“Works Completion Date”** shall be date of issuance of Final Acceptance Certificate as defined in Article 11.



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

### **(A) Definitions**

Unless the context of this Agreement otherwise requires

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

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

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

### **(C) Supersession**

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

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

- 2.14. The Agreement and the schedules, annexures, enclosures shall be read harmoniously as being mutually explanatory and as part of a complete set. In case of any repugnancy/conflict between the Agreement and the schedules, annexures, enclosures, the provisions of the Agreement shall prevail;



## Draft Agreement for Contractor of RETP

- 2.15. Any error in description, quantity or rate in schedule or quantities or omission therefrom, shall not vitiate the Agreement or release the Contractor from discharging his obligations under the Agreement including execution of the Works;
- 2.16. If the Agreement and the schedule, annexure, enclosure documents provide for different standards of product, workmanship or finish, the Contractor must specify those of the highest standard provided in any part of the Agreement;
- 2.17. The Agreement may be signed in one or more counterparts and each counterpart shall have the same effect as the original;
- 2.18. The Agreement shall come into force on and from the Effective Date.



Draft Agreement for Contractor of RETP

### **Article 3 Business Purpose**

It is expressly understood that;

- 3.1. The Contractor shall undertake Construction Works of RETP in conformance with the Terms of Reference attached as part of Annexure-III of this Agreement, and in accordance with all legal requirements, approvals and Good Industry Practices.





## Article 4 Conditions Precedent

- 4.1. Effective Date of the Agreement
- 4.2. This Agreement shall be deemed to have come into effect on the date of signing of the Agreement (the “**Effective Date**”) which shall be within twenty one (21) days from the date of receipt of LOI. However, the roles, responsibilities, warranties, obligations and other terms and conditions as mentioned in the Agreement shall be deemed to have come into effect from the date of acceptance of LOI.
- 4.3. Conditions Precedent of IREL
  - 4.3.1. Provide access of the land/ space for start of Works by the Contractor.
- 4.4. Conditions Precedent of the Contractor
  - 4.4.1. Contractor shall submit, on the date of signing of this Agreement or within twenty one (21) days from the date of receipt of LOI, whichever is earlier, a Security Deposit as specified in Article 6 of this Agreement.
- 4.5. All the Conditions Precedent in Clause 4.4 shall be achieved within 7 days of Effective Date unless extended in writing by IREL at its sole discretion. If the Conditions Precedent under this Clause 4.4 are not satisfied within the above-mentioned period, IREL shall have the right to terminate the Agreement, by notice in writing and forfeit the Security Deposit.
- 4.6. Provided that upon request in writing by the Contractor, IREL may, in its sole discretion, waive any of the Conditions Precedent set forth in this Clause 4.4 or grant extension of time for fulfillment thereof, as the case may be.
- 4.7. Best Endeavors

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



## **Article 5 Duration of Agreement**

- 5.1. This Agreement shall take effect from the Effective Date of the Agreement and shall remain in force till completion of the Works in 12 months (**“Duration of Agreement”**).
- 5.2. Within twenty one (21) days of Effective Date of this Agreement, the Contractor shall submit an Implementation Plan giving Project Milestones of scheduled progress on monthly basis.
- 5.3. Expiry of Agreement

Unless terminated earlier pursuant to Clause 28.6, this Agreement shall, unless extended by the Parties by mutual consent, expire upon issuance of “Final Acceptance Certificate” by IREL.



## Article 6 Security Deposit

- 6.1. The Contractor shall submit, within twenty one (21) days from the issuance of LOI or at the time of signing of Agreement, whichever is earlier, a Security Deposit (the “**Security Deposit**”) in the form of a bank guarantee issued by any Indian Nationalised Bank payable at Mumbai, for an amount equal to five percent (5 %) of the Agreement Value .
- 6.2. Bank guarantee shall be as per format given at Annexure-I, valid for fourteen (14) months from the date of issue with an additional claim period of ninety (90) days beyond expiry and shall be issued from any scheduled bank; In case, of any extension in the duration of Works, the validity of the Bank guarantee shall be extended accordingly.
- 6.3. In case of breach of any of the terms of this Agreement, IREL, at its sole discretion and without prejudice to its other rights, may encash the entire Security Deposit without assigning any reasons to the Contractor;
- 6.4. Forfeiture of Security Deposit  
The Security Deposit shall stand forfeited in favour of IREL, without any further notice to the Contractor in the following circumstances:
  - 6.4.1. In case of any failure whatsoever on the part of the Contractor at any time during performance of his part of the Agreement including the extended periods of the Agreement, where notice is given and time for rectification allowed;
  - 6.4.2. If the Contractor indulges at any time in any subletting/ sub-contracting of any portion of the Works without approval of IREL;
  - 6.4.3. If the Contractor abandons the Agreement;  
Notwithstanding anything in the Agreement, the refund of the Security Deposit, shall be subject to IREL’s right to deduct its dues which are payable by the Contractor to IREL;
- 6.5. The Security Deposit shall be released (without any interest) only after completion of the Works, subsequent issuance of Final Acceptance Certificate by IREL to Contractor and compliance of statutory provisions after deduction of any dues from the Agency arising out of any claim by IREL on the Contractor;



## **Article 7 Performance Bank Guarantee**

### **7.1. Performance Bank Guarantee**

- 7.1.1. The Contractor shall, for the performance of its obligations hereunder, provide to IREL, within 15 (fifteen) days of the date of receipt of Final Acceptance Certificate, an irrevocable and unconditional guarantee, for an amount equal to 10% (ten per cent) of the Agreement Value, from any Indian Nationalised Bank in the form set forth in Annexure-II (the "Performance Bank Guarantee"). The Performance Bank Guarantee shall be valid for a period of 18 (Eighteen) months, i.e. until the expiry of the Defects Liability Period specified in Article 21, with an additional claim period of 6 (six) months beyond the validity of Performance Bank Guarantee.
- 7.1.2. Until such time the Performance Bank Guarantee is provided by the Contractor pursuant hereto and the same comes into effect, the Security Deposit shall remain in force and effect, and upon such provision of the Performance Bank Guarantee, IREL shall release the Security Deposit and Retention Money (5% of the Contract Value) to the Contractor.
- 7.1.3. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Bank Guarantee in accordance with the provisions of Sub-clause 7.1.1 and within the time specified therein or such extended period as may be provided by IREL, in accordance with the provisions of Sub-clause 7.1.1, IREL may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **7.2. Appropriation of Performance Bank Guarantee**

- 7.2.1. In accordance with Article 20, IREL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Bank Guarantee the amounts due to it as Damages.

### **7.3. Release of Performance Bank Guarantee**

- 7.3.1. IREL shall release the Performance Bank Guarantee within thirty (30) days of the expiry of the claim period of the Performance Bank Guarantee, as the case may be, under this Agreement. Notwithstanding the aforesaid, the Parties agree that IREL shall not be obliged to release the Performance Bank Guarantee until all Defects identified during the Defects Liability Period, have been rectified.



## **Article 8 Risk Purchase Clause**

- 8.1. After signing of Agreement, if the Contractor fails to execute the activities outlined in the Scope of Work as per this Agreement or at any time repudiates the order, IREL have the right to invoke the Security Deposit and execute the order from other agencies at the risk and cost of the Contractor. IREL reserves the right to take over the plant to carry out the unfinished work and proceed with production activities without any payment to the Contractor.



## **Article 9 ENGINEER-IN-CHARGE**

- 9.1. The Engineer-in-charge shall represent and act on behalf of IREL at all times during the currency of the Agreement. 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.
- 9.2. The Engineer-in-charge, and any other person authorised by the Engineer-in-charge in writing or verbally instructed, shall have authority for
  - 9.2.1. general supervision, follow up of supply and direction of the Works
  - 9.2.2. direction to stop the Works whenever such stoppage may be necessary to ensure the proper execution of the Agreement
  - 9.2.3. to reject all Works and Materials which do not conform to the Agreement
- 9.3. The Engineer-in-charge shall have no authority to relieve the Contractor of any of his duties or obligations under this Agreement 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.



Draft Agreement for Contractor of RETP

## **Article 10 INSPECTION, TESTING AND REJECTION**

To be intimated separately at the time of sharing Technical Information



## **Article 11 Final Acceptance**

11.1. Final Acceptance shall occur in respect of the Works when:

11.1.1. the Agency has submitted all final drawings including as-built drawings & documents for the respective Works in accordance with the provisions of this Agreement as given in Terms of Reference.

11.1.2. the Agency has fulfilled all the obligations under the Agreement.

11.2. At any time after the events set out in Clause 11.1 hereof, have occurred, the Agency may notify to IREL requesting for the issue of Final Acceptance Certificate (FAC) for Works.

11.3. IREL shall, within seven (7) days after receipt of the Agency's notice, issue a FAC.

Final Payment and Retention Money (5 % of Contract Value), after adjustment of applicable Liquidated Damages, may be released by IREL against submission of Performance Bank Guarantee (by the Agency) equal to 10% of the Agreement Value valid for 12 months from the date of issue of FAC





## **Article 12 Ownership of Materials and Products**

- 12.1. Notwithstanding anything in this Agreement, IREL shall have absolute rights of the Materials & civil structures and shall have ownership and title over the Works in progress. However, the risk and liability of the project including all its components like material, structure, associated facilities and resources shall lie with the Contractor till until Final Acceptance of the Project. After Final Acceptance of the Project, the risk and liability of the Project including structures, tools & tackles, spares, manuals, drawings and any other components shall be transferred by the Contractor to IREL in accordance with the terms and conditions of this Agreement.
- 12.2. Notwithstanding anything in this Clause, the Contractor shall at all times be responsible for monitoring the safety and security of its manpower, equipment, tools & tackles etc. being used for completion of the Project.



## **Article 13 Declaration of the Contractor**

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



## **Article 14 Contract Documents**

### **14.1. Custody of drawings**

The drawings shall remain in the sole custody of IREL but one copy thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies, detailed drawings, if any, required by him. The detailed drawings prepared by the Contractor should have the approval of Engineer-in-charge before start of work.

### **14.2. Additional Drawings**

The Contractor shall give adequate notice in writing to the Engineer-in-charge any further drawings or specifications that may be required for the execution of the Works or otherwise under the contract.

### **14.3. One copy of the drawing to be kept**

One copy of the drawings furnished to the Contractor as aforesaid shall be kept by the Contractor at the site and the same shall at all reasonable times be available for inspection and use by the engineer in charge and any other person authorised by the Engineer-in-charge in writing or verbally instructed.

### **14.4. Further drawings and constructions**

The company shall have full power and authority to supply to the Contractor from time to time during the progress of the work such further drawings and instructions as shall be necessary for purpose of proper and adequate execution and maintenance of the works and the Contractor shall carry out and be bound by the same.



## **Article 15 Obligations of the Contractor**

### **15.1. Scope of Work**

15.1.1. Under this Agreement, the Contractor shall fulfil scope of work (the “**Scope of Work**”) defined in the Terms of Reference attached as part of Annexure-III.

### **15.2. Construction of temporary stores and site office**

15.2.1. Suitable areas will be allocated by IREL to the Contractor to build, at his expense, temporary stores for storing his materials, etc. and also to build his temporary site office. The Contractor will be solely responsible for watching and guarding of his stores office, materials, equipment etc.

15.2.2. The Contractor shall cover all his materials at site with requisite insurance against theft, fire, tempest, flood, earthquake, etc.

15.2.3. Construction water and power till completion of Works is under the Scope of the Contractor.

### **15.3. Accommodation**

15.3.1. IREL shall not be in a position to offer any lodging/ boarding facilities for Contractor’s personnel /men and it shall be the responsibility of the Contractor to make his own arrangements in this respect. No permanent accommodation facilities shall be constructed by the Contractor at the Site.

15.3.2. No personnel/ men of Contractor shall be allowed to stay during night time at Site, until unless so is desired for completion of the project, or for security purpose. Only temporary structural shelters shall be constructed by Contractor at Site for stay during shift time break. All such temporary constructions as well as stay of Contractor’s personnel/ men at Site during night shall be with due approval of IREL.

### **15.4. Co-ordination with other Agencies**

15.4.1. The Contractor shall execute his work so as not to obstruct or retard the work being executed simultaneously by other agencies. This aspect shall also be considered while quoting for the project.

### **15.5. Cleaning the site**

15.5.1. The Contractor shall clean all required debris etc. and other activities as necessary for the Project at the site prior to the commencement of work at no extra cost.

15.5.2. On completion of Works the site shall be cleared of all men, materials, machinery, tools and equipment belonging to the Contractor. The Contractor shall remove with IREL’s approval all his temporary arrangements for storage and distribution of construction water, all electrical installations together with wiring or construction power, site offices and all other temporary works and shall reinstate and make good any work disturbed by the temporary work to the satisfaction of IREL. The site and surroundings shall be handed over in a clean and neat condition as required by IREL.



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- 15.6. The Contractor shall ensure that construction of Works on the land/ space provided by IREL, within a stipulated period of 12 months from the Effective Date of the Agreement, subject to the terms mentioned in Clause 15.11 & Article 15 herein below;
- 15.7. The Works are to be located suitably on the land/ space provided by IREL.
- 15.8. All the activities related to the Works of this Agreement shall be under periodical inspection of the representatives of IREL;
- 15.9. The employees of the Contractor, including any assignees, entrusted with the job of construction and erection of the Works shall be required to follow, but not limited to, the Industrial Safety & Health Rules issued by Ministry of Labour & Employment, GoI;
- 15.10. While undertaking Works, the Contractor shall take all necessary precautions against any untoward incident, inside the Site, beside the area earmarked for construction of the Works, and shall indemnify IREL for any accident, loss or damage to the property of IREL or any third party due to negligence of the Contractor and /or its representatives;
- 15.11. The Contractor shall adhere to the Implementation Plan as submitted as part of the Conditions Precedent for successful construction and erection of the Works, and the Contractor shall ensure no delay in construction and erection of the Works due to any reason whatsoever, other than Force Majeure and subject to IREL fulfilling its obligations under this Agreement;
- 15.12. For any delay in construction of Works, the Contractor shall compensate IREL for the loss suffered by IREL (Liquidated Damages) as mentioned in Clause 18.1 of this Agreement;
- 15.13. The Contractor shall not be the owner of the aforesaid civil structures, building and land during the Agreement period;
- 15.14. The Contractor shall ensure all the statutory provisions of State Government, Central Government and local authorities including labour laws and industrial laws for construction of the Works / engagement of labours are followed, and in no case, the employees / workers engaged by the Contractor directly or indirectly, shall be the employee of IREL. Any violation of any of the provisions by the Contractor and / or its representatives, the same shall be indemnified by them to IREL, against any claim / demand made by any authority;
- 15.15. The Contractor shall take all necessary steps for obtaining Certificate under the provisions of the Agreement, Labour (Regulation & Abolition) Act, 1970 and the rules made there-under for engaging any contractor and contract labours and comply with all provisions of the said act and the rules;
- 15.16. The Contractor shall have strict compliance of all Safety provisions / norms at Site as per details given in Terms of Reference in Annexure-III.
- 15.17. The Contractor shall ensure all the environmental norms and regulation under the relevant authorities are followed.
- 15.18. The Contractor shall be responsible for getting all required approvals and clearances for completion of Works. IREL shall provide all administrative and facilitating support as required. All statutory costs for getting the clearances shall be reimbursed by IREL at actuals upon submission of documentary proofs.



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- 15.19. The contractor shall make his own arrangement to procure all equipment for satisfactory completion of its Works as defined in the Agreement.
- 15.20. All materials, plant and contractor's equipment, etc. once brought by the contractor on the site are not to be removed from there without the written authority from the Engineer-in-charge. Also, the contractor shall have adequate stock of spare parts for the equipment on the site and the work shall not be delayed on this account. Similarly, all temporary works build by the contractor for the main construction undertaken by him are not to be dismantled and removed without the written authority from the Engineer-in-charge.
- 15.21. Construction water and power is under the Scope of the Contractor till completion of Works.
- 15.22. Contractor shall also be responsible for drawing water and power from the nearest source indicated by the State Government required for the RETP. The statutory fees required for the same including deposit charges, if any, shall be reimbursed by IREL on submission of documentary evidence.



## **Article 16 Obligations of IREL**

### 16.1. Access to land and property

16.1.1. IREL warrants that the Contractor shall have, free of charge, unimpeded access to the Site of the Project in respect of which access is required for the performance of Works;

### 16.2. Payment

16.2.1. In consideration of the Works performed by the Contractor under this Agreement, IREL shall make to the Contractor such undisputed payments and in such manner as is provided in Article 17 & Article 18 of this Agreement.



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## **Article 17 Payments to the Contractor**

To be intimated separately at the time of sharing Technical Information





## **Article 18 Liquidated Damages**

- 18.1. In case of delay in achieving Works Completion Date, Liquidated Damages as mentioned below shall be applicable.
- 18.2. Liquidated Damages (LD) against delay in achieving Works Completion Date.
  - 18.2.1. Liquidated Damages (LD) shall be levied where reasons are attributable to Contractor for delays in execution of this Agreement. LD shall be levied @0.5% per week or part thereof on the Agreement Value for each week of delay in achieving Works Completion Date as per Clause 1.44; subject to a maximum of 5% of the total Agreement Value.



## Article 19 Representations and Warranties

### 19.1. IREL's Representations and Warranties

- 19.1.1. It is duly organised and validly existing entity under the laws of India and has all requisite legal right, power and authority to execute and deliver this Agreement and all the agreements to which it is a Party and to carry out the terms, conditions and provisions hereof and thereof;
- 19.1.2. The execution, delivery and performance by it of this Agreement and all of the agreements and documents referred to herein to which it is the party have been duly authorised by all requisite corporate action, and shall not contravene any provisions of, or constitute a default under, any other agreement or instrument to which it is the party. The execution, delivery and performance by it of this Agreement and all of the agreements and documents referred to herein to which IREL is the party does not constitute a violation of any statute, judgement, order, decree or regulation or rule of any court, government authority or arbitrator of competent jurisdiction applicable or relating to IREL, its assets or its business; and
- 19.1.3. This Agreement constitutes its valid, legal and binding obligation, enforceable in accordance with the terms hereof except that the enforceability thereof may be limited by applicable bankruptcy, insolvency, re-organisation, moratorium or other similar law affecting creditor's rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defenses, the discretion of the court before which any proceeding thereof may be brought and the principles of equity in general.

### 19.2. Contractor's Representations and Warranties

The Contractor represents and warrants as to itself that:

- 19.2.1. It is duly organised and validly existing entity under the laws of India. It has complied with the requirements of all Applicable Law and all requisite legal right, power and authority to execute and deliver this Agreement and all the agreements and documents referred to herein to which it is the party and to carry out the terms, conditions and provisions hereof and thereof,
- 19.2.2. The execution delivery and performance by it of this Agreement and all of the agreements and documents referred to herein to which it is the party have been duly authorised by all requisite corporate action, and shall not contravene any provisions of, or constitute a default under, any other agreement or instrument to which it is the party. The execution, delivery and performance by it of this Agreement and all of the agreements and documents referred to herein to which the Contractor is the party does not constitute a violation:
  - a. of any statute, judgment order, decree or regulation or rule of any court, government authority or arbitrator of competent jurisdiction applicable or relating to the Contractor, its assets or its business; or



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- b. the Contractor articles, constituting documents or any indenture, agreement or agreement to which it is the party or by which it or its property is bound.
- 19.2.3. This Agreement constitutes its valid, legal and binding obligation, enforceable in accordance with the terms hereof except that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar law affecting creditor's rights generally and except to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defences, the discretion of the court before which any proceeding thereof may be brought and the principles of equity in general;
- 19.2.4. There are no attachments or warrants served on it, in respect of GST, income tax, central government revenues or any other state government of India revenues, any other taxes and dues, that might materially adversely affect its ability to meet and carry out its obligations under this Agreement;
- 19.2.5. There are no actions, suits of proceeding pending or, to its knowledge threatened against or affecting the Contractor or its employee, before any court or administrative body or arbitral tribunal that might materially adversely affect its ability to meet and carry out its obligations under this Agreement;
- 19.2.6. It is not in default under any agreement to which it is the party or by which it or its property may be bound, nor in any material default of any obligation under this Agreement and all of the agreements and documents referred to herein to which it is the party.



## Article 20 Liability

- 20.1. The Contractor's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 20.2. The Contractor shall, subject to the limitation specified in Clause 20.3, be liable to IREL for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 20.3. The Parties hereto agree that in case of negligence or willful misconduct on the part of the Contractor or on the part of any person or firm acting on behalf of the Contractor in carrying out the Works, the Contractor, with respect to damage caused to IREL's property, shall not be liable to IREL:
  - 20.3.1. for any indirect or consequential loss or damage; and
  - 20.3.2. for any direct loss or damage that exceeds (a) the Agreement Value of this Agreement, or (b) the proceeds the Contractor may be entitled to receive from any insurance maintained by the Contractor to cover such a liability in accordance with Article 26, whichever of (a) or (b) is higher.
- 20.4. This limitation of liability specified in Clause 20.3 shall not affect the Contractor's liability, if any, for damage to Third Parties caused by the Contractor or any person or firm acting on behalf of the Contractor in carrying out the Work subject, however, to a limit equal to the Agreement Value.



## **Article 21 Defects Liability**

### **21.1. Defects Liability Period**

21.1.1. The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project or any Section thereof, till the expiry of a period of 18 (Eighteen) months commencing from the date of issue of Final Acceptance Certificate (the “Defects Liability Period”).

### **21.2. Remedy and rectification of Defects and deficiencies**

21.2.1. Without prejudice to the provisions of Clause 21.1.1, the Contractor shall repair or rectify all Defects and deficiencies observed by IREL during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by IREL in this behalf, or within such reasonable period as may be determined by IREL at the request of the Contractor, in accordance with Good Industry Practice.

### **21.3. Cost of remedying Defects**

21.3.1. For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 21.2, including any additional tests, shall be carried out by the Contractor at its own risk and cost

### **21.4. Contractor’s failure to rectify Defects**

21.4.1. In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 21.2, IREL shall be entitled to encash the Performance Bank Guarantee.



## **Article 22 Alteration, Additions & Omissions:**

### **22.1. Variations**

The Engineer-in-charge shall make any variation of the form, quality and /or quantity of the Works or any part thereof that may in his opinion be necessary and for that purpose or if for any other reason it shall in his opinion be desirable. He shall have power to order the Contractor to do and the Contractor shall do any of the following:

- a) Increase or decrease the quantity of any work included in the Contract;
- b) Omit any such work;
- c) Change the character or quality or kind of any such work;
- d) Change the levels, lines, position and dimensions of any part of the works;
- e) Execute additional work of any kind necessary for the completion of the works and no such variation shall in any way vitiate or invalidate the Agreement but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the Agreement Value.

### **22.2. Order for Variation to be in writing**

No such variation shall be made by the Contractor without the prior order in writing of the Engineer- in-charge.



## Article 23 Measurements

23.1. The quantities set out in the bill of quantities are the probable and estimated quantities of the work but they are not to be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfillment of his obligation under the Agreement. It must be clearly understood that the Agreement is not a lump sum contract and the company does not in any way assure the Contractor or guarantee that the actual Works should correspond to the probable or the estimated quantities indicated in the bill of quantities. No change whatsoever in unit rate shall be admissible for any variation in quantities. The unit prices stated in the bill of quantities shall be inclusive of everything necessary to complete the said items of the Works within the contemplation of the Agreement and beyond the unit prices no extra payment shall be allowed for incidental or contingent work, labour, materials and plant, etc.

### 23.2. Works to be measured

The engineer-in-charge shall accept as otherwise stated ascertain and determine by measurements the value of work done in accordance with the Contractor. He shall when he requires any part or parts of the Works is to be measured give notice to the Contractor who shall forthwith attend or send a qualified agent to assist the Engineer-in-charge in making such measurement and shall furnish all particulars and standards required by him. Should the Contractor not attend or neglect or omit to send such agent on the date/s fixed by the Engineer-in-charge for taking the measurement as per notice given to the Contractor then the measurement made by the Engineer-in-charge or approved by him shall be taken to be the correct measurement of the work. The Engineer in charge shall cause the measurement to be recorded in the measurement book maintained for the said purpose. The certification of the payment shall be based on the measurement noted in the measurement book.

### 23.3. Method of Measurement

Except where any general or detail description of the Works in the bill of quantities expressly shows to the contrary, bill of quantities shall be deemed to have been prepared and measurements shall be made according to the procedures set forth in the Indian standards method of measurements for building work IS:1200 and any subsequent amendment or modification thereof notwithstanding any general or local custom. All dimension and measurement shall be in metric units.

### 23.4. Period of final measurements

The final measurement and valuation in respect of the Agreement shall be completed within the period of final measurement stated in the technical information provided by IREL calculated from the date of completion of the works as certified by the engineer in charge.

### 23.5. Assistance for taking final measurements

The contractor shall provide necessary labour tools, instruments and assistance to the company for checking layouts, alignments, levels and other survey work connected with the excavation of Works and also for taking measurement for the finished Works at no extra cost to the company.



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## **Article 24 Contractor's Scope of Supply**

To be intimated separately at the time of sharing Technical Information.





## Article 25 Indemnity

- 25.1. The Contractor (“**Indemnifying Party**”) shall indemnify IREL (“**Indemnified Party**”) against any claim or damage, demand and any other expenses incurred by IREL for defending such claims / demand made by any authority due to the commission, omission and negligence on the part of the Contractor in complying with any of the statutory provisions, being the owner of the Project;
- 25.2. Without prejudice to the generality of Clause 25.1, the Indemnifying Party shall indemnify, and keep the Indemnified Party indemnified against any claim, damages, compensation proceeding, suit and any award rendered in any such suit or proceeding where such claim, proceeding, suit arises out of or in relation to:
- 25.2.1. Violation or breach of any Applicable Law as may be applicable to the Agreement which may arise out of or in consequence of the construction or maintenance or performance of the Works under the Agreement;
  - 25.2.2. Breach of any conditions imposed by all and any Government Approvals in relation to the Works or any part thereof;
  - 25.2.3. Infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor’s obligations or in any way incorporated in or related to the Project;
  - 25.2.4. Any accident or injury caused to any Third Party, any employee of the Indemnified Party, where such accident or injury is directly or indirectly attributable to any act, omission or negligence on the part of the Indemnifying Party, its agents, representatives or employees.
  - 25.2.5. Any damage or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the execution and completion of the Works and the remedying of any defects by the Contractor.
  - 25.2.6. Any breach of the representations and warranties provided herein.
  - 25.2.7. Any sum payable by IREL to Contractor for any breach of the Agreement, or otherwise which is directly or indirectly attributable to the acts and /or omission of the Contractor, its agents, representatives or employees under this Agreement.
  - 25.2.8. The Contractor shall indemnify IREL and keep IREL indemnified to the extent of the value of free issue materials, if applicable, to be issued till such time the entire Agreement is executed and proper account for the free issue materials is rendered. The Contractor shall not utilize IREL’s free issue materials for any job other than the one contracted out in this Agreement and also not indulge in any act, commission or negligence which shall cause/result in any loss/damage to IREL and in which case, the Contractor shall be liable to IREL to pay compensation to the full extent of damage/loss and undertakes to pay the same.



## Article 26 Insurance

- 26.1. Before commencing execution of the Works , the contractor and his sub-contractor/s (but without limiting his obligations and responsibilities) shall at his expense, insure the whole or any part of the material/work against any loss and damage by fire, theft, larceny dacoits, tempest, flood, earthquake or any other natural calamity or against any riot, civil war or insurrection or against any damage by aircraft with such insurer as may be acceptable to the company. Such insurance shall be effected in the name of IREL in terms to be approved by him and shall be of such value as may be determined in this behalf by the company from time to time. The contractor shall lodge with the company the policies and receipts of the premia for such insurance and shall keep such policies in force until the completion of the whole or part of the work in respect of which insurance has been effected and policies have been taken out including the period of maintenance thereof as certified by the Engineer-in-charge.
- 26.2. Such insurance shall not in any way be construed as a limit or bar to the liability or obligation of the contractor under the Agreement to complete the work in all respects, as certified by the Engineer-in-charge.
- 26.3. In event of any such loss or damage, the contractor his own cost shall lodge the claim with the insurance company and take every effort to get the damage quantified by insurance company before reconstruction. The money as assessed by insurance company for reconstruction under any such insurance policy shall be received by the company. The contractor shall repair and/or reconstruct the work so damaged in accordance with the instructions and directions from the Engineer-in-charge the value of such work shall be ascertained and paid for as if it was additional work.
- 26.4. The Contractor, at its sole cost and expense, shall continue to obtain and maintain all the construction insurance policies and operational insurance policies required to be taken in respect of the Project or as may be necessary in accordance with the Prudent Operating Practices. The Contractor shall ensure that IREL is named as an additional insured on all insurance policies with respect to third party liability insurance. Any failure by the Contractor to obtain the insurance coverage or certificates of insurance as required, shall neither relieve the Contractor of the insurance requirements set forth herein nor relieve or limit in any way the Contractor's obligations and liabilities under any other provision of this Agreement;
- 26.5. The under mentioned minimum coverage or such additional coverage as may reasonably be required, shall be maintained or caused to be maintained by the Contractor throughout the Agreement period :
- Workers Compensation and Employers General Liability Insurance
  - Builders All Risk Insurance Marine Cargo insurance (if required)
  - All Risk Property Insurance (Upon Completion of Construction)
  - Third party Liability Insurance
- 26.6. To the extent that the above insurance policies are available through Indian insurance companies, preference shall be given to using these companies.



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- 26.7. Notwithstanding any liability that may arise under this Agreement, any loss for which compensation is due to the Contractor under this Clause, shall not be charged to IREL.
- 26.8. The Contractor shall cause its insurers or agents to provide IREL with certificates of insurance for required replacement policies or renewals evidencing the endorsements of policies, at least thirty (30) days prior to either termination or expiration of any policy hereunder.



## Article 27 Force Majeure

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

If and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.



## Article 28 Breach of Terms, Suspension and Termination

### 28.1. Breach of Terms

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

### 28.2. Suspension

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

### 28.3. Temporary Suspension:

- 28.3.1. IREL may at any time temporarily hold the progress of work being performed under the Agreement or any part thereof by notice in writing to the Contractor. All the work so held shall be resumed by the Contractor and extended suitably for the period amounting to temporary suspension based on a schedule as directed by IREL and mutually agreed upon between the Contractor and IREL.
- 28.3.2. IREL will not pay the Contractor for any work, which is performed during such an interval of suspension, and IREL shall not be liable to the Contractor for any damages or loss caused by such suspension of work.

### 28.4. Event of Default

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

#### 28.4.1. Contractor Event of Default

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



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- a. the Contractor 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 Sub-clause 28.2.1 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as IREL may have subsequently granted in writing
- b. The Contractor fails to commence the Works within thirty (30) days from the Effective Date;
- c. The Contractor fails to ensure that Works Completion Date of the Plant is achieved within Twelve (12) months of the Effective Date;
- d. Any representation made or warranties given by the Contractor 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 Contractor under the Agreement, or (b) all or material part of the Contractor; except where such transfer in the reasonable opinion of IREL does not affect the ability of the Contractor to perform, and the Contractor has the financial and technical capability to perform, its material obligations under the Agreement;
- f. The Contractor suspends or abandons the Works without prior consent of IREL, provided that the Contractor shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by IREL;
- g. the Contractor becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- h. the Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 28.2 hereof;
- i. the Contractor submits to IREL a statement which has a material effect on the rights, obligations or interests of IREL and which the Contractor knows to be false;
- j. any document, information, data or statement submitted by the Contractor in its Bid, based on which the Contractor was considered eligible or successful, is found to be false, incorrect or misleading; or
- k. The Contractor repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.

### 28.4.2. IREL Event of Default

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



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- a. IREL is in breach of this Agreement and has failed to cure such breach within sixty (60) days of receipt of notice in that behalf from the Contractor;
- b. IREL repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- c. Any representation made or warranties given by IREL under this Agreement is found to be false or misleading.

### 28.5. Recourse to Event of Default

- 28.5.1. In case of an event of default, the following recourse is available to IREL and the Contractor or both as the situation may warrant:
  - a. In case of occurrence of Event of Default mentioned in Sub-clause 28.4.1.b and Sub-clause 28.4.1.c, the Contractor shall have an option to ask for extension from IREL specifying the conditions that have restricted the Contractor to complete the tasks in stipulated time. However, IREL's decision on said matter shall stand final as the case may be;
  - b. In case of occurrence of Event of Default mentioned in Sub-clause 28.4.1.a, Sub-clause 28.4.1.d, Sub-clause 28.4.1.e, Sub-clause 28.4.1.f, Sub-clause 28.4.1.g, Sub-clause 28.4.1.h, Sub-clause 28.4.1.i, Sub-clause 28.4.1.j and Sub-clause 28.4.1.k IREL shall have the option to seek Termination of Agreement. The Termination shall be governed by Clause 28.6 of this Agreement
  - c. In case of occurrence of Event of Default mentioned in Sub-clause 28.4.2, the Contractor shall have an option to seek Termination of this Agreement. In seeking the Termination of the Agreement, Contractor would have to clearly demonstrate that the Event of Default has occurred despite all possible steps taken by Contractor to avoid Termination. The Parties shall mutually decide the modalities of Termination.

### 28.6. Termination due to Contractor Event of Default

- 28.6.1. Without prejudice to any other right or remedy which IREL may have in respect thereof under this Agreement, upon the occurrence of an Contractor Event of Default, IREL shall be entitled to terminate this Agreement by issuing a Termination Notice (the "**Termination Notice**") to the Contractor, provided that before issuing the Termination Notice, IREL shall by a notice in writing inform the Contractor of its intention to issue the Termination Notice (the "**Preliminary Notice**"). In case the underlying breach/default is not resolved within a period of sixty (60) days from the date of the Preliminary Notice, IREL shall be entitled, to terminate this Agreement by issuing the Termination Notice. Provided further, that IREL shall be entitled to forfeit the Security Deposit;
- 28.6.2. Upon termination of this Agreement by notice of either Party to the other pursuant to Sub-clauses 28.5.1.b or 28.5.1.c hereof, the Contractor 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.



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### 28.7. Payment upon Termination

28.7.1. Upon termination of this Agreement pursuant to Sub-clauses 28.5.1.c hereof, IREL shall make the following payments to the Contractor (after offsetting against these payments any amount that may be due from the Contractor to IREL):

- a. remuneration pursuant to Payment Terms hereof for Works satisfactorily performed prior to the date of termination;

### 28.8. Disputes about Events of Termination

28.8.1. If either Party disputes whether an event specified in Sub-clause 28.4.1 or in Sub-clause 28.4.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Sub-clause 29.2 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.





## Article 29 Resolution of Disputes

### 29.1. Conciliation

- 29.1.1. All disputes or difference whatsoever arising between the Parties out of or relating to the Agreement shall be settled through discussions between a person authorized and notified in writing by IREL and the Authorised signatory of the Contractor (the “**Conciliation**”).
- 29.1.2. Conciliation shall be resorted to prior to invoking Arbitration. The Arbitration clause is to be invoked by the Parties to the Agreement only on failure of Conciliation proceedings to amicably settle the disputes;

### 29.2. Arbitration

- 29.2.1. All disputes and differences of any kind what so ever 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 Agreement) shall be referred to and settled by the person authorized and notified in writing by IREL who shall state his decision in writing. Such a decision may be in the form of a final certificate or otherwise, within a period of 30 days from the date of receipt of such reference to them.
- 29.2.2. If the Contractor is dissatisfied with the decision of such authorized person, then he may within 30 days of receipt of such decision send a written appeal to IREL, represented by the Chairman and Managing Director at the registered office, Mumbai for Arbitration, in accordance with the provisions of the Arbitration and Conciliation Act and the Rules framed there under from time to time, and for the time being in force. Such written appeals should however specify only those matters in dispute, which have been referred to such authorized person but not satisfied with the decision and the reasons leading to his dissatisfaction. The matter shall be settled through Arbitration by appointment of sole arbitrator as approved by CMD, IREL.
- 29.2.3. If the period of 30 days has expired at any stage, stipulated in the preceding paras without any response from the Contractor before such expiry, the Contractor 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.
- 29.2.4. The seat of arbitration will be at Mumbai and only the appropriate Court coming under High Court of Mumbai will have jurisdiction to entertain all matters of litigation to the exclusion of all other courts.
- 29.2.5. The Contractor shall not in any way delay or default or cause to delay or default the carrying out of the Works by reason of the fact that any matter has been agreed to be referred to and / or referred to Arbitration.
- 29.2.6. The provisions of The Arbitration & Conciliation Act, 1996, and Rules made there under and/or any statutory modifications or re-enactment thereof for the time being in force shall apply to such arbitration proceedings.



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## **Article 30 Governing Law**

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



## Article 31 Notices

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

In case to IREL:

.....

.....

Telephone No.:

Fax No.:

E-mail address:

In case to the Contractor:

.....

.....

Telephone No.:

Fax No.:

E-mail address:



## Article 32 General Provisions

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



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

- a. is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Contractor, its and the Personnel of either of them shall give IREL, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
  - b. is provided to the professional advisers, agents, auditors or representatives of the Contractor or its personnel or either of them, as is reasonable under the circumstances; provided, however, that the Contractor or personnel or either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.
- 32.8. No Third Party Beneficiaries: This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, standard of care with respect to, any liability to, or any right of suit or action in, any Third Party.
- 32.9. Severability: The declaration, as void or unenforceable, of any provisions of this Agreement by any judicial authority or arbitration panel shall not ipso facto render the remaining provisions of the Agreement void or unenforceable.
- 32.10. Relationship of the Parties: This Agreement shall not constitute either Party as a partner, agent or legal representative of the other Party. Neither Party shall have any right or authority to assume, create or incur any liability or obligation of any kind, expressed or implied, against, in the name of or on behalf of the other Party except in accordance with this Agreement or as may otherwise be agreed in writing by the Parties.
- 32.11. Governing Language: The language that governs the interpretation of this Agreement is the English language. All Notices required to be given by either Party to the other and all other communications and documentation which are in any way relevant to this Agreement or which are relevant to the execution and implementation of this Agreement, including any dispute resolution proceedings, shall be in English language.
- 32.12. Counterparts: This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute but one and the same instrument.
- 32.13. General Liability Provision: The rights and obligations of the Parties are finally and conclusively defined in this Agreement. Claims for indirect, remote or consequential damages such as loss of production, loss of profit, loss of use are excluded.



### Article 33 Annexures

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

- (i) Annexure I: Bank guarantee format for Security Deposit
- (ii) Annexure II: Bank Guarantee format for Performance Bank Guarantee
- (iii) Annexure III: RFP document, all addendums, corrigendum and clarifications issued by IREL, Technical Information and any other official communications
- (iv) Annexure IV: Techno-Commercial offer and other documents/ details/ data submitted by Contractor at RFP stage
- (v) Annexure V: Letter of Intent (LOI) issued by IREL to the Contractor
- (vi) Annexure VI: L3 Level Implementation Schedule
- (vii) Annexure VII: Detailed Billing Schedule
- (viii) Annexure VIII: Instructions to Contractor for Statutory Compliances for Job / Work / Labour Contract

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

**For and on behalf of Contractor**

**For and on behalf of IREL**

Signature.....  
 Name  
 Designation  
 Seal

Signature.....  
 Name  
 Designation  
 Seal

Witness  
 Signature.....  
 Name  
 Designation  
 Seal

Signature.....  
 Name  
 Designation  
 Seal



## **Annexure-I**



## BANK GUARANTEE FORMAT FOR SECURITY DEPOSIT

WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_  
M/s \_\_\_\_\_ (Selected Bidder's name & address), having its  
registered office situated at \_\_\_\_\_ (Postal address)  
(herein after referred to as the 'Contractor') entered into an Agreement bearing reference no.  
\_\_\_\_\_ dtd. \_\_\_\_\_ with 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 – 400 028,  
India (herein after referred to as IREL), for \_\_\_\_\_ (details of order)  
(herein after referred to as 'the Agreement').

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

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

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

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

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





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

We \_\_\_\_\_ (Name of Bank) , further agree that IREL shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extent time of performance by the said Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by IREL against the said Contractor and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relived from our liability by reason of any such variation, or extension being granted to the said Agreement or for any forbearance, act or omission on the part of IREL or any indulgence by IREL to the said Contractor 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 Contractor.

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

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

\_\_\_\_\_Bank

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

Bank's Common seal



## **Annexure-II**



## Bank Guarantee format for Performance Guarantee

WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_ M/s \_\_\_\_\_ (Tenderer's name & address), having its registered office situated at \_\_\_\_\_ (Postal address) (herein after referred to as 'The Tenderer') entered into a contract bearing reference no. \_\_\_\_\_ dtd. \_\_\_\_\_ with \_\_\_\_\_ 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 – 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 total agreement value as Guarantee for the due fulfillment by the tenderer of the 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 present being absolute and unequivocal.

The payment so made by us under this guarantees shall be valid discharge of our liability for payment thereunder and the 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.



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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 relived 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.

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



## **Annexure – III**

(RFP document, all addendums, corrigendum and clarifications issued by IREL and any other official communications including detailed Scope of Work and the Technical Information)



## **Annexure – IV**

(Techno-Commercial offer and other documents/ details/ data submitted by Contractor at RFP stage)



# **ANNEXURE V**

(Letter of Intent (LOI) issued by IREL to the Contractor)



## **ANNEXURE VI**

(L3 Level Schedule/ Master Network: to be submitted by Selected Bidder on or Before Effective Date)





## **ANNEXURE VII**

(Detailed Billing Schedule: to be submitted by Selected Bidder on or Before Effective Date)



# **ANNEXURE VII**



**INSTRUCTIONS TO CONTRACTOR FOR STATUTORY COMPLIANCES FOR JOB / WORK /  
LABOUR CONTRACT**

**1. Statutory registrations and clearances – Pre-Requisites**

Contractor shall commence the work only after obtaining the following:

- Labour License.
- Provident fund code no.
- ESI code no.
- Notice of commencement in Form 6-A & Maintain Register of workers Form-13.

**2. Contractor shall ensure following while executing contract**

- Employment card as per Contract Labour (Regulation & Abolition) Act.
- Annual leave with wages including National Holiday & Festival holiday.
- Leave record register.
- Shall engage only adult workers who have attained the age of 18.
- Work to be done on second/third shift, overtime, Sundays or on other declared holidays with written permission.
- Obtain insurance cover for his employees/equipment, tools etc & third party insurance coverage at his own cost.
- Remit Provident fund contributions in prescribed 3A & 6A forms.
- ESI contributions in Form 6.
- Submit challans of PF & ESI contributions every month.
- Provide Personal protective equipment for his employees.
- Distribute wage slip each month to his employees
- Ensure payment as per minimum wages act, 1948 in presence of HRM and concerned dept representative.
- Uniform to labours if provided by the Contractor, it must be different from IREL employees.

**3. Appointment and termination of workers by contractor**

- Contractor shall make appointment of his Employees only for a specific period and same shall be recorded in employment card.
- Contractor shall have the sole discretion to decide on employing, rewarding or terminating the services etc. of his employees. However, his employees must possess such qualifications, experience, age requirement and medical and physical standards as required for the work awarded to the contractor.



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- In case of termination of services of any employee of contractor, the contractor will ensure that wage payment and other dues to his employee is made within 48 hours of termination of services of such employee. While termination of the services of any of his employee, the contractor will discharge all formalities as per the Industrial Dispute Act such as payment of retrenchment compensation and gratuity as due and admissible.

### **4. Leave with wages**

- One-day leave for every 20 days of work performed during preceding calendar year after completing 240 days of service in preceding calendar year.
- Un-availed leave can be carried forward to next Calendar year but carry forward should not exceed 30 days. Leave should not be taken more than 3 times in a Calendar year and for which application before 15 days should be made.
- In addition, festival and National Holidays shall also be availed by employee of contractor during the Calendar year as per the holidays declared by the IREL.
- Contractor shall maintain leave record register.

### **5. Attendance Card**

- Contractor has to provide attendance card to his employee who will obtain endorsement of time of arrival at the work place and time of leaving the work place. The contractor shall maintain Attendance card which will be retained by his employee and will be handed over to the contractor after the end of each wage month.

### **6. Statutory obligations**

- Contractor shall engage only adult workers who have attained the age of 18 years and female workers shall not be employed between 7 PM to 6 Am on all days including Sundays and Holidays.
- Contractor shall observe local laws. As far as possible unskilled workers shall be engaged from the local areas only in which work is being executed.
- Contractor shall not employ any inter-state migrant workmen as defined in the Inter-State Migrant Workmen Act in the establishment except by prior permission of the Principal Employer.
- In case a contractor employs women as his employee, he will discharge his obligation under law in respect of such women workers such as prohibition of engaging them during night-hours, prohibition of employing them for more than 9 hours per day, provision of creche facility, grant of maternity leave as per rules etc.
- Payment of bonus under the Payment of Bonus Act, Payment of gratuity under the payment of Gratuity Act, will be the sole responsibility of the contractor.



## 7. PF & ESI Contribution & Returns

- Contractor shall remit Provident fund contribution of employee's together with Employer's within 15 days from the date of disbursement of wages to his employee. Monthly and annual returns in 3A & 6A prescribed forms should be submitted to the RPFC office. Present rate of employer share of PF is 13.61% and employee share is 12%.
- Contractor shall remit ESI contributions of employee's together with employer's within 21 days of the last day of the calendar month in which the contribution falls due and shall send a return of contribution in Form 6 before 12th May and 12th November of every year along with receipted challans to ESI office. Present rate of employer share is ESI 4.75% and employee is 1.75%
- Contractor shall submit a copy of latest PF& ESI returns and inspection reports from statutory authorities alongwith a copy of challans for having deposited PF & ESI contributions every month.
- Contractor shall submit following Certificate for each contract separately every month.  
" It is certified that PF challans of the amount ----- pertains to my workers whose names are appearing in the wage sheet of the month ----- and these workers are engaged in ----- (type of work) against work Work order no. ----- in ----- (name of department).  
Signature of Contractor  
*Note : - Similar certificate shall be submitted for ESI also.*
- Contractor shall fully comply all other formalities as per the PF & ESI statutory provisions and submit a copy of the same for replying to Statutory authorities in case of any complaints.

## 8. Medical care in case of accident

- It is the responsibility of contractor to undertake necessary care and make arrangement for transportation and treatment of his employee at ESI Hospital or any tie up hospitals of ESIC.
- Contractor should assist and guide his employees for claiming lawful benefits from ESI.

## 9. Supervision

Contractor shall employ adequate number of competent and qualified supervisors to supervise and control his employee at the work spot during execution of work for effective supervision. They will also identify their employee and regulate entry at gate at the time of entering and leaving the factory. Name and address of the Supervisor shall be submitted to the concerned department by the contractor.

## 10. Payment of wages

- Payment shall be made by the contractor to his employees as per their category & nature of work, which shall not be less than the rates declared from time to time under Minimum Wages Act, by Govt. of India.
- Over and above the daily wage rate, payment shall be made for leave with wages.



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- Contractor shall be responsible for making payment of wages before expiry of 7 days from the last day of wage period and to ensure disbursement of wages in the presence of the authorised representative of contract operating division who shall record under his signature at the end of entries in the Register of wages in the following form  
“Certified that the amount shown in column no. .... has been paid to the workers concerned in my presence on date ..... at time.....”  
Signature of representative
- Contractor shall distribute wage slip to his employee one day before the monthly wage payment date.

### 11. Safety and disciplinary action

- Contractor shall ensure that his employee does not indulge in any unsafe or hazardous practices. They use safety equipment such as safety belts, safety shoes, goggles, helmet and masks where use of such equipment is required in day-to-day operations. All such safety gadgets will be provided by the contractor failing which the contract operating division will provide safety equipment to such employee of the contractor at the cost of the contractor to be recovered from his bills. Further, the Contractor shall arrange all tools, scaffolding required for the Works.
- Contractor shall fully indemnify IREL against any claim for damages for injury to person or property resulting from such accidents.
- Contractor to ensure that employee deployed in the premises is physically and mentally fit and do not have any criminal record.
- Contractor will be responsible for good conduct of his employees. In case of misconduct, contractor shall take prompt disciplinary action as per "Model Standing Orders" on the advise of Contracting officer.
- Contract awarded is liable for termination for any contravention of statutory provisions or any other reasons without assigning any explanation or notice to the contractor.
- Contractor shall fully comply provisions of various applicable labour laws.

### 12. Records & information to be furnished by contractor

- Contractor shall maintain neatly, completely and legibly registers, records, reports and returns for inspection by various authorities at short notice.
- Contractor shall submit the details of work awarded to him by other departments indicating work order No., nature of work and maximum number of workers employed etc.
- Contractor shall provide information as required in respect of all of his employees employed by him to enable the Contract operating division to monitor compliance of P.F./ESI and also to enable him to furnish information to Ministry and Labour deptt. as may be required.
- Contractor shall provide full particulars of each employee employed by him before start of the work and from time to time. He will also endorse a copy of returns furnished by



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him to the Labour Department under the Contract Labour (Regulation and Abolition) Act 1970.

### **13. Compliance of Statutory provisions**

Contractor shall fully comply provisions of the following enactments and other enactments as applicable for such contracts.

- Contract Labour (R&A) Act 1970 and rules 1971.
- Child Labour (Prohibition & Regulation) Act 1986
- Payment of Wages Act.
- Minimum Wages act 1948, M.P. Rules 1958.
- Employees State Insurance Act 1948, Rules and Regulations 1950.
- Employees Provident Fund Act 1952 and Pension Scheme 1995.
- Workmen's Compensation Act 1923.
- Maternity Benefit Act 1961.
- Equal Emolument Act 1976.
- Equal Remuneration Act 1979
- Payment of Bonus Act 1963,
- Inter State Migrant Workmen Act
- Industrial Disputes Act,1947
- The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996

### **GUIDE LINES IN CASE OF ACCIDENT**

Steps to be followed

- 1) Locate the contractor & also inform Welfare Department with the full details of the injured person and accident.
- 2) Take the injured person immediately to OHC for first aid.
- 3) The contractor should report the accident in form 16 to appropriate authority of ESI within 24 hours of accident.
- 4) After First aid treatment, the contractor should immediately take his employee for further treatment & admission at ESI Hospital, if required.
- 5) Contractor should inform the concern department & Welfare Department in case where absence is more than 48 hours.
- 6) Contractor should inform the date of joining to the Welfare Department of IREL for informing the statutory authority.



Draft Agreement for Contractor of RETP

**Responsibilities of Employees engaged by the Contractors:**

- 1) An employee must, while at work, take reasonable care for the health and safety of people who are at the employee's place of work and who may be affected by the employee's act or omissions at work.
- 2) An employee must, while at work, co-operate with his or her employer or other persons so far as is necessary to enable compliance with any requirement under the act or the regulations that is imposed in the interest of health, safety and welfare of the employee or any other person.