

INDIAN RARE EARTHS LIMITED

(A Govt. of India Undertaking)

CHAVARA, KOLLAM DIST, KERALA

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EXPRESSION OF INTEREST (EOI) FOR ENTERING INTO SURFACE RIGHT CONTRACT WITH SURFACE RIGHT HOLDERS UNDER PROFIT SHARING OPTION AND CONCESSION SHARING OPTION FOR IREL, CHAVARA, KOLLAM DISTRICT, KERALA.

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INDIAN RARE EARTHS LIMITED
NOTICE INVITING TENDER

Indian Rare Earths Limited (IREL), Chavara invites Expression of Interest (EOI) for entering into surface right contract with surface right holders under profit sharing option and concession sharing option for IREL, Chavara, Kollam District, Kerala

Details as follows:

1	Tender No.	CH/PUR/EOI-01/148/2016-17 dated 17-11-2016
2	Date of Publication	29-12-2017
3	Last date & time of receipt of response	On or before 29-12-2018 2:00 PM
4	Due date & time of opening of response	On or before 29-12-2018 2:30 PM
5	Receiving queries, if any	Within 15 days of (4) above
6	Query Clarification meeting, if any	Within 15 days of (5)above
7	Issue of list of eligible applicants by IREL	Within 15 days of (6)above
8	Issue of bid documents and declaration of floor amount to eligible applicant	Within 15 days of (7)above
9	Response from eligible applicants	Within 15 days of (8)above
10	Issue of Final Compensation Notice by IREL	Within 30 days of (9)above
11	Signing of Surface Rights Contracts between IREL & Surface right holder	Within 30 days of (10)above
12	Validity of offer	Till signing of agreement

Sd/-

D G M (Commercial)

Expression of Interest (Eoi) for entering into surface right contract with surface right holders under profit sharing option for Chavara, Kerala unit

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DEFINITIONS

S. No	Term	Meaning
1	Expression of Interest or "EOI"	Shall mean this document along with all schedules and annexures attached hereto and shall include any modifications, amendments, alterations or clarifications thereto
2	Addendum	A document containing any additions / modifications / deletions made to any of the Tender Documents issued via public notices and on IREL's website
3	Final Compensation Notice or "FCN"	The notice issued by IREL detailing the final compensation to be provided to Surface Right Holders entering into a Surface Rights Contract, after verification of documents submitted by the Surface Right Holders
4	Floor Amount	As defined in Annexure II
5	Price Adjustment Factor or "PAF"	Ratio reflecting market price fluctuation of heavy minerals defined as: weighted average price of minerals at the time of payout divided by weighted average price of minerals at the time of signing of the Surface Rights Contract
6	Produced Minerals	All heavy minerals extracted, separated and processed by IREL from Mineral Sand for commercial sale. For the avoidance of doubt, it is clarified that Monazite is not included in Produced Minerals
7	Tailings	Sand left out / residue after the extraction of the Produced Minerals and Monazite using Mineral Separation and/or processes that IREL conducts on Mineral Sand to extract the Produced Minerals and Monazite
8	Profit Share %	The total consideration to be provided to a Surface Right Holder in the form of a part of IREL's profit, expressed as a percentage/multiple of the total royalty payable by IREL on the production of minerals from the Surface Right Holder's land, pursuant to the signing of a Surface Rights Contract under the Profit Sharing option
9	Query Clarification Meeting	The pre-bid meeting to clarify all pre-bid queries pertaining to the Tender Process raised by Surface Right Holders
10	Surface Right Holder or "SRH"	A Surface Right Holder is the owner of an area of land, as per revenue records, from which IREL desires to mine Mineral Sand
11	Surface Rights	The ownership rights over an area of land either as per revenue records or actual measurement confirmed by the surveyor, whichever is less
12	Tender Documents	This Expression of Interest (EOI), the Surface Rights Contract and any other documents issued by IREL pertaining to this Tender Process
13	Tender Process	The process for identifying and selecting Surface Right Holders to enter into a contract with IREL to provide Surface Rights over their land on a temporary basis

1. Introduction

1.1 Background

- 1.1.1 Indian Rare Earths Limited (“IREL”) is a central government undertaking, engaged in the mining of Mineral Sand and production and sale of heavy minerals and rare earth compounds, which operates under the administrative control of the Department of Atomic Energy, Government of India.
- 1.1.2 IREL is headquartered in Mumbai and operates four production units in the country: Mineral Divisions in Chavara, Kerala, and Manavalakurichi, Tamil Nadu, Orissa Sand Complex in Chatrapur, Orissa, and Rare Earths Division in Aluva, Kerala.
- 1.1.3 To acquire temporary surface right for mining in areas where economically explorable minerals like Ilmenite, Rutile, Zircon, Sillimanite, Garnet etc. are available, IREL has derived profit sharing option for its Chavara unit.
- 1.1.4 IREL has identified the areas for which it intends to acquire Surface Rights. The details of these areas can be found in Annexure-I.
- 1.1.5 All Surface Right Holders of land in the areas highlighted in Annexure I, are requested to express their interest in this EOI.

1.2 Eligibility

Any registered company having mining lease / able to obtain statutory clearances for mining and surface rights (over a minimum of 10 acres of contiguous land in its name) within the area determined as per Clause 1.1.4, is eligible for the Profit Sharing option.

1.3 Basic Principles

- 1.3.1 The Profit Sharing option involves sharing of an amount of IREL’s annual profit(as per audited financial statement), expressed as a percentage of the total royalty payable on the production of minerals from a Surface Right Holder’s land (“Profit Share %”), with the Surface Right Holder in lieu of Surface Rights.
- 1.3.2 The land will be backfilled with Tailings and returned to the respective Surface Right Holder within a maximum period of three (3) years from date of signing of the contract for acquiring Surface Rights (“Surface Rights Contract”).
- 1.3.3 The only compensation offered under this option is the amount of profit shared by IREL as per Annexure II. No other compensation will be provided.
- 1.3.4 Notwithstanding the above profit sharing arrangement, all decisions pertaining to the sale of minerals, including but not limited to sales price, will be the sole purview of IREL.

1.4 Payment Terms

IREL will share the profit at the end of the financial year based on annual production and royalty information.

1.5 GST

The sharing of profit as per Annexure II will occur after the deduction of applicable GST payable by IREL.

1.6 Extension

- 1.6.1 IREL reserves the right to extend the Surface Rights Contract for a period of one year upon the expiry of three years period as per clause 1.3.2.
- 1.6.2 In such a case, IREL will pay an additional amount equivalent to 10-15% of the total amount of profit (subject to Price Adjustment Factor) that shall be shared under the 3 year term of this Agreement to the Surface Right Holder, provided that the Agreement is extended on account of delay in mining attributable to IREL.

2. Description of Tender Process

2.1 Brief Overview

- 2.1.1 This EOI is issued w.e.f ----- to all Surface Right Holders (as per eligibility mentioned in clause 1.2 mentioned above) in the area determined as per Clause 1.1.4 and highlighted in Annexure-I, with whom IREL intends to enter into contracts to acquire Surface Rights temporarily.
- 2.1.2 This EOI provides details of the profitsharing option, eligibility criteria and compensation payable.
- 2.1.3 The Tender Process consists of two stages, viz., application and contract signing.
- 2.1.4 During the application stage, Surface Right Holders are required to familiarize themselves with the all information in the Tender Documents before responding to this EOI. A complete and eligible response to this EOI will consist of –
 - Application Letter as per Annexure III and
 - Documents as per Annexure IV.

- 2.1.5 After receipt of response to EOI, IREL will evaluate responses received and verify land ownership of Surface Right Holder.
- 2.1.6 After verifying land ownership of surface right holder, IREL will issue a list of eligible applicants.
- 2.1.7 After this, IREL will also issue a Final Compensation Notice comprising details of compensation payable to the eligible Surface Right Holders, subject to Price Adjustment Factor.
- 2.1.8 Eligible Applicants are required to familiarize themselves with the final compensation offered before proceeding to sign Surface Rights Contracts with IREL.

2.2 Timelines

Sl.	Event	Last date
(i)	Uploading of EOI in IREL website	
(ii)	Receipt of response to EOI (EOI is downloadable from IREL website)	
(iii)	Receiving queries, if any	within 15 days of (ii)
(iv)	Query Clarification meeting, if any	within 15 days of (iii)
(v)	Issue of list of eligible applicants by IREL	within 15 days of (iv)
(vi)	Issue of bid documents and declaration of floor amount to eligible applicants	within 15 days of (v)
(vii)	Response from eligible applicants	within 15 days of (vi)
(viii)	Issue of Final Compensation Notice by IREL	within 30 days of (vii)
(ix)	Signing of Surface Rights Contracts between IREL & surface right holder	within 30 days of (viii)

3. Instructions to Surface Right Holders

3.1 Important information

- 3.1.1 This EOI, the Surface Rights Contract and any other documents that IREL makes available from time to time constitute the Tender Documents.
- 3.1.2 Unless the context otherwise requires, the terms not defined in this EOI, but defined in the Surface Rights Contract shall have the meaning assigned thereto in the Surface Rights Contract.
- 3.1.3 Notwithstanding anything to the contrary contained in this EOI, the detailed terms specified in the respective Surface Rights Contracts shall have overriding effect;

provided, however, that any conditions or obligations imposed on the Surface Right Holders hereunder shall continue to have effect in addition to its obligations under the respective Surface Rights Contract.

- 3.1.4 Surface Right Holders are invited to examine the Tender Documents in detail, including information pertaining to contract option, eligibility and compensation. IREL is not obligated to provide any information over and above that which is contained in the Tender Documents.
- 3.1.5 IREL shall not be liable for any omission, mistake or error in or on account of any matter or thing arising out of or concerning or relating to the Tender Documents, including any error or mistake therein or in any information or data given by it.

3.2 Right to Inspect Land

- 3.2.1 IREL reserves the right to inspect, without obtaining any permission or authorization, a Surface Right Holder's land, at any time once an application in response to this EOI has been made by the Surface Right Holder.
- 3.2.2 IREL may, based on its own discretion, carry out either general or specific inspections, tests or surveys of the land.

3.3 Clarifications

- 3.3.1 Surface Right Holders requiring any clarifications on the Tender Documents must submit written queries via hard or soft copy to IREL as per Clause 3.3.4 and 2.1.8. Alternatively, Surface Right Holders may pose queries in person at the Query Clarification Meeting scheduled as per clause 2.1.8.
- 3.3.2 IREL will endeavour to respond to all queries raised at the Query Clarification Meeting. No individual written responses will be provided.
- 3.3.3 IREL reserves the right to not respond to any query or provide any clarification, at its sole discretion, and nothing in this EOI shall be taken or read as compelling or requiring IREL to respond to any query or to provide any clarification.
- 3.3.4 IREL may also, if deemed necessary, issue interpretations and clarifications to all Surface Right Holders in the area identified as per Clause 1.1.4. All clarifications and interpretations issued by IREL shall be deemed as a part of the Tender Documents.
- 3.3.5 All queries must be directed to the following official at the respective unit which has issued this EOI.
 - Head, Chavara
 - Indian Rare Earths Limited
 - P.O.- Chavara
 - District-Kollam
 - Kerala-691583
 - e-mail: cgm-ch@irel.gov.in
- 3.3.6 The venue for the Query Clarification Meeting, if any shall be office of the IREL unit issuing EOI.

3.4 Amendment of Tender Documents

- 3.4.1 IREL may, at any time, for any reason, whether at its own initiative or in response to clarifications requested by the Surface Right Holders, modify (any of) the Tender Documents by the issuance of an Addendum.
- 3.4.2 IREL will issue all such addendums, if any, via public notices and on its website.

3.5 Cancellation of Tender Process

- 3.5.1 IREL may, at any time, for any reason, in its sole discretion and without incurring any obligation or liability, cancel the Tender Process and/or reissue the Tender Documents for a fresh Tender Process.
- 3.5.2 In case IREL issues Tender Documents for a fresh Tender Process, it will be implicit that this Tender Process has been cancelled.

3.6 Rejection of Application

- 3.6.1 IREL may, at any time during the application or verification stages, in its sole discretion and without incurring any obligation or liability, reject an application made by a Surface Right Holder.
- 3.6.2 While IREL shall endeavour to provide a clear rationale for any such rejection, it shall not be obligated to entertain any queries in this matter and all decisions made by IREL pertaining to rejection of an application will be final and binding upon all involved parties.

3.7 Language

- 3.7.1 All communications in relation to or concerning the Tender Process shall be in English language.
- 3.7.2 Documents required to be submitted by Surface Right Holders at any stage in the Tender Process shall be in English, or if in a local language, shall be accompanied by notarized translations in English. IREL will not accept any documents in local languages without accompanying notarised translations and reserves the right to reject application with such submissions.

4. Miscellaneous

4.1 Arbitration

- 4.1.1 All disputes or differences whatever arising between the Surface Right Holders and IREL shall be settled by the sole arbitrator appointed by Chairman and Managing Director of IREL and the award of such arbitrator shall be final, conclusive and binding on all parties to the tender.
- 4.1.2 No objection shall be raised on the ground that the arbitrator so appointed is an employee of IREL or that the persons so appointed had to deal with the matter to which the tender relates in his official capacity.
- 4.1.3 The seat of arbitration will be Mumbai and the appropriate District Court will have jurisdiction to entertain any/all matters of litigation.

4.2 Force Majeure

- 4.2.1 Any delay or failure in the performance by IREL or the Surface Right Holder hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure.
- 4.2.2 For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, and other events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.
- 4.2.3 IREL shall reserve the right to postpone the dates and delay the Tender Process as per the situation arising out of Force Majeure. In such a case, IREL shall publicly notify the revised timelines in newspapers and on their website.

ANNEXURES

I. Annexure I:

A. Land area determined for entering into profit sharing option for acquiring Surface Rights temporarily

1. Land area in & around Chavara, Kerala unit of IREL having economically explorable mineral sands (e.g. Ilmenite, Rutile, Zircon, Sillimanite, Garnet etc.) available.
2. All Surface Right Holders as per eligibility mentioned in clause 1.2 of this EoI within this area are hereby invited to respond to this EOI.

B. Geographical area: To be mentioned by respondent of this EoI.

C. Boundaries: To be mentioned by respondent of this EoI.

D. Insert map: To be attached by respondent of this EoI.

II. Annexure II: Details of compensation

1. Profit Share % is the amount of profit to be shared expressed as a percentage of the total royalty payable on the production of minerals from a Surface Right Holder's land.
2. It will be shared with the Surface Right Holder as per Clause 1.4.
3. The compensation details provided herein, if any are an indicative range of the final compensation amounts that will be awarded to Surface Right Holders.
4. The final compensation payable to Surface Right Holders will be as per the Final Compensation Notice issued as per Clause 2.1.7.
5. The floor amounts (minimum amount) for Profit Share % is provided below –

	Floor amount
Profit Share (%)	will be declared by IREL after identification of land through this EoI & subsequent analysis of mineral content

6. All compensation amounts provided herein are gross of applicable taxes. The final compensation payable to Surface Right Holders will be made after deduction of applicable taxes, if any.
7. As mentioned in Clause 1.3.3, no other compensation aside from the above highlighted Profit Share % will be provided.

III. Annexure III: Application letter for Profit Sharing option

[On the Letter Head of the Bidding Company]

Head Chavara
Indian Rare Earths Limited

Sub: Expression of Interest for entering into Profit Sharing contract option with IREL.

Dear Sir,

On behalf of _____ (insert name of registered company), I, the undersigned, acting as duly authorized signatory, do hereby confirm that I have read and understood all the terms and conditions set forth in this EOI and other Tender Documents and hereby express our unconditional interest in the Profit Sharing contract proposed by IREL in this EOI dated _____. The details of land held by _____ (insert name of registered company) are given below –

Title Detail:

Plot Area:

Plot Address:

I have determined our eligibility and hereby confirm our intention to enter into a Surface Rights Contract with IREL under the Profit Sharing option. I understand and acknowledge that such a contract would serve as consent for IREL to carry out mining operations on our land. Further, I am attaching with this letter the applicable documents as per Annexure-IV.

I understand that IREL will only invite us to enter into a Surface Rights Contract upon successful verification of clear ownership and title for the above land, and that the final compensation payable will be as per the Final Compensation Notice issued by IREL. I affirm that we will not withdraw this expression of interest to enter into a Surface Rights Contract with IREL before the Final Compensation Notice is issued and will only be able to retract our expression of interest in this Tender Process in the event the final compensation amount computed is less than the Floor Amount.

I affirm that the contents herein above are true and correct and confirmed by me with free will without any coercion or force. I further affirm that we have not given any false information or withheld any information.

Signature:

Name:

Designation:

Name & seal of registered company:

Location:

Date:

IV. Annexure IV: List of documents (attested photocopies) to be submitted at time of application

1. Title deed (along with Patta wherever applicable) or land registration certificate
2. Most recent land tax receipt
3. Location certificate (issued by Village Officer)
4. Encumbrance certificate
5. Possession certificate (issued by Village Officer)
6. Company registration certificate
7. PAN card / Service tax registration details
8. Memorandum of Association
9. Power of Attorney as per AnnexureV
10. Affidavit as per AnnexureVI
11. Mining Lease / Statutory clearances for mining

V. Annexure V: Power of Attorney for registered company entering into Surface Rights Contract under Profit Sharing option

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to this expression of interest and tender process issued by IREL including but not limited to signing and submission of all applications, bids and other documents and writings, participate in clarification and other meetings and providing information / responses to IREL, representing us in all matters before IREL, signing and execution of all contracts including the Surface Rights Contract and undertakings consequent to acceptance of our application, and generally dealing with IREL in all matters in connection with or relating to or arising out of our application in response to this expression of interest and tender process.

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

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

For.....

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

Notarised

(Signature, name, designation 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.*
- *Wherever required, the registered company should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the registered company.*

VI. Annexure VI: Affidavit to be submitted by Surface Right Holder entering into Surface Rights Contract with IREL

(To be executed on appropriate non-judicial stamp paper of minimum value and attested by a Notary Public)

I, _____, aged _____, son/daughter of _____, residing at _____, do hereby solemnly affirm and say as follows:

I am the applicant or I am a Director/Company Secretary of _____, the applicant company owning the land plot measuring _____ at _____, and am duly authorised and competent to make this affidavit.

The statements made in application including all additional submissions made in response to the EOI dated _____ are true to my knowledge and belief. These statements made are based on information and I believe them to be true.

I say that there are no proceedings pending in any court of law/ tribunal or arbitrator or any other authority regarding land under consideration, wherein the applicant are a party.

Solemnly affirm at _____ on this _____ day of _____ that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Deponent

Verification:-

Verified that the contents of the above said affidavit stated by me, which are correct to the best of my knowledge and belief and nothing has been concealed therein.

Verified at _____ on _____

Deponent

Witnesses:

- 1.
- 2.

Contract agreement for entering into surface right contract with surface right holders under profit sharing option for Chavara, Kerala unit

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ANNEXURES

- I. Annexure I: Land area for profit sharing under this Agreement**

This Agreement is made on this---- (date)

Between

(1) Indian Rare Earths Limited (IREL), Chavara Unit

and

XYZ("the Surface Right Holder")

Whereas:

- A) IREL had identified an area and invited eligible Surface Right Holders owning surface rights therein to express interest in entering into a contract for providing such surface rights temporarily to IREL for mining of Mineral Sand.
- B) Being the sole and whole owner of Surface Rights of the land patch measuring _____ acres at _____ (address), and having understood all terms and conditions as set forth in the EOI # _____ dated _____ issued by IREL and all Addendums issued with respect thereto, the Surface Right Holder had expressed interest in entering into this Surface Rights Contract with IREL under the Profit Sharing option.
- C) IREL, having verified the title deed and other ownership documents pertaining to the above mentioned land patch, is entering into this Surface Rights Contract with the Surface Right Holder to establish the terms and conditions for the temporary surface rights being provided and compensation to be provided in lieu thereof.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

Definitions

For the purpose of this Agreement, the following terms, phrases and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word 'shall' is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is written in capital letters.

Addendum	A document containing any additions / modifications / deletions made to any of the Tender Documents issued via public notices and on IREL's website
Effective Date	The date of signing of this Agreement
Expiry Date	The date falling three (3) years from the Effective Date, or the date on which this Agreement is terminated pursuant to Article 2.3
Expression of Interest or "EOI"	Shall mean the tender document issued by IREL dated _____ along with all schedules and annexures attached thereto and shall include any modifications, amendments, alterations or clarifications thereto
Preliminary Default Notice	A notice delivered by an aggrieved party to a defaulting party, stating its intention to terminate this Agreement, and specifying in reasonable detail, the circumstances of the default mentioned therein
Produced Minerals	All heavy minerals extracted, separated and processed by IREL from Mineral Sand for commercial sale. For the avoidance of doubt, it is clarified that Monazite is not included in Produced Minerals
Profit Share %	The total consideration to be provided to a Surface Right Holder in the form of a part of IREL's profit, expressed as a percentage of the total royalty payable on the production of minerals from the Surface Right Holder's land, pursuant to the signing of a Surface Rights Contract under the Profit Sharing option
Mineral Sand	The mineral bearing sand mined for processing and separation of heavy minerals
Surface Rights Contract or "SRC"	This Agreement signed between IREL and Surface Right Holders containing the terms and conditions of surface rights being provided to IREL for the mining of Mineral Sand from the land specified under this agreement and compensation being provided to Surface Right Holders in lieu thereof
Surface Right Holder or "SRH"	The holder of occupation rights of the surface over the land specified under this Agreement
Surface Rights	The ownership rights over an area of land either as per revenue records or actual measurement confirmed by the surveyor, whichever

is less

Tailings

Sand left out / residue after the extraction of the Produced Minerals and Monazite using Mineral Separation and/or processes that IREL conducts on Mineral Sand to extract the Produced Minerals and Monazite

Terms of Agreement

2.1. Effective date

2.1.1. This Agreement shall come into force from the day of its signing by both Parties ("Effective Date") and be valid for a maximum period of three (3) years.

2.1.2. Upon the expiry of three (3) years from the date of signing ("Expiry Date"), this Agreement shall stand terminated, unless extended by IREL as per terms and conditions set out as under.

2.2. Extension

2.2.1. This Agreement may be extended by IREL for a maximum period of one (1) year, provided a notice for extension must be served upon the Surface Right Holder no later than three (3) months prior to the original Expiry Date. Provided that in case of such extension, the Expiry Date shall be revised to account for the additional year.

2.3. Early Termination

2.3.1. This Agreement shall terminate prior to the Expiry Date if:

- a) IREL completes the mining of Mineral Sand before the completion of three (3) years and terminates this Agreement by giving a written notice to the Surface Right Holder to this effect, or
- b) Either IREL or the Surface Right Holder terminates the Agreement pursuant to Article 3.3, or
- c) The Surface Right Holder terminates the Agreement pursuant to Article 5.3, or
- d) IREL terminates the Agreement pursuant to Article 5.4.

2.3.2. If this Agreement is terminated prior to the Expiry Date, then the Expiry Date shall be revised to mean the date on which this Agreement is terminated.

2.4. Survival

2.4.1. The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.

Conditions Subsequent

3.1. Satisfaction of conditions subsequent by the Surface Right Holder

3.1.1. The Surface Right Holder agrees and undertakes to duly perform and complete all of the following activities at his own cost and risk within thirty (30) days from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by IREL:

- a) The Surface Right Holder shall provide any documents pertaining to the land holding or ownership thereof, required by IREL in addition to those submitted at the time of application in response to the EOI.
- b) The Surface Right Holder shall arrange for the transferral/evacuation of all removable property and provide the land free of all such removable property to IREL to facilitate mining of Mineral Sand.

Provided that non-fulfilment of any of these conditions precedent shall not affect in any way IREL's rights under Article 4.1, and the Surface Right Holder expressly agrees to IREL proceeding with its mining operations in the land for which surface rights are being acquired via this Agreement.

3.2. Satisfaction of conditions subsequent by IREL

3.2.1. IREL shall agree and undertakes to duly perform and complete all of the following activities at its own cost and risk within thirty (30) days from the Effective Date, unless such completion is affected by any Force Majeure event:

- a) IREL shall take possession of the land free of all removable property. Provided that in case the Surface Right Holder has not evacuated all removable property as per Clause 3.1.1b), IREL reserves the right to take possession of the land as is and evacuate all removable property as it deems fit, without incurring any liability to the Surface Right Holder in this regard.
- b) IREL shall make payments to the Surface Right Holder as per Article 4.3.

3.3. Consequences of non-fulfilment of conditions subsequent

3.3.1. In the event of default of any condition subsequent to be satisfied by either party within the stipulated time, the aggrieved party may serve a notice upon the defaulting party stating the event of default and requiring remedial.

3.3.2. The defaulting party shall, within two (2) weeks of receiving such notice, remedy such default. In case of failure to do so, the aggrieved party may terminate this Agreement.

Terms and conditions under Profit Sharing option

4.1. Rights and obligations of parties

4.1.1. The Surface Right Holder acknowledges that pursuant to this Agreement, and for the period of this Agreement, he shall not, without IREL's express and written permission:

- a) Enter, mine, excavate, otherwise use or carry out any activity whatsoever on the land.
- b) Create any lien, charge, obligation or any other encumbrance on the land
- c) Sell, transfer or mortgage the land.
- d) Provide access to the land to a third party.

4.1.2. The Surface Right Holder acknowledges that pursuant to this Agreement, IREL may carry out inspections of his land. Such inspections may be either general or specific and may include tests or surveys of the land to determine mineral content and aid in planning the mining operations for the period of this Agreement.

4.1.3. The Surface Right Holder acknowledges that IREL will remove all structures, plantation, trees, rocks, etc and dispose of them as required. Alternatively, the Surface Right Holder may provide the land free of all structures, plantation, trees, rocks, etc. and in such case is entitled to retain any of the materials he so desires.

4.1.4. Pursuant to this Agreement and the terms and conditions of its mining lease(s), IREL reserves the right to mine any quantity of Mineral Sand it deems appropriate from the land.

4.1.5. IREL shall backfill the land with Tailings before returning the same to the Surface Right Holder.

4.1.6. Pursuant to this Agreement and IREL's rights as per its mining lease(s), all ownership of minerals processed from Mineral Sand mined from the Surface Right Holder's land will vest in IREL.

4.2. Compensation under Profit Sharing option

4.2.1. In lieu of providing surface rights over the land owned by him, the Surface Right Holder shall be entitled to ____ times of the royalty (will be declared after analysis of mineral content) payable on Produced Minerals from the Surface Right Holder's land.

4.3. Payment terms

4.3.1. In keeping with the guidelines in the EOI document, the entire compensation will be shared at the end of the financial year in which the mining of the Surface Right Holder's land has been completed.

4.3.2. IREL will send a written notice upon the completion of mining providing the exact timing of sharing of Profit.

4.3.3. In case of an extension of this Agreement pursuant to Clause 2.2.1, IREL will pay an additional amount equivalent to 10-15% of the total amount of profit shared under the original 3 year term of this Agreement to the Surface Right Holder, provided that the Agreement is extended on account of delay in mining attributable to IREL. This amount will be paid out as per terms to be agreed at the time of extension.

4.4. Taxes

4.4.1. Any and all compensation payable to the Surface Right Holder will be made after deduction of applicable taxes. These include but are not limited to income tax, service tax, etc, on a case to case basis.

4.4.2. Exemption for recovery of tax deducted at source (TDS) or any other applicable taxes will be dealt with as per the Income Tax Act and applicable rules framed thereunder.

4.4.3. In case the Surface Right Holder is exempted from paying income tax for a given year, such exemption (in original, as issued by the Income Tax Commissioner for that specific year) will have to be furnished to IREL.

4.4.4. IREL reserves the right to verify and reject or accept any such claims with respect to exempted status as per relevant rules and regulations under the Income Tax Act.

4.4.5. IREL does not assume the responsibility for obtaining any exemptions on the behalf of the Surface Right Holder.

Default, Penalties and Termination

5.1. IREL event of default

5.1.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Surface Right Holder of its obligations under this Agreement, shall constitute an IREL event of default:

- a) IREL fails to make any payment as specified in Article 4.3.
- b) IREL repudiates this Agreement and does not rectify such breach even within thirty (30) days of receiving a notice from the Surface Right Holder in this regard.
- c) Occurrence of any other event which is specified in this Agreement to be a material breach or default of IREL.

5.2. Surface Right Holder event of default

5.2.1. The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by IREL of its obligations under this Agreement, shall constitute an Surface Right Holder event of default:

- a) The Surface Right Holder repudiates this Agreement and does not rectify such breach even within thirty (30) days of receiving a notice from IREL in this regard.
- b) Occurrence of any other event which is specified in this Agreement to be a material breach or default of the Surface Right Holder.

5.3. Procedure for IREL event of default

- 5.3.1. Upon the occurrence and continuation of any IREL event of default under Article 5.1, the Surface Right Holder shall have the right to deliver to IREL a notice ("Preliminary Default Notice") stating his intention to terminate this Agreement, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 5.3.2. Following the issue of such a Preliminary Default Notice, a consultation period of thirty (30) days shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant event of default having regard to all the circumstances.
- 5.3.3. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement
- 5.3.4. Within a period of seven (7) days following the expiry of the Consultation Period, unless the IREL event of default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Surface Right Holder may terminate this Agreement by giving written notice of thirty (30) days to IREL.

5.4. Procedure for Surface Right Holder event of default

- 5.4.1. Upon the occurrence and continuation of any Surface Right Holder event of default under Article 5.2, IREL shall have the right to deliver to the Surface Right Holder a notice stating its intention to terminate this Agreement, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 5.4.2. Following the issue of such a Preliminary Default Notice, a consultation period of thirty (30) days shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant event of default having regard to all the circumstances.
- 5.4.3. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement
- 5.4.4. Within a period of seven (7) days following the expiry of the Consultation Period, unless the Surface Right Holder event of default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, IREL may terminate this Agreement by giving written notice of thirty (30) days to the Surface Right Holder.

5.5. Penalties

- 5.5.1. In the event of a Surface Right Holder event of default leading to Early Termination, IREL shall be compensated as follows:
 - a) Provided IREL has shared Profit with the Surface Right Holder, the Surface Right Holder shall reimburse any and all such compensation amounts paid to him by IREL along with an additional__ % of that compensation (will be declared before finalization of contract) prior to the Early Termination of this Agreement.
 - b) Provided IREL has not mined any Mineral Sand from the Surface Right Holder's land, the Surface Right Holder shall pay the sum of Rupees _____ per acre (will be declared before finalization of contract) as liquidated damages for the land (or part thereof) which has not been mined.

5.5.2. In the event of any default from IREL leading to Early Termination, the Surface Right Holder shall be compensated as follows:

- a) Provided IREL has not mined any Mineral Sand from the Surface Right Holder's land, it shall pay the sum of Rupees _____ per acre (will be declared before finalization of contract) as liquidated damages for the land (or part thereof) which has not been mined.
- b) Provided IREL has mined but shared lesser quantum of Profit than specified in Clause 4.2.1, it shall pay to the Surface Right Holder the difference (in rupee terms) of the profit supposed to be shared as per Clause 4.2.1 and what it actually shared.

5.5.3. All penalties will become due and payable upon the expiry of thirty (30) days after the notice to terminate this Agreement has been issued.

5.5.4. Any failure to make full payment upon the date 30 days after the issuance of the notice to terminate this Agreement will attract interest on the outstanding penalty amount at the rate of 0.50% per week or proportion thereof.

5.6. Return of land upon Termination

5.6.1. The Surface Right Holder acknowledges that his land will be backfilled with Tailings and returned to him within one (1) week of the Expiry Date, but shall not contain any structures, plantation, trees, rocks, etc, that were present prior to the signing of this Agreement. For the avoidance of doubt, it is reiterated that IREL shall not be responsible for construction of any structures or planting of any trees before returning the land to the Surface Right Holder.

Liability and Indemnification

6.1. Indemnity

6.1.1. The Surface Right Holder shall indemnify, defend and hold IREL harmless against:

- a) any and all third party claims against IREL for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Surface Right Holder of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by IREL from third party claims arising by reason of a breach by the Surface Right Holder of any of its obligations under this Agreement, or any of the representations or warranties of the Surface Right Holder under this Agreement being found to be inaccurate or untrue.

6.1.2. IREL shall indemnify, defend and hold the Surface Right Holder harmless against:

- a) any and all third party claims against the Surface Right Holder for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by IREL of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Surface Right Holder from third party claims arising by reason of a breach by IREL of any of its obligations under this Agreement, or any of the representations or warranties of IREL under this Agreement being found to be inaccurate or untrue.

6.2. Monetary limitation of liability

6.2.1. A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 0 for any indemnity claims made prior to the Expiry Date only up to a monetary amount equivalent to twenty five percent (25%) of the total compensation payable under this Agreement.

6.3. Procedure for claiming Indemnity

Third party claims

6.3.1. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Clause 6.1.1(a) or 6.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in to Clause 6.1.1(a) or 6.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- a) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Clause 6.3.1(0 below; and

the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute, the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnifying Party.

6.3.2. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under to Clause 6.1.1(a) or 6.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

6.3.3. An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

6.4. Indemnifiable Losses

6.4.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Clause 6.1.1(b) or 6.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 6.4, such event shall constitute a payment default under Article 0.

6.5. Limitation on Liability

6.5.1. Except as expressly provided in this Agreement, neither IREL nor the Surface Right Holder nor their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns (or their respective insurers) for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the REL, the Surface Right Holder or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

6.5.2. The Surface Right Holder shall have no recourse against any officer, director or shareholder of IREL or any Affiliate of IREL or any of its officers, directors or shareholders for such claims as excluded under this Article.

6.6. Duty to mitigate

6.6.1. The Parties shall endeavour to take all reasonable steps so as to mitigate any loss or damage which has occurred under this Article.

Force Majeure

7.1. Definitions

7.1.1. In this Article, the following terms shall have the following meanings:

Affected Party

An Affected Party means either of the Parties whose performance has been affected by an event of Force Majeure.

Any event of Force Majeure affecting the performance of IREL's contractors shall be deemed to be an event of Force Majeure affecting IREL only if the Force Majeure event is affecting and resulting in:

- a) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the mining/processing of Mineral Sand; or
- b) a delay in the performance of any of the IREL's contractors

Force Majeure

A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable:

- a) Any Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado, tsunami or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years.

- b) The unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consent required by IREL or any of IREL's contractors to perform their obligations under this Agreement or any unlawful, unreasonable or discriminatory refusal to grant any other consent required for the mining/processing of Mineral Sand. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) Any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against IREL. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- d) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action.
- e) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought near the area affected by the Affected Party or those employed or engaged by the Affected Party.
- f) Industry wide strikes and labour disturbances having a nationwide impact in India.

7.2. Force Majeure exclusions

7.2.1. Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables required for mining or processing of Mineral Sand;
- b) Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Clause 7.1.1;
- c) Non-performance resulting from normal wear and tear typically experienced in mining equipment;
- d) Strikes or labour disturbance at the facilities of the Affected Party;
- e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f) Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement or any Tender Documents.

7.3. Notification of Force Majeure Event

- 7.3.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.
- 7.3.2. The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

7.4. Duty to Perform and Duty to Mitigate

- 7.4.1. To the extent not prevented by a Force Majeure Event pursuant to Article 7.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

7.5. Available Relief for a Force Majeure Event

- 7.5.1. No Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event.
- 7.5.2. Each Party shall be entitled to claim relief in relation to a Force Majeure by way of an extension of applicable timelines on a 'day for day' basis to permit it, through the use of due diligence, to overcome the effects of the Force Majeure Events affecting it. As a result of such extension, all dates defined in this Agreement shall be deemed to be the extended accordingly for the purposes of this Agreement.
- 7.5.3. For avoidance of doubt, none of either Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party. Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

Change in Law

8.1. Definitions

- 8.1.1. In this Article, the following terms shall have the following meanings:

Change in Law

"Change in Law" means the occurrence of any of the following events after the Effective Date resulting in any additional recurring / non-recurring expenditure by IREL or any income to IREL:

- a) The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law.
- b) A change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law.
- c) The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier.
- d) A change in any consents, approvals or licenses available or obtained for mining/processing or Mineral Sand, otherwise than for default of IREL, which results in any change in any cost of or revenue for IREL.
- e) A change in the existing or inclusion of any new terms and conditions prescribed for obtaining any Consents, Clearances and Permits, except due to any default of IREL.
- f) Any change in the lease charge of land provided by the Surface Right Holder

Any change in tax or introduction of any tax made applicable for the mining or processing of Mineral Sand or sale of Processed Minerals by IREL as per the terms of this Agreement

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of IREL; or (ii) any change on account of regulatory measures by an appropriate authority/regulator.

Competent Court

"Competent Court" means the Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement.

8.2. Notification of Change in Law

8.2.1.If IREL is affected by a Change in Law in accordance with this Article and wishes to claim a Change in Law under this Article, it shall give notice to the Surface Right Holder of such Change in Law as soon as reasonably practicable after becoming aware of the same.

8.2.2.Notwithstanding Clause 8.2.1, IREL shall be obliged to serve a notice to the Surface Right Holder under this Article if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Surface Right Holder contained herein shall be material. Provided that in case IREL has not provided such notice, the Surface Right Holder shall have the right to issue such notice to the IREL.

8.2.3.Any notice served pursuant to this Article 8.2 shall provide, amongst other things, precise details of:

- a) the Change in Law; and
- b) the effects of such Change in Law on IREL and its obligations and/or rights under this Agreement.

8.3. Application and Principles for computing impact of Change in Law

8.3.1.While determining the consequence of Change in Law under this Article 8, the parties shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law, is to restore the affected party to the same economic position as if such Change in Law has not occurred.

8.4. Relief for Change in Law

8.4.1. In the event of a Change in Law having a material effect on either party, it shall be binding upon both parties to try and arrive at a mutual agreement on revised terms and conditions of this Agreement so as to restore the affected party to the same economic position as if such Change in Law had not occurred. Provided that in the event of a failure to arrive at such mutual agreement with a period of thirty (30) days from the date of issue of notice in this regard, the parties shall jointly initialise the procedure for Dispute Resolution as per Article 10.1

Assignments and Charges

9.1. Assignments

9.1.1. This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

9.1.2. This Agreement shall not be assigned by any Party (and no Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual consent between the Parties to be evidenced in writing.

9.1.3. Provided that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

9.1.4. Article 9.1 does not apply to:

- a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of IREL carrying out its business activities
- b) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of IREL carrying out its business activities; or
- c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of IREL carrying out its business activities

Governing Law and Dispute Resolution

10.1. Governing Law

10.1.1. This Agreement shall be governed by and construed in accordance with the Laws of India.

10.1.2. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of the appropriate district court.

10.2. Amicable Settlement

10.2.1. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice ("Dispute Notice") to the other Party, which shall contain:

- a) a description of the Dispute;
- b) the grounds for such Dispute; and
- c) all written material in support of its claim

10.2.2. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Clause 10.2.1, furnish:

- a) counter-claim and defences, if any, regarding the Dispute; and
- b) all written material in support of its defences and counter-claim

10.2.3. Within thirty (30) days of issue of notice by any Party pursuant to Clause 10.2.1 or Clause 10.2.2, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 10.3.

10.3. Dispute Resolution

10.3.1. Any Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Clause 10.2.3 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.

- a) The arbitration tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules.
- b) The place of arbitration shall be Mumbai, India. The language of the arbitration shall be English.
- c) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- d) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
- e) The provisions of this Article shall survive the termination of this Agreement for any reason whatsoever.

10.4. Parties to Perform Obligations

10.4.1. Notwithstanding the existence of any Dispute and difference referred to the arbitral tribunal as provided in Article 10.3 and save as the arbitral tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

Miscellaneous

11.1. Amendment

11.1.1. This Agreement may only be amended or supplemented by a written agreement between the Parties.

11.2. Third Party Beneficiaries

11.2.1. This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

11.3. No Waiver

11.3.1. A valid waiver by a Party shall be in writing and executed by an authorized representative of that Party. Neither the failure by any Party to insist on the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by any Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

11.4. Entirety

11.4.1. This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

11.4.2. Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the mining/processing of Mineral Sand under this Agreement shall stand superseded and abrogated.

11.5. Confidentiality

11.5.1. The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law

without the prior written consent of the other Party.

11.6. Affirmation

11.6.1. IREL and the Surface Right Holder, each affirm that:

- a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and IREL and the Surface Right Holder hereby undertake not to engage in any similar acts during the Term of Agreement.

11.7. Severability

11.7.1. The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

11.8. No Partnership

11.8.1. None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between IREL and the Surface Right Holder.

11.9. Counterparts

11.9.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument

11.10. Notices

11.10.1. All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

11.10.2. If to IREL, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the address below:

Head, Chavara
Indian Rare Earths Limited
P.O.- Chavara
District-Kollam
Kerala-691583
e-mail: cgm-ch@irel.gov.in
Fax:

- 11.10.3. If to the Surface Right Holder, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address below:

Address:
Attention:
Email:
Fax No.:
Telephone No.:

- 11.10.4. All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 11.10.5. Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

11.11. Language

- 11.11.1. The language of this Agreement and all written communication between the Parties relating to this Agreement shall be in English.

11.12. Breach of Obligations

- 11.12.1. The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

11.13. Commercial Acts

- 11.13.1. IREL and the Surface Right Holder unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement constitute private and commercial acts rather than public or governmental acts.

11.14. No Consequential or Indirect Losses

- 11.14.1. The liability of IREL and the Surface Right Holder shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall IREL or the Surface Right Holder claim from one another, any indirect or consequential losses or damages.

11.15. Taxes and Duties

- 11.15.1. The Surface Right Holder shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on him / it, which are required to be paid by him / it as per the Law in relation to the execution of the Agreement.
- 11.15.2. IREL shall be indemnified and held harmless by the Surface Right Holder against any claims that may be made against IREL in relation to the matters set out in Clause 11.15.1.
- 11.15.3. IREL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Surface Right Holder by IREL on behalf of the Surface Right Holder.
- 11.15.4. For the avoidance of doubt, it is clarified that any and all compensation provided by IREL to the Surface Right Holder may be treated as “rent” and will therefore be subject to tax deducted at source (TDS) and other applicable taxes.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of IREL

For (and on behalf of) the Surface Right Holder

Name, Designation and Address

Name, (Designation) and Address

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

ANNEXURES

VII. Annexure I: Land area for profit sharing under this Agreement

A. Land area for entering into current profitsharingoption

Title Detail:

Plot Area:

Plot Address:

(Insert map)

Expression of Interest (Eol) for entering into surface right contract with surface right holders under concession option for Chavara, Kerala unit

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DEFINITIONS

S. No	Term	Meaning
1	Expression of Interest or "EOI"	Shall mean this document along with all schedules and annexures attached hereto and shall include any modifications, amendments, alterations or clarifications thereto
2	Addendum	A document containing any additions / modifications / deletions made to any of the Tender Documents issued via public notices and on IREL's website
3	Concession Amount or "CA"	The total consideration payable to a Surface Right Holder entering into a Surface Rights Contract with IREL under the Concession option. This includes the Lease Rental, Ex-Gratia and Compensation for Trees and Buildings
4	Lease Rental or "LR"	The sum of rent for each of the 3 contract years, payable to a Surface Right Holder entering into a Surface Rights Contract with IREL under the Concession option, based on the guideline value of the land
5	Ex-gratia or "ER"	The monetary payment that may be made, over and above the Lease Rental & Compensation for Trees and Buildings, to the Surface Right Holder pursuant to signing of a Surface Rights Contract with IREL under Concession Option
6	Compensation for Trees and Buildings or "CTB"	The monetary amount to be provided to a Surface Right Holder entering into a Surface Rights Contract with IREL under the Concession option, in lieu of loss of trees and demolition of buildings on his land to facilitate mining of Mineral Sand by IREL
7	Bonus Payout or "BP"	The monetary amount payable to each Surface Right Holder, if either the entire area or at least 90% of the area determined is offered as a contiguous patch and the land offered and contracted is at least 10 acre.
8	Final Compensation Notice or "FCN"	The notice issued by IREL detailing the final compensation to be provided to Surface Right Holders entering into a Surface Rights Contract, after verification of documents submitted by the Surface Right Holders
9	Floor Amount	As defined in Annexure II.
10	Price Adjustment Factor or "PAF"	Ratio reflecting market price fluctuation of heavy minerals defined as: weighted average price of minerals at the time of payout divided by weighted average price of minerals at the time of signing of the Surface Rights Contract
11	Produced Minerals	All heavy minerals extracted, separated and processed by IREL from Mineral Sand for commercial sale. For the avoidance of doubt, it is clarified that Monazite is not included in Produced Minerals
12	Query Clarification Meeting	The pre-bid meeting to clarify all pre-bid queries pertaining to the Tender Process raised by Surface Right Holders
13	Surface Rights Contract or "SRC"	An agreement signed between IREL and Surface Right Holders containing the terms and conditions of Surface

		Rights being provided to IREL for the mining of Mineral Sand from the land specified under the agreement and compensation being provided to Surface Right Holders in lieu thereof
14	Surface Right Holder or "SRH"	A Surface Right Holder is the owner of an area of land, as per revenue records, from which IREL desires to mine Mineral Sand
15	Surface Rights	The ownership rights over an area of land either as per revenue records or actual measurement confirmed by the surveyor, whichever is less
16	Tailings	Sand left out / residue after the extraction of the Produced Minerals and Monazite using Mineral Separation and/or processes that IREL conducts on Mineral Sand to extract the Produced Minerals and Monazite
17	Tender Documents	This Expression of Interest (EOI), the Surface Rights Contract and any other documents issued by IREL pertaining to this Tender Process
18	Tender Process	The process for identifying and selecting Surface Right Holders to enter into a contract with IREL to provide Surface Rights over their land on a temporary basis

12. Introduction

1. Background

- 12.1.1. Indian Rare Earths Limited (“IREL”) is a central government undertaking, engaged in the mining of Mineral Sand and production and sale of heavy minerals and rare earth compounds, which operates under the administrative control of the Department of Atomic Energy, Government of India.
- 12.1.2. IREL is headquartered in Mumbai and operates four production units in the country: Mineral Divisions in Chavara, Kerala, and Manavalakurichi, Tamil Nadu, Orissa Sand Complex in Chatrapur, Orissa, and Rare Earths Division in Aluva, Kerala.
- 12.1.3. IREL possess mining lease over land banks in Chavara, Kerala and desires to acquire surface rights over these areas temporarily to mine mineral sand from these areas. IREL will return these areas to the respective Surface Right Holders after mining and backfilling the same.
- 12.1.4. To acquire surface right for mining in areas where economically explorable minerals like Ilmenite, Rutile, Zircon, Sillimanite, Garnet etc. are available, IREL has derived concession option.
- 12.1.5. IREL has identified the areas for which it intends to acquire Surface Rights. The details of these areas can be found in Annexure-I.
- 12.1.6. All Surface Right Holders of land in the areas highlighted in Annexure I, are requested to express their interest in this EOI.

2. Eligibility

Individuals, corporate bodies and Public Sector Undertakings (“PSU”) possessing Surface Rights in the area determined as per Clause 1.1.5 are eligible for the Concession option.

3. Basic principles

- 12.3.1. The Concession option involves payment of a pre-determined amount of money to Surface Right Holders in lieu of Surface Rights.
- 12.3.2. The land will be backfilled with Tailings and returned to the respective Surface Right Holder within a maximum period of three (3) years from date of signing of the contract for acquiring Surface Rights (“Surface Rights Contract”), if not extendable by one year as per clause 1.6.1.
- 12.3.3. The Concession Amount (“CA”) is payable in three parts, namely Lease Rental (“LR”), Ex-Gratia (“EG”) and Compensation for Trees and Buildings (“CTB”) on each Surface Right Holder’s land holding.
- 1.3.4 The LR and EG amounts will both be a fixed value per acre of land being offered by the Surface Right Holder.
- 1.3.5 Compensation for trees & buildings (CTB) will be as per actual assessment of individual Surface Right Holders’ properties as per provisions mentioned below in Clause 1.3.6, at rates specified by the respective State’s Public Works Department (“PWD”), or Central PWD where no State PWD rates are available.
- 1.3.6 IREL reserves the right to appoint the following officials (or their equivalents) for the purpose of assessment of individual Surface Right Holders’ properties:
 - Trees: Assistant Agricultural Officer of the Agriculture Department of the respective State Government
 - Buildings: Civil Engineer in the PWD of the respective State Government

- Land: Surveyor in the Revenue / Survey Department of the respective State Government
- 1.3.7 In addition, a onetime Bonus Payout (“BP”) will be paid out, if either the entire area determined or at least 90% of the area determined is offered as a contiguous land patch¹ and the land offered and contracted is at least 10 acre.
- 1.3.8 Details of compensation available can be found in AnnexureII.

1.4 Payment Terms

- 1.4.1 The total compensation amount (CA) will be paid as per details provided in AnnexureXIII.
- 1.4.2 For corporate bodiesincluding PSUs, variation of market prices of minerals produced by IREL will be considered at the time of payouts to Surface Right Holders.
- 1.4.3 The variation of market prices of minerals will be reflected in a Price Adjustment Factor (“PAF”), equivalent to the ratio of ***weighted average price of minerals at the time of payout***(most recent month end)to ***weighted average price of minerals at the time of signing of the Surface Rights Contract***.
- 1.4.4 The computation of PAFs will be carried out by IREL at the time of each payout specified in AnnexureXIII. However, IREL is not obligated to entertain any queries in this matter and all decisions made by IREL pertaining to PAFs and applicable variation of market prices of minerals will be final and binding upon all contracted Surface Right Holders.

1.5 Taxes

- 1.5.1 Any and all compensation payable to Surface Right Holders will be made after deduction of applicable taxes. These include but are not limited to income tax, service tax, etc, on a case to case basis.
- 1.5.2 Exemption for recovery of tax deducted at source (TDS) or any other applicable taxes will be dealt with as per the Income Tax Act and applicable rules framed thereunder.
- 1.5.3 In case a particular Surface Right Holder is exempted from paying income tax for a given year and wishes to avail of the same benefit, such exemption (in original, as issued by the Income Tax Commissioner for that specific year) will have to be furnished to IREL.
- 1.5.4 IREL reserves the right to verify and reject or accept any such claims with respect to exempted status as per relevant rules and regulations under the Income Tax Act.
- 1.5.5 IREL does not assume the responsibility for obtaining any exemptions on the behalf of any Surface Right Holders.

1.6 Extension

- 1.6.1 IREL reserves the right to extend the Surface Rights Contract for a period of one year upon the expiry of three years as per Clause 1.3.2.
- 1.6.2 In such a case, IREL will pay 1/3rd of the Lease Rental as per the Surface Rights Contract for the additional year, provided that the Agreement is extended on account of delay in mining attributable to IREL.

2.Description of Tender Process

2.1 Brief Overview

¹ An area such that there is no individual land patch/plot within its boundaries for which Surface Rights have not been offered.

- 2.1.1 This EOI is issued w.e.f ----- to all Surface Right Holders (as per eligibility mentioned in clause 1.2 mentioned above) in the area determined as per Clause 1.1.5 and highlighted in Annexure-I, with whom IREL intends to enter into contracts to acquire Surface Rights temporarily.
- 2.1.2 This EOI provides details of the concession option, eligibility criteria and compensation payable.
- 2.1.3 The Tender Process consists of two stages, viz., application and contract signing.
- 2.1.4 During the application stage, Surface Right Holders are required to familiarize themselves with the all information in the Tender Documents before responding to this EOI. A complete and eligible response to this EOI will consist of –
- Application Letter as per Annexure III and
 - Documents as per Annexure IV.
- 2.2.5 After receipt of response to EOI, IREL will evaluate responses received and verify land ownership of Surface Right Holder.
- 2.2.6 After verifying land ownership of surface right holder, IREL will issue a list of eligible applicants.
- 2.2.7 After this, IREL will also issue a Final Compensation Notice comprising details of compensation payable to the eligible Surface Right Holders.
- 2.2.8 Eligible Applicants are required to familiarize themselves with the final compensation offered before proceeding to sign Surface Rights Contracts with IREL.

2.3 Timelines

Sl.	Event	Last date
(iii)	Uploading of EOI in IREL website	
(iv)	Receipt of response to EOI (EOI is downloadable from IREL website)	
(iii)	Receiving queries, if any	within 15 days of (ii)
(iv)	Query Clarification, if any	within 15 days of (iii)
(v)	Issue of list of eligible applicants by IREL	within 15 days of (iv)
(vi)	Issue of bid documents and declaration of floor amount to eligible applicants	within 15 days of (v)
(vii)	Response from eligible applicants	within 15 days of (vi)
(viii)	Issue of Final Compensation Notice by IREL	within 30 days of (vii)
(ix)	Signing of Surface Rights Contracts between IREL & eligible surface right holders	within 30 days of (viii)

3. Instructions to Surface Right Holders

3.1 Important information

- 3.1.1 This EOI, the Surface Rights Contract and any other documents that IREL makes available from time to time constitute the Tender Documents.
- 3.1.2 Unless the context otherwise requires, the terms not defined in this EOI, but defined in the Surface Rights Contract shall have the meaning assigned thereto in the Surface Rights Contract.
- 3.1.3 Notwithstanding anything to the contrary contained in this EOI, the detailed terms specified in the respective Surface Rights Contracts shall have overriding effect; provided, however, that any conditions or obligations imposed on the Surface Right Holders

hereunder shall continue to have effect in addition to its obligations under the respective Surface Rights Contract.

- 3.1.4 Surface Right Holders are invited to examine the Tender Documents in detail, including information pertaining to contract option, eligibility and compensation. IREL is not obligated to provide any information over and above that which is contained in the Tender Documents.
- 3.1.5 IREL shall not be liable for any omission, mistake or error in or on account of any matter or thing arising out of or concerning or relating to the Tender Documents, including any error or mistake therein or in any information or data given by it.

3.2 Right to Inspect Land

- 3.2.1 IREL reserves the right to inspect, without obtaining any permission or authorization, a Surface Right Holder's land, at any time once an application in response to this EOI has been made by the Surface Right Holder.
- 3.2.2 IREL may, based on its own discretion, carry out either general or specific inspections, tests or surveys of the land.

3.3 Clarifications

- 3.3.1 Surface Right Holders requiring any clarifications on the Tender Documents must submit written queries via hard or soft copy to IREL as per Clause 3.3.4 and 2.1.8. Alternatively, Surface Right Holders may pose queries in person at the Query Clarification Meeting scheduled as per clause 2.2.
- 3.3.2 IREL will endeavour to respond to all queries raised at the Query Clarification Meeting. No individual written responses will be provided.
- 3.3.3 IREL reserves the right to not respond to any query or provide any clarification, at its sole discretion, and nothing in this EOI shall be taken or read as compelling or requiring IREL to respond to any query or to provide any clarification.
- 3.3.4 IREL may also, if deemed necessary, issue interpretations and clarifications to all Surface Right Holders in the area identified as per Clause 1.1.5. All clarifications and interpretations issued by IREL shall be deemed as a part of the Tender Documents.
- 3.3.5 All queries must be directed to the following official at the respective unit which has issued this EOI.

Head, Chavara
Indian Rare Earths Limited
P.O.- Chavara
District-Kollam
Kerala-691583
e-mail: cgm-ch@irel.gov.in

- 3.3.6 The venue for the Query Clarification Meeting, if any shall be office of the IREL unit issuing EOI.

3.4 Amendment of Tender Documents

- 3.4.1 IREL may, at any time, for any reason, whether at its own initiative or in response to clarifications requested by the Surface Right Holders, modify (any of) the Tender Documents by the issuance of an Addendum.
- 3.4.2 IREL will issue all such addendums, if any, via public notices and on its website.

3.5 Cancellation of Tender Process

- 3.5.1 IREL may, at any time, for any reason, in its sole discretion and without incurring any obligation or liability, cancel the Tender Process and/or reissue the Tender Documents for a fresh Tender Process.

- 3.5.2 In case IREL issues Tender Documents for a fresh Tender Process, it will be implicit that this Tender Process has been cancelled.

3.6 Rejection of Application

- 3.6.1 IREL may, at any time during the application or verification stages, in its sole discretion and without incurring any obligation or liability, reject an application made by a Surface Right Holder.
- 3.6.2 While IREL shall endeavour to provide a clear rationale for any such rejection, it shall not be obligated to entertain any queries in this matter and all decisions made by IREL pertaining to rejection of an application will be final and binding upon all involved parties.

3.7 Language

- 3.7.1 All communications in relation to or concerning the Tender Process shall be in English language.
- 3.7.2 Documents required to be submitted by Surface Right Holders at any stage in the Tender Process shall be in English, or if in a local language, shall be accompanied by notarized translations in English. IREL will not accept any documents in local languages without accompanying notarised translations and reserves the right to reject application with such submissions.

4. Miscellaneous

4.1 Arbitration

- 4.1.1 All disputes or differences whatever arising between the Surface Right Holders and IREL shall be settled by the sole arbitrator appointed by Chairman and Managing Director of IREL and the award of such arbitrator shall be final, conclusive and binding on all parties to the tender.
- 4.1.2 No objection shall be raised on the ground that the arbitrator so appointed is an employee of IREL or that the persons so appointed had to deal with the matter to which the tender relates in his official capacity.
- 4.1.3 The seat of arbitration will be Mumbai and the appropriate District Court will have jurisdiction to entertain any/all matters of litigation.

4.2 Force Majeure

- 4.2.1 Any delay or failure in the performance by IREL or the Surface Right Holder hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure.
- 4.2.2 For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, and other events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.
- 4.2.3 IREL shall reserve the right to postpone the dates and delay the Tender Process as per the situation arising out of Force Majeure. In such a case, IREL shall publicly notify the revised timelines in newspapers and on their website.

ANNEXURES

VIII. Annexure I:

- A. Land area determined for entering into concession option for acquiring Surface Rights temporarily**
 - 1. Land area under the mining lease of IREL in Chavara, Kerala.
 - 2. All Surface Right Holders as per eligibility mentioned in clause 1.2 of this EoI within this area are hereby invited to respond to this EOI.
- B. Geographical area:** To be mentioned by respondent of this EoI.
- C. Boundaries:** To be mentioned by respondent of this EoI.
- D. Insert map:** To be attached by respondent of this EoI.

IX. Annexure II: Details of compensation

1. The compensation details provided herein, if any are an indicative range of the final compensation amounts that will be awarded to Surface Right Holders.
2. The final compensation payable to Surface Right Holders will be as per the Final Compensation Notice issued as per Clause 2.1.7.
3. The floor amounts (minimum amount) for concession option is provided below –

	Floor amount
Lease Rental	will be declared by IREL after identification
Ex-gratia	of land through this EoI & subsequent
Bonus amount	analysis of mineral content

4. The lease rental amount will be arrived based on the average guideline value for the entire land area mentioned in Annexure-I.
5. Compensation for trees and buildings will be assessed for each individual Surface Right Holders and incorporated into the respective Surface Rights Contract.
6. All compensation amounts provided herein are gross of applicable taxes. The final compensation payable to Surface Right Holders will be made after deduction of applicable taxes, if any.

X. Annexure III: Application letter for Concession option

Head, Chavara
Indian Rare Earths Limited

Sub: Expression of Interest for entering into Concession contract option with IREL.

Dear Sir,

I, _____, aged _____, son/daughter of _____, residing at _____, do hereby state that I own the land as mentioned below –

Title Detail:

Plot Area:

Plot Address:

I confirm that I have read and understood all the terms and conditions set forth in this EOI and other Tender Documents and hereby express my unconditional interest in the Concession contract option proposed by IREL in the EOI dated _____.

I have determined my eligibility and hereby confirm my intention to enter into a Surface Rights Contract with IREL under the Concession option. I understand and acknowledge that such a contract would serve as consent for IREL to carry out mining operations on my land. Further, I am attaching with this letter the applicable documents as per Annexure-IV.

I understand that IREL will only invite me to enter into a Surface Rights upon successful verification of clear ownership and title for the above land, and that the final compensation payable will be as per the Final Compensation Notice issued by IREL. I affirm that I will not withdraw this expression of interest to enter into a Surface Rights with IREL under the Concession option before the Final Compensation Notice is issued and will only be able to retract my expression of interest in this Tender Process in the event the final compensation amount computed is less than the Floor Amount.

I affirm that the contents herein above are true and correct and confirmed by me with free will without any coercion or force. I further affirm that I have not given any false information or withheld any information.

Signature:

Name:

Address:

Date:

XI. Annexure IV: List of documents (attested photocopies) to be submitted at time of application

1. Title deed (along with Patta wherever applicable) or land registration certificate
2. Most recent land tax receipt
3. Location certificate (issued by Village Officer)
4. Encumbrance certificate
5. Possession certificate (issued by Village Officer)
6. Copy of Government-issued photo ID (Driver's license, PAN card, Aadhar Card, Ration Card, Voter's Card)
7. Passport photo (1)
8. Family membership certificate or Legal heir certificate (wherever applicable)
9. Tax exemption certificates/documents (wherever applicable)
10. Affidavit as per AnnexureVI

XII. Annexure V: Affidavit to be submitted by Surface Right Holder entering into Surface Rights Contract with IREL

(To be executed on appropriate non-judicial stamp paper of minimum value and attested by a Notary Public)

I, _____, aged _____, son/daughter of _____, residing at _____, do hereby solemnly affirm and say as follows:

I am the sole owner of the land plot measuring _____ at _____, and am duly authorised and competent to make this affidavit. **[FOR INDIVIDUAL SURFACE RIGHT HOLDER]**

I am the applicant or I am a Director/Company Secretary of _____, the applicant company owning the land plot measuring _____ at _____, and am duly authorised and competent to make this affidavit. **[FOR ALL OTHER SURFACE RIGHT HOLDERS]**

The statements made in application including all additional submissions made in response to the EOI dated _____ are true to my knowledge and belief. These statements made are based on information and I believe them to be true.

I say that there are no proceedings pending in any court of law/ tribunal or arbitrator or any other authority, wherein the applicant are a party.

Solemnly affirm at _____ on this _____ day of _____ that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Deponent

Verification:-

Verified that the contents of the above said affidavit stated by me, which are correct to the best of my knowledge and belief and nothing has been concealed therein.

Verified at _____ on _____

Deponent

Witnesses:

- 1.
- 2.

XIII. Annexure VI: Payment Terms for Concession option

1. The Concession Amount ("CA") is payable in three parts, namely Lease Rental ("LR"), Ex-Gratia ("EG") and Compensation for Trees and Buildings ("CTB") on each Surface Right Holder's land holding
2. The payment terms will be informed to surface right holders at the time of issue of final compensation notice as per clause 2.1.7.

Contract agreement for entering into surface right contract with surface right holders under Concession option for Chavara, Kerala unit

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ANNEXURES

- I. Annexure I: Land area for production sharing under this Agreement**

This Agreement is made on this----(date)

Between

(2) Indian Rare Earths Limited (IREL), Chavara unit

and

XYZ("the Surface Right Holder")

Whereas:

- D) IREL had identified an area and invited eligible Surface Right Holders owning surface rights therein to express interest in entering into a contract for providing such surface rights temporarily to IREL for mining of Mineral Sand.
- E) Being the sole and whole owner of Surface Rights of the land patch measuring _____ acres at _____ (address), and having understood all terms and conditions as set forth in the EOI # _____ dated _____ issued by IREL and all Addendums issued with respect thereto, the Surface Right Holder had expressed interest in entering into this Surface Rights Contract with IREL under the Concession option.
- F) IREL, having verified the title deed and other ownership documents pertaining to the above mentioned land patch, is entering into this Surface Rights Contract with the Surface Right Holder to establish the terms and conditions for the temporary surface rights being provided and compensation to be provided in lieu thereof.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

a. Definitions

For the purpose of this Agreement, the following terms, phrases and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word 'shall' is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is written in capital letters.

Addendum	A document containing any additions / modifications / deletions made to any of the Tender Documents issued via public notices and on IREL's website
Bonus Payout or "BP"	The monetary amount payable to each Surface Right Holder, if, in aggregate, Surface Rights for 90% or more of the total land determined in this Tender Process are offered and contracted by IREL under the Concession option and if the Surface Rights for at least 10 acre of land determined in this Tender Process are contracted as contiguous patch of land by IREL under the Concession Option
Compensation for Trees and Buildings or "CTB"	The monetary amount to be provided to a Surface Right Holder entering into a Surface Rights Contract with IREL under the Concession option, in lieu of loss of trees and demolition of buildings on his land to facilitate mining of Mineral Sand by IREL
Concession Amount or "CA"	The total consideration payable to a Surface Right Holder entering into a Surface Rights Contract with IREL under the Concession option. . This includes the Lease Rental, Ex-Gratia and Compensation for Trees and Buildings
Effective Date	The date of signing of this Agreement
Expiry Date	The date falling three (3) years from the Effective Date, or the date on which this Agreement is terminated pursuant to Article 2.3
Ex-gratia or "ER"	The monetary payment that may be made, over and above the Lease Rental & Compensation for Trees and Buildings, to the Surface Right Holder pursuant to signing of a Surface Rights Contract with IREL under Concession Option
Expression of Interest or "EOI"	Shall mean the tender document issued by IREL dated _____ along with all schedules and annexures attached thereto and shall include any modifications, amendments, alterations or clarifications thereto
Heavies Upgradation Plant or "HUP"	The processing plant and included equipment used by IREL to process sand upgraded sand from Mineral Sand feedstock.
HUP Output	The output of the Heavy Upgradation Plant (HUP) which is fed to the Mineral Separation Plant (MSP)

Lease Rental or "LR"	The sum of the 3 years' individual rent, payable to a Surface Right Holder entering into a Surface Rights Contract with IREL under the Concession option, based on the guideline value of the land
Preliminary Default Notice	A notice delivered by an aggrieved party to a defaulting party, stating its intention to terminate this Agreement, and specifying in reasonable detail, the circumstances of the default mentioned therein
Price Adjustment Factor or "PAF"	Ratio reflecting market price fluctuation of heavy minerals defined as: weighted average price of minerals at the time of payout divided by weighted average price of minerals at the time of signing of the Surface Rights Contract
Produced Minerals	All heavy minerals extracted, separated and processed by IREL from Mineral Sand for commercial sale. For the avoidance of doubt, it is clarified that Monazite is not included in Produced Minerals
Mineral Sand	The mineral bearing sand mined for processing and separation of heavy minerals
Surface Rights Contract or "SRC"	This Agreement signed between IREL and Surface Right Holders containing the terms and conditions of surface rights being provided to IREL for the mining of Mineral Sand from the land specified under this agreement and compensation being provided to Surface Right Holders in lieu thereof
Surface Right Holder or "SRH"	The holder of occupation rights of the surface over the land specified under this Agreement
Surface Rights	The ownership rights over an area of land either as per revenue records or actual measurement confirmed by the surveyor, whichever is less
Tailings	Sand left out / residue after the extraction of the Output Minerals using Mineral Separation and/or processes that IREL or Surface Right Holder conducts on Mineral Sand to extract the Output Minerals

b. Terms of Agreement

a. Effective date

- a) This Agreement shall come into force from the day of its signing by both Parties (“Effective Date”) and be valid for a maximum period of three (3) years.
- b) Upon the expiry of three (3) years from the date of signing (“Expiry Date”), this Agreement shall stand terminated, unless extended by IREL as per terms and conditions set out as under.

b. Extension

- a) This Agreement may be extended by IREL for a maximum period of one (1) year, provided a notice for extension must be served upon the Surface Right Holder no later than three (3) months prior to the original Expiry Date. Provided that in case of such extension, the Expiry Date shall be revised to account for the additional year.

c. Early Termination

- a) This Agreement shall terminate prior to the Expiry Date if:
 - e) IREL completes the mining of Mineral Sand before the completion of three (3) years and terminates this Agreement by giving a written notice to the Surface Right Holder to this effect, or
 - f) Either IREL or the Surface Right Holder terminates the Agreement pursuant to Article 3.3, or
 - g) The Surface Right Holder terminates the Agreement pursuant to Article 5.3, or
 - h) IREL terminates the Agreement pursuant to Article 5.4.
- b) If this Agreement is terminated prior to the Expiry Date, then the Expiry Date shall be revised to mean the date on which this Agreement is terminated.

d. Survival

- a) The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.

c. Conditions Subsequent

a. Satisfaction of conditions subsequent by the Surface Right Holder

- a) The Surface Right Holder agrees and undertakes to duly perform and complete all of the following activities at his own cost and risk within thirty (30) days from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by IREL:
- b) The Surface Right Holder shall provide any documents pertaining to the land holding or ownership thereof, required by IREL in addition to those submitted at the time of application in response to the EOI.
- c) The Surface Right Holder shall arrange for the transferral/evacuation of all removable property and provide the land free of all such removable property to IREL to facilitate mining of Mineral Sand.

Provided that non-fulfilment of any of these conditions precedent shall not affect in any way IREL's rights under Article 4.1, and the Surface Right Holder expressly agrees to IREL proceeding with its mining operations in the land for which surface rights are being acquired via this Agreement.

b. Satisfaction of conditions subsequent by IREL

- a) IREL shall agree and undertakes to duly perform and complete all of the following activities at its own cost and risk within thirty (30) days from the Effective Date, unless such completion is affected by any Force Majeure event:
- c) IREL shall appoint the following officials (or their equivalents) for the purpose of assessment of individual Surface Right Holder's land:
 - Trees: Assistant Agricultural Officer of the Agriculture Department of the respective State Government
 - Buildings: Civil Engineer in the PWD of the respective State Government
 - Land: Surveyor in the Revenue / Survey Department of the respective State Government
- d) IREL shall take possession of the land free of all removable property. Provided that in case the Surface Right Holder has not evacuated all removable property as per Clause 3.1.1b), IREL reserves the right to take possession of the land as is and evacuate all removable property as it deems fit, without incurring any liability to the Surface Right Holder in this regard.
- e) IREL shall make payments to the Surface Right Holder as per Article 4.33.

c. Consequences of non-fulfilment of conditions subsequent

- a) In the event of default of any condition subsequent to be satisfied by either party within the stipulated time, the aggrieved party may serve a notice upon the defaulting party stating the event of default and requiring remedial.
- b) The defaulting party shall, within one (1) week of receiving such notice, remedy such default. In case of failure to do so, the aggrieved party may terminate this Agreement.

d. Terms and conditions under Concession option

a. Rights and obligations of parties

- a) The Surface Right Holder acknowledges that pursuant to this Agreement, and for the period of this Agreement, he shall not, without IREL's express and written permission:
 - b) Enter, mine, excavate, otherwise use or carry out any activity whatsoever on the land.
 - c) Create any lien, charge, obligation or any other encumbrance on the land
 - d) Sell, transfer or mortgage the land.
 - e) Provide access to the land to a third party.
- f) The Surface Right Holder acknowledges that pursuant to this Agreement, IREL may carry out inspections of his land. Such inspections may be either general or specific and may include tests or surveys of the land to determine mineral content and aid in planning the mining operations for the period of this Agreement.
- g) The Surface Right Holder acknowledges that IREL will remove all structures, plantation, trees, rocks, etc and dispose of them as required. Alternatively, the Surface Right Holder may provide the land free of all structures, plantation, trees, rocks, etc. and in such case is entitled to retain any of the materials he so desires.

- h) Pursuant to this Agreement and the terms and conditions of its mining lease(s) # _____, IREL reserves the right to mine any quantity of Mineral Sand it deems appropriate from the land.
- i) IREL shall backfill the land with Tailings before returning the same to the Surface Right Holder.
- j) Pursuant to this Agreement and IREL's rights as per its mining lease(s) # _____, all ownership of minerals processed from Mineral Sand mined from the Surface Right Holder's land will vest in IREL.

b. Compensation under Concession option

1. In lieu of providing surface rights over the land owned by him, the Surface Right Holder shall be entitled to the following compensation from IREL:
 - a) The Concession Amount ("CA") is payable in three parts, i.e. Lease Rental ("LR"), Ex-Gratia ("EG") and Compensation for Trees and Buildings ("CTB").
 - b) The Lease Rental amount will be Rupees _____ / acre of land being offered by the Surface Right Holder. The survey of the Surface Right Holder's land for purpose of determining exact acreage will be carried out by the official mentioned below in Clause 2. For the avoidance of doubt, it is clarified that the LR is the sum of annual rent for each of the three (3) years of this Agreement's tenure.
 - c) The Ex-Gratia amount will be Rupees _____ / acre of land being offered by the Surface Right Holder.
 - d) The Compensation for Trees and Buildings will be as per actual assessment of individual Surface Right Holders' properties as per provisions mentioned below in Clauses 2.
 - e) The amount mentioned above for Lease Rental, Ex-Gratia and Compensation for Trees and Buildings are floor amounts and will be declared by IREL after analysis of mineral content in the land. The final amount will be declared at the time of issue of final compensation notice to eligible applicants.
2. The Surface Right Holder's property shall be assessed by the following officials (or their equivalents):
 - Trees: Assistant Agricultural Officer of the Agriculture Department of the respective State Government
 - Buildings: Civil Engineer in the PWD of the respective State Government
 - Land: Surveyor in the Revenue / Survey Department of the respective State Government

4.2.3 The buildings and trees so assessed shall be valued as per the rates notified by the State's Public Works Department (or Central PWD where no State PWD rates are available), prevailing at the time of execution of this Agreement. Provided that IREL is not obligated to entertain any queries, representations or disputes in this matter and all decisions made by IREL and / or the officials appointed will be final and binding upon the Surface Right Holder. Provided that no such buildings or trees will be considered which have been constructed or planted, respectively, after the land has been surveyed and assessed.

4.2.4 As per Clause 1.3.7 of the EOI # _____ dated _____, a one-time Bonus Payout ("BP") amount of Rupees _____ / acre

4.3. Payment terms

4.3.1 The payment terms will be as follows:

S. No.	Payment milestone	Quantum (in %)*	Amount (in Rupees)*
1	Signing of Surface Rights Contract		
2	Completion of clearing of land		
3	Completion of mining of sand		
4	Completion of refilling of land		

*will be declared at the time of issue of final compensation notice

4.3.2 IREL will send a written notice apprising the Surface Right Holder of the achievement of any of the above milestones, within three (3) days of achieving it, and will make the related payment within one (1) week of issuance of such notice.

4.3.3 In case of an extension of this Agreement pursuant to Clause 2.2.1, IREL will reimburse an amount equivalent to 1/3rd of the Lease Rental shared under the original 3 year term of this Agreement to the Surface Right Holder, provided that the Agreement is extended on account of delay in mining attributable to IREL. This amount will be paid out with the last payment milestone.

4.4. Taxes

4.4.1 Any and all compensation payable to the Surface Right Holder will be made after deduction of applicable taxes. These include but are not limited to income tax, service tax, etc, on a case to case basis.

4.4.2 Exemption for recovery of tax deducted at source (TDS) or any other applicable taxes will be dealt with as per the Income Tax Act and applicable rules framed thereunder.

4.4.3 In case the Surface Right Holder is exempted from paying income tax for a given year, such exemption (in original, as issued by the Income Tax Commissioner for that specific year) will have to be furnished to IREL.

4.4.5 IREL reserves the right to verify and reject or accept any such claims with respect to exempted status as per relevant rules and regulations under the Income Tax Act.

4.4.6 IREL does not assume the responsibility for obtaining any exemptions on the behalf of the Surface Right Holder.

4.5. Price adjustment (in case of corporate bodies and PSUs)

4.5.1 Each of the above payment milestones will be adjusted by a PAF, equivalent to the ratio of weighted average price of minerals at the time of payout² to weighted average price of minerals at the time of signing of this Agreement.

1- or the most recent month end

4.5.2 The computation of PAFs will be carried out by IREL shared with the Surface Right Holder at the time of each payout specified in Clause 4.3.1. However, IREL is not obligated to entertain any queries in this matter and all decisions made by IREL pertaining to PAFs and applicable variation of market prices of minerals will be final and binding upon the Surface Right Holder.

e. Default, Penalties and Termination

a. IREL event of default

- a) The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Surface Right Holder of its obligations under this Agreement, shall constitute an IREL event of default:
 - d) IREL fails to make any payment as specified in Article 4.3.
 - e) IREL repudiates this Agreement and does not rectify such breach even within thirty (30) days of receiving a notice from the Surface Right Holder in this regard.
 - f) Occurrence of any other event which is specified in this Agreement to be a material breach or default of IREL.

b. Surface Right Holder event of default

- a) The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by IREL of its obligations under this Agreement, shall constitute an Surface Right Holder event of default:
 - c) The Surface Right Holder repudiates this Agreement and does not rectify such breach even within thirty (30) days of receiving a notice from IREL in this regard.
 - d) Occurrence of any other event which is specified in this Agreement to be a material breach or default of the Surface Right Holder.

c. Procedure for IREL event of default

- a) Upon the occurrence and continuation of any IREL event of default under Article 5.1, the Surface Right Holder shall have the right to deliver to IREL a notice ("Preliminary Default Notice") stating his intention to terminate this Agreement, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- b) Following the issue of such a Preliminary Default Notice, a consultation period of thirty (30) days shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant event of default having regard to all the circumstances.
- c) During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement
- d) Within a period of seven (7) days following the expiry of the Consultation Period, unless the IREL event of default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Surface Right Holder may terminate this Agreement by giving written notice of thirty (30) days to IREL.

d. Procedure for Surface Right Holder event of default

- a) Upon the occurrence and continuation of any Surface Right Holder event of default under Article **Error! Unknown switch argument.**, IREL shall have the right to deliver to the Surface Right Holder a notice stating its intention to terminate this Agreement, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- b) Following the issue of such a Preliminary Default Notice, a consultation period of thirty (30) days shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant event of default having regard to all the circumstances.
- c) During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement
- d) Within a period of seven (7) days following the expiry of the Consultation Period, unless the Surface Right Holder event of default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, IREL may terminate this Agreement by giving written notice of thirty (30) days to the Surface Right Holder.

e. Penalties

- a) In the event of a Surface Right Holder event of default leading to Early Termination, IREL shall be compensated as follows:
- c) The Surface Right Holder shall reimburse any and all such compensation amounts paid to him by IREL along with an additional __% of (will be declared before finalization of contract) this compensation prior to the Early Termination of this Agreement. Provided that the amount paid to the Surface Right Holder as Compensation for Trees and Buildings shall not need to be reimbursed.
- d) Provided IREL has not made any payment to the Surface Right Holder, the Surface Right Holder shall pay the sum of Rupees _____ /acre (will be declared before finalization of contract) as liquidated damages for the land (or part thereof) which has not been mined.
- b) In the event of any default from IREL leading to Early Termination, the Surface Right Holder shall be compensated as follows:
- c) IREL shall pay to the Surface Right Holder any and all such compensation amounts that are as yet unpaid, irrespective of the timing of the Early Termination of this Agreement. For the avoidance of doubt, it is clarified that IREL will be obligated to make payments corresponding to all milestones mentioned in Clause 4.3.1.
- c) All penalties will become due and payable upon the expiry of thirty (30) days after the notice to terminate this Agreement has been issued.
- d) Any failure to make full payment upon the date 30 days after the issuance of the notice to terminate this Agreement will attract interest on the outstanding penalty amount at the rate of 0.50% per week or proportion thereof.

f. Return of land upon Termination

- a) The Surface Right Holder acknowledges that his land will be backfilled with Tailings and returned to him within one (1) week of the Expiry Date, but shall not contain any structures, plantation, trees, rocks, etc, that were present prior to the signing of this Agreement. For the avoidance of doubt, it is reiterated that IREL shall not be responsible for construction of any structures or planting of any trees before returning the land to the Surface Right Holder.

f. Liability and Indemnification

a. Indemnity

- a) The Surface Right Holder shall indemnify, defend and hold IREL harmless against:
 - c) any and all third party claims against IREL for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Surface Right Holder of any of its obligations under this Agreement; and
 - d) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by IREL from third party claims arising by reason of a breach by the Surface Right Holder of any of its obligations under this Agreement, or any of the representations or warranties of the Surface Right Holder under this Agreement being found to be inaccurate or untrue.
- b) IREL shall indemnify, defend and hold the Surface Right Holder harmless against:
 - c) any and all third party claims against the Surface Right Holder for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by IREL of any of its obligations under this Agreement; and
 - d) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Surface Right Holder from third party claims arising by reason of a breach by IREL of any of its obligations under this Agreement, or any of the representations or warranties of IREL under this Agreement being found to be inaccurate or untrue.

b. Monetary limitation of liability

- a) A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 0 for any indemnity claims made prior to the Expiry Date only up to a monetary amount equivalent to twenty five percent (25%) of the total compensation payable under this Agreement.

c. Procedure for claiming Indemnity

Third party claims

- a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Clause 6.1.1(a) or 6.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in to Clause 6.1.1(a) or 6.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
 - b) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Clause 6.3.1(0 below); and

the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute, the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnifying Party.

- b) The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under to Clause 6.1.1(a) or 6.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- c) An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

d. Indemnifiable Losses

- a) Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Clause 6.1.1(b) or 6.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 6.4, such event shall constitute a payment default under Article 0.

e. Limitation on Liability

- a) Except as expressly provided in this Agreement, neither IREL nor the Surface Right Holder nor their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns (or their respective insurers) for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the REL, the Surface Right Holder or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- b) The Surface Right Holder shall have no recourse against any officer, director or shareholder of IREL or any Affiliate of IREL or any of its officers, directors or shareholders for such claims as excluded under this Article.

f. Duty to mitigate

- a) The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article.

g. Force Majeure

a. Definitions

- a) In this Article, the following terms shall have the following meanings:

Affected Party

An Affected Party means either of the Parties whose performance has been affected by an event of Force Majeure.

Any event of Force Majeure affecting the performance of IREL's contractors shall be deemed to be an event of Force Majeure affecting IREL only if the Force Majeure event is affecting and resulting in:

- c) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the mining/processing of Mineral Sand; or
- d) a delay in the performance of any of the IREL's contractors

Force Majeure

A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable:

- g) Any Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado, tsunami or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years.
- h) The unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consent required by IREL or any of IREL's contractors to perform their obligations under this Agreement or any unlawful, unreasonable or discriminatory refusal to grant any other consent required for the mining/processing of Mineral Sand. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- i) Any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against IREL. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- j) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action.
- k) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought near the area affected by the Affected Party or those employed or engaged by the Affected Party.
- l) Industry wide strikes and labour disturbances having a nationwide impact in India.

b. Force Majeure exclusions

- a) Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- g) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables required for mining or processing of Mineral Sand;
- h) Delay in the performance of any contractor, sub-contractors or their agents excluding the conditions as mentioned in Clause 7.1.1;
- i) Non-performance resulting from normal wear and tear typically experienced in mining equipment;
- j) Strikes or labour disturbance at the facilities of the Affected Party;
- k) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- l) Non-performance caused by, or connected with, the Affected Party's:
 - iv. Negligent or intentional acts, errors or omissions;
 - v. Failure to comply with an Indian Law; or
 - vi. Breach of, or default under this Agreement or any Tender Documents.

c. Notification of Force Majeure Event

- a) The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.
- b) The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

d. Duty to Perform and Duty to Mitigate

- a) To the extent not prevented by a Force Majeure Event pursuant to Article 7.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

e. Available Relief for a Force Majeure Event

- a) No Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event.
- b) Each Party shall be entitled to claim relief in relation to a Force Majeure by way of an extension of applicable timelines on a 'day for day' basis to permit it, through the use of due diligence, to overcome the effects of the Force Majeure Events affecting it. As a result of such extension, all dates defined in this Agreement shall be deemed to be the extended accordingly for the purposes of this Agreement.
- c) For avoidance of doubt, none of either Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party. Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

h. Change in Law

a. Definitions

- a) In this Article, the following terms shall have the following meanings:

Change in Law

"Change in Law" means the occurrence of any of the following events after the Effective Date resulting in any additional recurring / non-recurring expenditure by IREL or any income to IREL:

- g) The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law.
- h) A change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law.
- i) The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier.
- j) A change in any consents, approvals or licenses available or obtained for mining/processing or Mineral Sand, otherwise than for default of IREL, which results in any change in any cost of or revenue for IREL.
- k) A change in the existing or inclusion of any new terms and conditions prescribed for obtaining any Consents, Clearances and Permits, except due to any default of IREL.
- l) Any change in the lease charge of land provided by the Surface Right Holder

Any change in tax or introduction of any tax made applicable for the mining or processing of Mineral Sand or sale of Processed Minerals by IREL as per the terms of this Agreement but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of IREL; or (ii) any change on account of regulatory measures by an appropriate authority/regulator.

Competent Court

"Competent Court" means the Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement.

b. Notification of Change in Law

- a) If IREL is affected by a Change in Law in accordance with this Article and wishes to claim a Change in Law under this Article, it shall give notice to the Surface Right Holder of such Change in Law as soon as reasonably practicable after becoming aware of the same.
- b) Notwithstanding Clause 8.2.1, IREL shall be obliged to serve a notice to the Surface Right Holder under this Article if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Surface Right Holder contained herein shall be material. Provided that in case IREL has not provided such notice, the Surface Right Holder shall have the right to issue such notice to the IREL.
- c) Any notice served pursuant to this Article 8.2 shall provide, amongst other things, precise details of:
 - c) the Change in Law; and
 - d) the effects of such Change in Law on IREL and its obligations and/or rights under this Agreement.

c. Application and Principles for computing impact of Change in Law

- a) While determining the consequence of Change in Law under this Article 0, the parties shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law, is to restore the affected party to the same economic position as if such Change in Law has not occurred.

d. Relief for Change in Law

- a) In the event of a Change in Law having a material effect on either party, it shall be binding upon both parties to try and arrive at a mutual agreement on revised terms and conditions of this Agreement so as to restore the affected party to the same economic position as if such Change in Law had not occurred. Provided that in the event of a failure to arrive at such mutual agreement with a period of thirty (30) days from the date of issue of notice in this regard, the parties shall jointly initialise the procedure for Dispute Resolution as per Article 10.1

i. Assignments and Charges

a. Assignments

- a) This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.
- b) This Agreement shall not be assigned by any Party (and no Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual consent between the Parties to be evidenced in writing.
- c) Provided that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

- d) Article 9.1 does not apply to:
- d) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of IREL carrying out its business activities
- e) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of IREL carrying out its business activities; or
- f) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of IREL carrying out its business activities

j. Governing Law and Dispute Resolution

a. Governing Law

- a) This Agreement shall be governed by and construed in accordance with the Laws of India.
- b) Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of the appropriate district court.

b. Amicable Settlement

- a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice ("Dispute Notice") to the other Party, which shall contain:
 - d) a description of the Dispute;
 - e) the grounds for such Dispute; and
 - f) all written material in support of its claim
- b) The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Clause 10.2.1, furnish:
 - c) counter-claim and defences, if any, regarding the Dispute; and
 - d) all written material in support of its defences and counter-claim
- c) Within thirty (30) days of issue of notice by any Party pursuant to Clause 10.2.1 or Clause 10.2.2, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred to Dispute Resolution in accordance with Article 10.3.

c. Dispute Resolution

- a) Any Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Clause 10.2.3 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.
- f) The arbitration tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules.
- g) The place of arbitration shall be Mumbai, India. The language of the arbitration shall be English.

- h) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- i) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
- j) The provisions of this Article shall survive the termination of this Agreement for any reason whatsoever.

d. Parties to Perform Obligations

- a) Notwithstanding the existence of any Dispute and difference referred to the arbitral tribunal as provided in Article 10.3 and save as the arbitral tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

k. Miscellaneous

a. Amendment

- a) This Agreement may only be amended or supplemented by a written agreement between the Parties.

b. Third Party Beneficiaries

- a) This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

c. No Waiver

- a)
- b) A valid waiver by a Party shall be in writing and executed by an authorized representative of that Party. Neither the failure by any Party to insist on the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by any Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

d. Entirety

- a) This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.
- b) Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or the mining/processing of Mineral Sand under this Agreement shall stand superseded and abrogated.

e. Confidentiality

- a) The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:
 - d) to their professional advisors;

- e) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- f) disclosures required under Law

without the prior written consent of the other Party.

f. Affirmation

- a) IREL and the Surface Right Holder, each affirm that:
- c) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- d) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and IREL and the Surface Right Holder hereby undertake not to engage in any similar acts during the Term of Agreement.

g. Severability

- a) The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

h. No Partnership

- a) None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between IREL and the Surface Right Holder.

i. Counterparts

- a) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument

j. Notices

- a) All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.
- b) If to IREL, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the address below:

Address:

Attention:

Email:

Fax No.:

Telephone No.:

- c) If to the Surface Right Holder, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address below:

Address:

Attention:

Email:

Fax No.:

Telephone No.:

- d) All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- e) Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

k. Language

- a) The language of this Agreement and all written communication between the Parties relating to this Agreement shall be in English.

l. Breach of Obligations

- a) The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

m. Commercial Acts

- a) IREL and the Surface Right Holder unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement constitute private and commercial acts rather than public or governmental acts.

n. No Consequential or Indirect Losses

- a) The liability of IREL and the Surface Right Holder shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall IREL or the Surface Right Holder claim from one another, any indirect or consequential losses or damages.

o. Taxes and Duties

- a) The Surface Right Holder shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on him / it, which are required to be paid by him / it as per the Law in relation to the execution of the Agreement.
- b) IREL shall be indemnified and held harmless by the Surface Right Holder against any claims that may be made against IREL in relation to the matters set out in Clause 11.15.1.
- c) IREL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Surface Right Holder by IREL on behalf of the Surface Right Holder.

- d) For the avoidance of doubt, it is clarified that any and all compensation provided by IREL to the Surface Right Holder may be treated as “rent” and will therefore be subject to tax deducted at source (TDS) and other applicable taxes.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of IREL

For (and on behalf of) the Surface Right Holder

Name, Designation and Address

Name, (Designation) and Address

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

ANNEXURES

XIV. Annexure I: Land area for production sharing under this Agreement

A. Land area for entering into current production sharing contract

Title Detail:

Plot Area:

Plot Address:

(Insert map)