

# RARE EARTH INDUSTRY AND TECHNOLOGY ASSOCIATION

## Membership Agreement

This Agreement for Membership in the Rare Earth Industry and Technology Association (this “**Agreement**”) is made effective this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ by and between the Rare Earth Industry and Technology Association, (“**REITA**”), a Colorado non-profit corporation with offices at 8400 East Prentice Avenue, Suite 1500, Greenwood Village, Colorado 80111 and \_\_\_\_\_ (“**Member**”) (REITA and Member are referred to herein as the “**Parties**” or individually, as a “**Party**”).

Upon the execution of this Agreement, the admission of the applicant as a member of REITA (as hereinafter defined) and Member’s payment of all applicable dues in accordance with this Agreement, the applicant shall become a member of REITA. This Membership Agreement summarizes certain aspects of the activities and administration of REITA and defines the terms and conditions related to status as a member of REITA. Members shall be admitted to REITA by the REITA’s Executive Director (“**ED**”) in his or her discretion.

## RECITALS

**WHEREAS**, REITA is dedicated to the growth of the rare earth industry and technology sectors in developed countries of the world.

**WHEREAS**, REITA intends to operate at all times as a not-for-profit corporation pursuant to Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, (“**Code**”) and applicable rules and regulations, as amended.

**WHEREAS**, the purposes of REITA include, without limitation:

1. Improving the business conditions of entities engaged in all points of the production chain for rare earth magnets and other materials and products beginning with the extraction of rare earth and ending with the marketing and sale of such materials and products (“**Rare Earth Companies**”);
2. Improving the global economy through the development of a strong and diverse international rare earth industry based on the responsible use of global strategic reserves; and
3. Improving the business conditions of Rare Earth Companies while providing guidance for such companies to act as responsible stewards of rare earth resources; and
4. Creating an effective teaming environment among members for purposes of identifying rare earth related opportunities that can be developed into applications that serve commercial markets; and

5. Facilitating research and development that results in the commercial production of rare earth technology and products vital to green energy and technological advancements that will improve the daily lives of people everywhere; and

6. Transacting all lawful business for which nonprofit corporations may be organized pursuant to the Colorado Revised Nonprofit Corporations Act, as amended, to have and exercise all powers, privileges, and immunities now or hereafter conferred upon or permitted to nonprofit corporations by the laws of the State of Colorado, and to do any and all of the things set forth herein to the same extent as natural persons could do insofar as permitted by the laws of the State of Colorado and the Articles of Incorporation and Bylaws of REITA (sometimes collectively referred to as the “**Governing Documents**”).

**WHEREAS**, REITA, a tax exempt entity pursuant to Section 501(c)(6), intends that REITA shall at all times be treated as a nonprofit, tax exempt entity pursuant to Section 501(c)(6) of the Code. As such, REITA shall exercise only such powers as are consistent with exemption under Section 501(c)(6) of the Code and the regulations thereunder, as the same now exist or as they may be hereafter amended from time to time. No part of the income or net earnings of REITA, if any, shall inure to the benefit of any Member or officer of REITA or other private person, except that REITA shall be authorized and empowered to pay reasonable compensation for services rendered in effecting one or more purposes of REITA and to reimburse any actual and reasonable expenses incurred in connection with the administration of the affairs of REITA.

**WHEREAS**, membership in REITA shall be open to individuals, corporations (for profit and not-for-profit) and other entities with particular competence or interest in any point in the production chain for rare earth magnets and other materials and products beginning with the extraction of rare earths and ending with the marketing and sale of such materials and products.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained in this Agreement, the Parties agree as follows:

**7. Member Identification**

Member agrees to promptly notify the ED of any changes to Member’s identification information as set forth herein.

Name of Member: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Designated Representative for Membership Purposes:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Explanation of Member’s interest in rare earth technologies (additional pages may be attached):

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**Executive Director**

The initial ED of REITA is Mr. Keith Delaney. Telephone: (303) 409-7603 and E-Mail: [Keith.Delaney@REITAUSA.org](mailto:Keith.Delaney@REITAUSA.org). The ED will devote all of his time to the affairs of REITA.

**8. Membership Benefits and Obligations**

Upon the execution of this Agreement, the ED’s admission of the applicant as a member and the payment of all membership dues (see item 4 below) the applicant shall become a member of REITA, subject to the benefits and obligations set forth in this Agreement and the Governing Documents.

**9. Membership Dues**

Membership dues shall be established annually. All membership dues are payable by check to “Rare Earth Industry and Technology Association” and should be mailed to the ED at the address set forth in the first paragraph of this Agreement. An additional fee may be assessed for members located outside of the United States to cover mailing costs.

An amount equal to the applicable membership dues for one year of membership must be submitted to the ED (see the first paragraph of this Agreement) by an applicant with a completed copy of this Agreement.

If an applicant has been admitted as a member by the ED, member status shall be renewed on the anniversary of the first day of the month coincident with or next following the month in which the applicant became a member (“**Dues Due Date**”) upon Member’s payment of applicable dues in effect as of the Dues Due Date. Membership fees shall be payable on or before the Dues Due Date and shall be considered delinquent if not paid by the thirtieth (30<sup>th</sup>) day after the Dues Due Date which date shall be considered the “**Dues Delinquency Date.**”

Member may upgrade membership level at any time. The membership level upgrade will be effective on the first day of the month coincident with or next following the date when Member pays the dues applicable to the higher membership level, as prorated for the number of complete months from the date of the upgrade effective date until Member's next Dues Due Date.

Applicable dues depend on the membership class and are established by REITA's Board of Directors ("**Board**") each year. Members of each membership class are entitled to all applicable rights and obligations included in Bylaws. The following fee schedule shall apply in 2011 (*check all that apply*):

- Sustaining Member.* \$40,000 per year.  
Voting Member.
  
- General Member.*
  - Rare Earth Supplier Member.* \$25,000 per year.  
(*available to mining and rare earth material processing companies*)  
Voting Member.
  - OEM Member.* \$10,000 per year.  
(*available to original equipment manufacturers ("**OEMs**")*)  
Voting Member.
  - Other General Member.* \$10,000 per year.  
(*available to individuals and entities that do not qualify as Rare Earth Suppliers or OEMs*).  
Voting Member.
  
- Contributing Member.* \$5,000 per year.  
Nonvoting member.
  
- Junior Mining Projects Member.* \$10,000 per year.  
Nonvoting member.
  
- Research Member.* \$2,500 per year.  
Nonvoting member.
  
- Honorary Member.* \$0.00 per year.  
(*available to individuals nominated by the Board or a member and elected as an Honorary Member by a majority of the members present at any annual meeting of the members.*)  
Nonvoting member.

The Board shall review and, if considered necessary by the Board, adjust membership dues annually. Member shall be advised of any change in applicable membership dues prior to Member's Dues Due Date. The Board, in its sole and absolute discretion, may elect to reduce or waive membership dues annually for any Member on a case by case basis.

Member's economic obligation with respect to REITA shall be limited to his or her obligation to pay membership dues in accordance with the terms described above. In no event shall this Agreement require the expenditure of funds by Member in addition to his or her annual membership dues.

#### **10. Dues; Expenses and Reserves**

Membership benefits and activities are subject to compliance with this Agreement and the Governing Documents. The ED will be responsible for the day-to-day administration of REITA.

Member understands that membership dues will be paid to REITA to pay the costs of establishing, operating and administering REITA. Such expenses shall include the ED's salary and benefits, as well as other applicable administrative overhead expenses. Additionally, in the sole and absolute discretion of the Board, membership dues may be set aside to establish reasonable reserves for future expenses or contingencies of REITA. REITA may from time to time (but shall have no obligation to) borrow and advance funds from banks or other entities or persons to cover its costs.

#### **11. Meetings of the Members**

Member meetings shall be held at such place or places as the Board may from time to time determine. Such meetings may be conducted by telephone conference or other similar electronic communications equipment pursuant to which each participant at the meeting can hear the other participants.

The annual meeting of the members will be held on the first Thursday of each June. At the annual meeting, new members will be introduced and the members will elect members the Board. Additionally, the members will review REITA activities during the prior year, the financial status of REITA and plans for future REITA activities. Additional items shall be placed on the agenda as determined by the Board.

Failure to hold an annual meeting of the members does not affect the validity of REITA actions. Notice of the annual meeting shall be given to Member pursuant to the procedures set forth in the Bylaws. Such notice must include a description of any matter to be discussed at the meeting that either must be approved by the Voting Members or for which the Board is seeking Voting Member approval.

Special meetings of the Voting Members may be called by or at the request of the Board or upon the written request of one-quarter (1/4) of the Voting Members. Special meetings shall be held at such time and place as may be designated by the Board. Notice of each special

meeting shall be given to Members pursuant to the procedures set forth in the Bylaws. Such notice must state the purpose or purposes of the meeting.

## **12. Publications**

As a non-profit organization, REITA reserves the right to publish and present publicly the results of research conducted by REITA. No Member shall have rights with respect to such research except as provided in this Agreement or another agreement between REITA and the Member. In limited circumstances, and in accordance with any confidentiality agreement entered by Member and REITA, REITA shall maintain the confidentiality of Member's proprietary business information.

## **13. Intellectual Property**

For purposes of this Agreement, "**Intellectual Property**" means and shall include, but is not be limited to, all trade secrets, technical information, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not eligible for patent or copyright protection.

It is understood and agreed that the preexisting Intellectual Property of the Parties is the separate property of each Party, and shall not be affected by this Agreement. Neither Party shall have any claims or rights in such preexisting Intellectual Property of the other Party.

Except as expressly provided otherwise by a written agreement between the Parties covering a specific research activity, ownership of any Intellectual Property arising from work performed by Member and REITA shall vest in the Party whose personnel created and/or conceived of the subject matter or first actually reduced the subject matter to practice. Such Party may perfect legal protection therein in its own name at its own expense.

## **14. Indemnification, Responsibility for Injuries and Limitation of Liability**

(a) *Indemnification.* Subject to Subsection 9(b), Member shall defend, indemnify and hold harmless REITA, its officers, employees, agents and its members from and against all claims, causes of action, damages, injuries (including bodily injury and death), losses, liabilities and expenses (including attorney's fees) caused by or resulting from: (i) the negligent or intentional act of Member or any of its officers, employees or agents; or (ii) Member's use of any REITA research results, patents or other intellectual property; or (iii) Member's breach of any term or condition of this Agreement, except to the extent that such claims or liabilities are proven to result from the sole negligence of REITA.

(b) *Members that are State Entities.* If Member is a state entity that is prohibited by state law from becoming subject to the indemnification provisions of Subsection 9(a), Member shall be subject to this Subsection 9(b) rather than Subsection 9(a). Subsection 9(b) shall not apply if Member is subject to Subsection 9(a). Under this Subsection 9(b), Member shall be solely and entirely responsible for Member's acts and the acts of Member's agents and employees, within the course and scope of their agency or employment, as applicable, during the performance of this Agreement. Additionally, Member warrants that it is self-insured

pursuant to the terms of state law governing Member. Nothing in this subsection 9(b) shall be construed as enlarging the responsibility or liability of Member beyond that permitted by relevant state law.

(c) *Limitation of Liability.* In the event of the dissolution of REITA and termination of this Agreement by REITA pursuant to Section 13, Member shall, subject to the dissolution provisions of the REITA Articles of Organization, be entitled to receive, as its sole and exclusive remedy, a prorated refund of its membership fees, and upon such refund, any further liability of REITA to Member shall be extinguished. This remedy is in lieu of all other remedies, whether oral or written, express or implied. In no event shall REITA be liable for any indirect, incidental, consequential or special damages, including lost profits, sustained or incurred by Member in connection with or as a result of its participation in REITA or under this Agreement.

(d) *Disclaimer of Warranties.* REITA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY RESEARCH ACTIVITIES, DATA, OR RESULTS PROVIDED OR MADE AVAILABLE TO MEMBER THROUGH REITA ACTIVITIES, INCLUDING BUT NOT LIMITED TO REITA ACTIVITIES, SUCH AS THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF ANY RESEARCH ACTIVITIES, OR THE CONDITION, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY RESEARCH OR REITA INTELLECTUAL PROPERTY.

## **15. Publicity**

Member shall not create or issue any advertising, publicity or other publicly disseminated material that contains any reference to REITA or its staff without prior written consent of REITA. Nor shall Member use any REITA seals, logos or trademarks without the prior written consent of REITA. REITA may include Member's name in REITA membership list.

## **16. Compliance with Laws**

All activities of REITA shall be conducted a manner that complies with this Agreement and the Governing Documents, as well as all applicable federal, state and local laws and regulations, including but not limited to those applicable to REITA as a non-profit, tax-exempt organization and the recipient of federal and/or state funding and grants, to the extent applicable.

## **17. Force Majeure**

REITA shall not be responsible to Member for failure to perform any of the obligations imposed under this Agreement to the extent such failure to perform is due to circumstances reasonably beyond REITA's control, including, without limitation, labor disturbances or labor disputes of any kind, failure of any governmental approval required for full performance, civil disorders or commotions, actions of aggression or terrorism, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical

breakdowns, material shortages, disease, accidents, fire, failure of transportation, or any similar cause beyond the reasonable control of REITA.

#### **18. Termination**

This Agreement and Member's status as a member may be terminated by the Board either for or without cause upon thirty (30) days' prior written notice to Member. Except as otherwise provided in this Section 13 and the Governing Documents, in the event of the termination of this Agreement, Member shall receive a refund of its dues equal to the amount of its annual fees, less any cost or non-cancelable commitments incurred with respect to REITA through and including the date when Member's status is terminated, multiplied by a fraction with the numerator equal to the number of days beginning on the date when Member's membership is terminated and ending on the last day immediately prior to Member's Dues Due Date, and a denominator equal to three hundred sixty-five (365) days.

The Board may also terminate the Agreement and Member's status as a member if Member is in breach of any term or condition of this Agreement or the Governing Documents and has failed to cure such breach within ten (10) days after receipt of written notice from REITA of such breach, in which case Member shall not be entitled to a refund of membership fees. Failure of Member to pay dues on or before the Dues Delinquency Date shall result in the automatic termination of this Agreement and Member's status as a member; however, this Agreement and Member's status as a member shall be automatically reinstated upon Member's payment of all outstanding dues.

Member may voluntarily terminate this Agreement and Member's status as a member by submitting written notice to the ED, in which case Member shall not be entitled to a refund of membership fees.

Subject to the foregoing, the Board may, in its sole and absolute discretion, reinstate Member's status as a member upon receipt of Member's written request for reinstatement.

The obligations of Member with respect to publications contained in Section 7, the intellectual property contained in Section 8, and the indemnification, responsibility for injuries and limitation of liability contained in Section 9 shall survive the termination of this Agreement and the termination of Member's status with respect to REITA, in each case, regardless of the reason for the termination.

#### **19. Independent Contractor**

Nothing herein shall be deemed to establish a relationship of principal and agent between the Parties, or any of the agents and employees of the Parties, nor shall this Agreement be construed as creating any form of legal association or arrangement which would impose liability upon one Party as a result of any act or omission of the other Party. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the Parties, or their assigns (as permitted under Section 18), any benefits, rights or remedies.

#### **20. Entire Agreement; Amendments**

This Agreement embodies the entire understanding between the Parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. This Agreement may not be varied except by a written document signed by duly authorized representatives of both Parties.

**21. Interpretation**

This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that such Party did or did not author this Agreement.

**22. Governing Law; Venue**

This Agreement shall be construed and governed in accordance with the laws of the State of Colorado, without giving effect to conflict of law provisions. The Parties agree to submit to the venue and personal jurisdiction of the Colorado state and federal courts concerning any dispute arising from or relating to this Agreement.

**23. Assignment**

No rights hereunder may be assigned by any Party, directly or by merger or other operation of law, without the express written consent of the other Party.

**24. Waiver**

A waiver by either Party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or of any other provision of this Agreement.

**25. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**26. Severability**

If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of the Agreement. On the contrary, such remaining provisions shall be fully severable, and the Agreement shall be construed and enforced as if such invalid provisions never had been included in the Agreement.

**27. Arbitration**

(a) *Binding Arbitration.* Subject to subsection 22(b), any controversy arising out of or relating to this Agreement, its enforcement or interpretation, or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, or any other controversy arising out of Member's membership in REITA, including, but not limited to, any

state or federal statutory claims, shall be submitted to arbitration in Denver, Colorado, before a sole arbitrator selected from Judicial Arbitrator Group, Inc., Denver, Colorado, or its successor (“JAG”), or if JAG is no longer able to supply the arbitrator, such arbitrator shall be selected from the Judicial Arbitration and Mediation Services, Inc., (“JAMS”) or other mutually agreed upon arbitration provider, as the exclusive forum for the resolution of such dispute. Provisional injunctive relief may, but need not, be sought by either Party in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the Arbitrator. Final resolution of any dispute through arbitration may include any remedy or relief which the Arbitrator deems just and equitable, including any and all remedies provided by applicable state or federal statutes. At the conclusion of the arbitration, the Arbitrator shall issue a written decision that sets forth the essential findings and conclusions upon which the Arbitrator’s award or decision is based. Any award or relief granted by the Arbitrator hereunder shall be final and binding on the Parties and may be enforced by any court of competent jurisdiction. The Parties acknowledge and agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the Parties against the other in connection with any matter whatsoever arising out of or in any way connected with this Agreement or Member’s membership in REITA. The Parties agree that each Party shall be responsible for payment of one-half of the forum costs of any arbitration hereunder, including one-half of the Arbitrator’s fee. The Parties further agree that in any proceeding to enforce the terms of this Agreement, the prevailing Party shall be entitled to its, his or her reasonable attorneys’ fees and costs incurred by such Party in connection with resolution of the dispute in addition to any other relief granted.

(b) *Members that are State Entities.* If Member is a State entity that is prohibited by State law from becoming subject to the binding arbitration clause in Subsection 22(a), Member shall be subject to this Subsection 22(b) rather than Subsection 22(a). Subsection 22(b) shall not apply if Member is subject to Subsection 22(a). Under this Subsection 22(b), any controversy arising out of or relating to this Agreement, its enforcement or interpretation, or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, or any other controversy arising out of Member’s membership in REITA, including, but not limited to, any state or federal statutory claims, shall be submitted to arbitration in Denver, Colorado, before a sole arbitrator selected from JAG or, if JAG is no longer able to supply the arbitrator, such arbitrator shall be selected from JAMS or another mutually agreed upon arbitration provider, as the forum for the resolution of such dispute. Provisional injunctive relief may, but need not, be sought by either Party in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the Arbitrator. Resolution of any dispute through arbitration may include any remedy or relief which the Arbitrator deems just and equitable, including any and all remedies provided by applicable state or federal statutes. At the conclusion of the arbitration, the Arbitrator shall issue a written decision that sets forth the essential findings and conclusions upon which the Arbitrator’s award or decision is based. Any award or relief granted by the Arbitrator hereunder shall be binding on the Parties, unless either Party submits such controversy to a court of law for final resolution. The Parties agree that each Party shall be responsible for payment of one-half of the forum costs of any arbitration hereunder, including one-half of the Arbitrator’s fee. The Parties further agree that in any proceeding to enforce the

terms of this Agreement, the prevailing Party shall be entitled to its, his or her reasonable attorneys' fees and costs incurred by such Party in connection with resolution of the dispute in addition to any other relief granted.

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The Parties, intending to be legally bound, have executed this Agreement by their duly authorized representatives on the date indicated.

**Member Organization's Name**

Printed Name of Member (or Applicant prior to admission)

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RARE EARTH INDUSTRY AND TECHNOLOGY ASSOCIATION**

\_\_\_\_\_  
By: Keith Delaney, Executive Director

Date: \_\_\_\_\_