



**ITER-India**  
**(Institute For Plasma Research)**

Tender Notice No.

I-ITN21002

<b>Title</b>	<b>Tender No. I-ITN21002 dated 23<sup>rd</sup> September, 2021 for Development of FPGA (Field Programmable Gate Arrays) based RF Control System for RF Source</b>
<b>Sub Title</b>	<b>PART-A (III): Terms and Conditions of the Contract</b>

**ITER-India, Institute for Plasma Research**  
**Block A, Sangath Skyz, Bhat-Motera Road, Koteswar,**  
**Ahmedabad 380005, Gujarat, INDIA**





Title: Development of FPGA (Field Programmable Gate Arrays) based RF Control System for RF Source

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**ITER-India, Institute for Plasma Research  
Block A, Sangath Skyz, Bhat-Motera Road, Koteshwar,  
Ahmedabad 380005, Gujarat, INDIA**

<http://www.iter-india.org>





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**Amendment Record**

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## Abbreviations

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### **A**

*ABG · Advance Bank Guarantee*

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### **B**

*BG · Bank Guarantee*

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### **H**

*HDFC · Housing Development Finance Corporation*

*HP · Hold Point*

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### **I**

*ICICI · Industrial Credit and Investment Corporation of India*

*IDBI · Industrial Development Bank of India*

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### **L**

*LD · Liquidated Damages*

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### **N**

*NP · Notification Point*

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### **P**

*PBG · Performance Bank Guarantee*

*PLR · Prime Lending Rate*

*PM · Project Manager*

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### **S**

*SBI · State Bank of India*

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### **T**

*TDS - Tax Deducted at Source*

*TRO · Technical Responsible Officer*



## 1 Terms and Conditions of the Contract (TCC) / Purchase Order

Following are the Terms and Conditions of the Contract (TCC) applicable to this tender. The Contract / Purchase Order resulting from this tender shall be governed by the terms and conditions given in this TCC. Bidders submitting the bid against this tender shall be deemed to have read and understood the same in total.

### 1.1 Definitions and Interpretations

#### 1.1.1 Definitions

- (a) **"ITEM(S)" or "GOODS" or "MATERIALS" or "PRODUCTS" or "SYSTEMS" or "EQUIPMENT" or "SUPPLIES" or "COMPONENTS"** shall mean and include entire scope of supply and work which Contractor/Supplier has agreed to supply and provide under the Contract / Purchase Order deliverables as specified in the Contract / Purchase Order (as per Part-A(II) of this tender).
- (b) **"BID" or "TENDER" or "QUOTATION"** shall mean the tender, offer and quotation in response to this Notice Inviting Tender / Tender Notification.
- (c) **"BIDDER" or "TENDERER" or "VENDOR"** shall mean the entity who seeks to supply the specified goods / Items and perform the scope of work by submitting Tender/Bid/Quotation
- (d) **"COMPLETION"** shall mean that all activities specified under the scope of supply and scope of work have been successfully completed to the complete satisfaction of the Purchaser in all aspects & approved and accepted by the Purchaser.
- (e) **"CONTRACT / PURCHASE ORDER"** shall mean the communication or document signed for and on behalf of the Purchaser by an Officer duly authorized confirming the acceptance, for and on behalf of the Purchaser, on the terms and conditions mentioned or referred to in the said communication or document, including all attachments and appendices thereto, while accepting the Bid or Offer of the Contractor / Supplier for supply of items and any subsequent amendments there to made on the basis of mutual agreement.
- (f) **"CONTRACTOR / SUPPLIER"** shall mean the firm or company with whom or with which the Contract/Order for **"Development of FPGA (Field Programmable Gate Arrays) based RF Control System for RF Source"** is placed and shall be deemed to include the Contractor/Supplier's legal successors and/or assignees (approved by the Purchaser), representatives, heirs, executors and administrators unless excluded by the Contract/Order.
- (g) **"CONTRACTOR RELEASE NOTE (CRN)/DISPATCH CLEARANCE NOTE (DCN)"** shall mean the document approved by Purchaser's commercial coordinator authorizing the Contractor/Supplier to dispatch/ release the Items to Purchaser's site.
- (h) **"DAY" or "DAYS"** shall mean a Gregorian calendar day or days of twenty-four (24) hours each.
- (i) **"DELIVERABLES"** shall mean all the Items, Products, Components, Services, Documentation that are part of the scope of work and scope of supply as defined in this Tender Part-A(II).
- (j) **"EFFECTIVE DATE OF CONTRACT/ORDER" or "COMMENCEMENT DATE OF CONTRACT/ORDER"** shall mean the date of Letter of Intent (LoI) on which the Contract/Order shall come into force.
- (k) **"FACTORY ACCEPTANCE"** shall mean acceptance of items at factory of the Contractor as



described in Part-A (II)

- (l) **“FINAL ACCEPTANCE”** shall mean acceptance of items at on-site as per “Site Acceptance” Part-A (II)
- (m) **“ITER-INDIA”** is a project of Institute for Plasma Research (IPR), Bhat, Gandhinagar and it is Indian Domestic Agency for the execution of ITER Project.
- (n) **“MILESTONE”** shall mean a scheduled or planned event or activity that indicates the completion of a major deliverable event or activity of the Contract that is measurable and observable.
- (o) **“MONTH”** shall mean a month according to Gregorian calendar.
- (p) **“ON-SITE”** shall mean the place(s) where the deliverables shall be delivered by the Contractor / Supplier i.e.  
ICRH Lab (3<sup>rd</sup> Floor),  
ITER-India Lab building  
Institute for Plasma Research Campus  
Bhat, Gandhinagar-382428  
Gujarat, India
- (q) **“PARTY”** shall mean either the PURCHASER or the CONTRACTOR/SUPPLIER
- (r) **“PARTIES”** to the Contract are the Contractor/Supplier and the Purchaser named in the Contract.
- (s) **“PRICE”** shall mean the basic prices (without applicable taxes and duties) quoted by the bidder in his bid proposal for the entire scope of supply and scope of work as per the specifications as defined in Part-A(II) of this tender.
- (t) **“PROJECT DIRECTOR”** shall mean Project Director of ITER-India, who is appointed by a competent authority.
- (u) **“PROJECT MANAGER” or “PM”** shall mean the person authorized to act as Project Manager (PM) by a competent authority of ITER-India.
- (v) **“PURCHASER”** shall mean ITER-India (IPR), acting through the Project Director or his authorized representative.
- (w) **“PURCHASE OFFICER” or “COMMERCIAL COORDINATOR”** shall mean the person authorized to act as Purchase Officer and he/she is Purchaser’s representative for all commercial matters of the Contract/Order.
- (x) **“QUALITY SURVEILLANCE ENGINEER/INSPECTOR”** shall mean any person appointed by or on behalf of the Purchaser to inspect or carry out quality surveillance on Items/supplies, equipment or work under the Contract or any person deputed by Purchaser for the said purpose.
- (y) **“SUB-CONTRACTOR”** shall mean any person or firm or company on whom execution of any part of the supplies, including supply of any components, carrying out any manufacturing process/inspection/conformity assessment is subcontracted by the Contractor/Supplier and includes its legal successor or permitted assignees, and unless otherwise stated, all the sub-contractors and suppliers to such person and the term sub-contract shall be construed accordingly.



- (z) **“TECHNICAL RESPONSIBLE OFFICER (TRO)”** shall mean the person nominated by the Purchaser to carry out all technical functions concerning the Contract/Order including inter-alia review of technical documents, post Contract technical follow up and such other technical functions with the approval of Project Manager.
- (aa) **“THIRD PARTY”** shall mean the Party authorized to carry out the assigned inspection/testing on behalf of the Purchaser.
- (bb) **“TOTAL ORDER VALUE” or “TOTAL CONTRACT PRICE”** shall mean the basic price as mentioned in the Contract/Purchase Order i.e. it is the Contract/Order price excluding taxes, duties and levies (if any)
- (cc) **“UNIT RATE”** shall mean the basic rate quoted by the bidder on per unit basis, which will be used for addition or deletion purposes.
- (dd) **“WARRANTY PERIOD”** shall mean the period during which the Contractor/Supplier shall remain liable without any extra cost to the Purchaser for repair, replace or rectify any defective item(s) or performance of the ITEMS supplied under the Contract/Purchase Order.

#### 1.1.2 Interpretations

- (a) In the Contract, except where the context requires otherwise:
- i. Words indicating one gender include all genders;
  - ii. Words indicating the singular also include the plural and words indicating the plural also include the singular;
  - iii. Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
  - iv. The word “tender” is synonymous with “bid”, “tenderer” with “bidder” and “tender documents” with “bidding documents”;
  - v. “Written” or “in writing” means hand-written, type-written, printed or electronically made, electronic mail resulting in a permanent record.
- (b) The marginal words and headings shall not be taken into consideration in the interpretation of these Terms & Conditions of Contract.
- (c) **PERSONS:** Words incorporating persons or parties shall include firms, companies, corporations, government entities and other bodies whether incorporated or not but having legal entity.
- (d) **ENTIRE AGREEMENT:** The Contract constitutes the entire agreement between the Purchaser and Contractor/Supplier with respect to the subject matter of Contract and includes all written communications, negotiations and agreements of parties with respect thereto made prior to the date of Contract that are included as reference in the Contract.

#### 1.2 General provisions of the Contract

##### 1.2.1 Language

- 1.2.1.1 The ruling language of the Contract and language for documentation and communication shall be English.



## 1.2.2 Governing Law

- 1.2.2.1 The Contract shall be construed and shall be governed by the laws of India and the Contractor/Supplier shall be required to comply with all the applicable laws with regard to performance of the Contract.

## 1.2.3 Jurisdiction

- 1.2.3.1 The Courts in Ahmedabad (Gujarat State, India) only shall have exclusive jurisdiction to deal with and decide all disputes arising out of this Contract.

## 1.2.4 Exercising the Rights and Powers of the Purchaser

- 1.2.4.1 All the rights, discretion and powers of the Purchaser under the Contract shall be exercised by the Purchaser through written communications which shall be given by the Project Director or other officers authorized by him for and on behalf of the Purchaser.

## 1.2.5 Publicity

- 1.2.5.1 No publicity of any kind whatsoever regarding the Contract shall be given by the Contractor/Supplier without prior written permission of the Purchaser.

## 1.2.6 Confidentiality and Secrecy

- 1.2.6.1 All information, including but not limited to, specifications, drawings and designs that are imparted to the Contractor/Supplier, shall at all times, remain the absolute property of the Purchaser. The Contractor/Supplier shall not use them for purposes other than for which they are provided for, and shall treat all these documents as confidential. These shall not be reproduced in whole or in part for any other purpose.
- 1.2.6.2 All information, drawings, documents, specifications, datasheets and other related documents forming part of the enquiry, tender or Contract are property of the Purchaser and shall not be used for any other purpose, except for execution of the Contract. All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, drawings, specifications, records and other documents shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole and/or duplicated, modified, divulged and/or disclosed to a third party nor misused in any other form whatsoever, without the Purchaser's prior consent in writing, except to the extent required for the execution of this Contract. This technical information, drawings, specifications and other related documents shall be returned to the Purchaser with all approved copies and duplicates, if any, immediately after they have been used for the agreed purpose.
- 1.2.6.3 The Contractor/Supplier shall use his best endeavours to ensure that such information are not divulged to third parties except where needed for the performance of the Contract by the Contractor/Supplier with the prior consent of the Purchaser. In such cases, the Contractor/Supplier shall ensure and obtain similar obligation of confidence, from other parties in question.
- 1.2.6.4 The Contractor/Supplier shall at his own cost procure from his own employees, agents, suppliers or sub-contractors (and agents, suppliers and sub-contractors of such agents, suppliers and sub-contractors) all such acts, deeds and things to cause such employees, agents, suppliers and sub-contractors to whom the confidential information is given, to be bound by similar confidentiality obligations as the Contractor/Supplier is bound under this Agreement.



1.2.6.5 In the event of any breach of this provision, the Contractor/Supplier shall indemnify the Purchaser from any liabilities, loss, damage or any other claims whatsoever from any parties claiming from or through him in respect of such breach.

1.2.6.6 A Non-disclosure Agreement (NDA) as per the format given in **Annexure-4** shall be submitted by the Contractor/Supplier.

### 1.2.7 Intellectual Property Rights (IIP)

Detailed intellectual property rights provisions to be adhered by the Contractor are given in **Annexure-5**.

## 1.3 The Purchaser

### 1.3.1 Permits, Licenses or Approvals

1.3.1.1 The Purchaser may provide, at the request of the Contractor/Supplier, such reasonable assistance in the form of issue of necessary certificates as required under law so as to allow the Contractor/Supplier to obtain any permits, licenses or approvals required by the laws of the country, which the Contractor/Supplier is required to obtain. However, no claim can be made by the Contractor/Supplier with respect to this clause. The Contractor/Supplier shall bear all costs, charges and expenses for the licenses, permits and approvals required to be obtained by him.

### 1.3.2 Purchaser's representatives

1.3.2.1 The **Project Director**, as mentioned in the Contract, shall act as an authority who can take all decisions related to this Contract.

1.3.2.2 The **Project Manager**, as mentioned in the Contract, shall act as a **Contract Manager** for the Purchaser and execute all such duties assigned to him by the project director for smooth execution of the Contract.

1.3.2.3 The **Technical Representative Officer**, as mentioned in the Contract, will be Purchaser's representative to carry out all technical functions concerning the Contract including inter-alia review of technical documents, post Contract technical follow up and such other technical functions with the approval of project manager.

1.3.2.4 **The Purchase Officer** as mentioned in the Contract is the Purchaser's representative for all commercial matters of the Contract and act as a **Commercial Coordinator**.

## 1.4 The Contractor/Supplier

### 1.4.1 Permits, Licenses or Approvals

1.4.1.1 The Contractor/Supplier shall, at his own cost, acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings that are necessary for the performance of the Contract. The Contractor/Supplier shall also acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser as per clause **1.3.1** (Permits, licenses or approvals) hereof and that are necessary for the performance of the Contract.

### 1.4.2 Compliance with law

1.4.2.1 The Contractor/Supplier shall comply with all laws in force in India and in the countries / states where the items/equipment are manufactured. The Contractor/Supplier shall

indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor/Supplier or its personnel, including the sub-contractors and their personnel.

#### 1.4.3 Contractor/Supplier's representative

- 1.4.3.1 The Contractor/Supplier shall appoint the Contractor/Supplier's key representatives, who are responsible for execution of managerial, technical and commercial aspects of the Contract. The details of the Contractor/Supplier representatives including their roles and responsibilities shall be intimated to the Purchaser before signing of the Contract.
- 1.4.3.2 The Contractor/Supplier's representatives shall represent and act for the Contractor/Supplier at all times during the tenure of the Contract. All notices, instructions, information and all other communications to be given by the Purchaser to the Contractor/Supplier under the Contract shall be given to the Contractor/Supplier's representative(s), except as herein otherwise provided.
- 1.4.3.3 The Contractor/Supplier shall promptly inform the Purchaser if there is any change in the Contractor/Supplier's representative personnel or their designated roles towards this Contract. In the absence of timely information regarding change of personnel or their designated roles from the Contractor/Supplier, the resulting damages/liabilities if any, shall not be attributable to the Purchaser.
- 1.4.3.4 During the Contract period, to carry out some activities listed in scope of work, the Contractor/Supplier needs to deploy his manpower at the Purchaser's office at the Contractor/Supplier's risk and cost. For this, the Purchaser will not provide any facility except office space, electricity, water and will not provide any local hospitality like lodging, transportation, food, etc.

#### 1.4.4 General obligations

- 1.4.4.1 The Contractor/Supplier shall design (to the extent specified in the scope), procure / manufacture (including associated purchases and/or sub-contracting), and supply the Items with due care and diligence in accordance with the Contract and with the Purchaser's instructions, and shall remedy any defects in the supplies occurring in warranty period.
- 1.4.4.2 The Items supplied by the Contractor/Supplier shall be of brand new with the best quality and workmanship and shall comply in all respects with particulars of the scope & technical specifications as per the Contract.
- 1.4.4.3 The Contractor/Supplier shall be deemed to have carefully examined all Contract documents and obtained clarifications from the Purchaser where needed, the quantities and nature of work and material necessary for the completion of the Contract, all necessary information for risks, contingencies and other. The price quoted in the price-bid format (Part-B), which rate and prices shall, except as otherwise provided, cover all his obligations under the Contract and all matters and things necessary for the proper completion of the supplies. The Contractor/Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully supplying the items. No claim on his part which may arise on account of non-examination or misunderstanding of the particulars and/or matter related to site will, in any circumstances, be considered payable by the Purchaser.

1.4.4.4 Each party shall bear their own expenses for visit of their personnel to other Party's end concerning execution of the Contract/Order.

#### 1.4.5 Sub-contracting, subletting or assignment of Contract

1.4.5.1 The Contractor/Supplier shall not sub-contract, sublet, transfer or assign the Contract or any part thereof, without the prior written consent of the Purchaser (All major sub-contractors are required to be appraised and approved by the Purchaser, before placement of orders by the Contractor/Supplier). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor/Supplier. Such assignment or subletting shall not relieve the Contractor/Supplier from any Contractual obligation or responsibility under the Contract.

1.4.5.2 The Contractor/Supplier shall be responsible for coordination of all activities with his sub-contractors

1.4.5.3 In case the Contractor/Supplier sublets, transfers or assigns any part of the Contract with the prior written consent of the Purchaser, all payments to the Sub-Contractor shall be the responsibility of the Contractor/Supplier and any requests from such Sub-Contractor shall not be entertained by the Purchaser.

1.4.5.4 All payment to the sub-contractors shall be made by the Contractor/Supplier

#### 1.4.6 Alteration of specifications and drawings

1.4.6.1 The Purchaser reserves the right to alter specifications and drawings, whenever necessary. As from that date, the supplies shall be in accordance with the specifications and drawings so altered which the Contractor/Supplier is bound to comply with.

1.4.6.2 In the event of such alteration involving a revision in the cost, or delay in the milestone achievement date, the same shall be discussed and mutually agreed.

#### 1.4.7 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date, one (01) day prior to date of Price bid opening shall apply unless otherwise specified. During the Contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with clause **1.17** (Changes), if applicable.

### 1.5 Contract Work Scope and Completion Time

#### 1.5.1 Scope of Work, Scope of Supply and Specifications:

Part-A(II) specifies the **scope of work, scope of supply, testing and technical specifications** of deliverables to be covered under this Contract.

Any tooling or accessories which may not be specifically mentioned in the Specifications but which are necessary for proper and efficient functioning of the items/systems as per the specifications of the tender shall be supplied by the Contractor/Supplier without extra charge to the Purchaser, the items/systems supplied shall be complete in all respects.



### 1.5.2 Delivery Dates and Completion Time

- 1.5.2.1 Supplier shall prepare and submit Engineering Design Documents describing hardware and software architecture for selection & approval of RFSoc to ITER-India **within 2 months** from effective date of the Contract/Order. Delivery of all the Hardware and Software items shall be made **within 12 months** from the date of approval of RFSoc by ITER-India. Final Acceptance of the items/system will be done **within 4 months** from the date of delivery of all the items/system at ITER-India site.
- 1.5.2.2 **The date of delivery and time for completion stipulated in the Contract shall be deemed to be the essence of the Contract.** Delivery and work completion must be accomplished within the dates/durations specified in Delivery Schedule.
- 1.5.2.3 In case fabrication of components depends upon external agencies, it will be the responsibility of the supplier to get the things done in right time so as not to get the delivery time schedule affected.
- 1.5.2.4 The date of the final acceptance note issued by the Purchaser after successful completion of Site acceptance tests at ITER-India Lab shall be considered as completion date.
- 1.5.2.5 The Contractor is required to maintain Hindrance Register for reporting hindrance if any, while executing the work and supply related issues, in an approved format. The Contractor shall get record of hindrances in the Hindrance Register approved / endorsed by the Purchaser's representative. Such hindrance in the Work or Supply endorsed by the Purchaser's representative will only be taken into consideration for granting time extension. Format of Hindrance Register will be provided in the Contract.

### 1.6 Free Issue Material (FIM):

No Free Issue Material (FIM) from Purchaser side is involved for execution of this Contract/Order. Purchase will provide facilities like electricity, water, space as may be required for final/site acceptance testing of the ordered items.

### 1.7 Bank Guarantees

#### 1.7.1 Security Deposit (SD)

- 1.7.1.1 Within a month from the date of signing of Contract/Order, the Contractor/Supplier shall submit an irrevocable Bank Guarantee (BG) equal to 3% (three percent) of total basic Contract/Order value on a non-judicial stamp paper of appropriate value, as "Security Deposit" towards satisfactory execution and performance of the Contract/Purchase Order.
- 1.7.1.2 For the BG towards the security deposit is issued by an Indian bank, it shall be from State Bank of India (SBI) /from any other Nationalized Bank /from one of the banks namely AXIS, HDFC, ICICI, and IDBI. The format of the Security Deposit is given in **Annexure-1**.
- 1.7.1.3 The Bank Guarantee shall remain valid until final acceptance of Items under this Contract/Order plus applicable claim period (minimum two months). If need arises, the Contractor/Supplier shall extend the validity of the Bank Guarantee for suitable period at his expenses.
- 1.7.1.4 If the Contractor/Supplier fails to provide the Security Deposit, within the period as specified in clause no. **1.7.1.1** such failure shall constitute a breach of Contract and and the

action as deemed fit may be initiated by the Purchaser.

- 1.7.1.5 In the event, the Contractor/Supplier fails to fulfil any of the obligations under the Contract; the Purchaser shall have the right to encash the Security Deposit.
- 1.7.1.6 Where the Contractor/Supplier fails to maintain the Contractual delivery date/completion time, the Contractor/Supplier shall extend the validity of Bank Guarantee(s) suitably to cover the extended/expected delivery date or completion time, failing which, the Purchaser shall have the right to invoke the Bank Guarantee(s) without prejudice to the terms and conditions of the Contract.
- 1.7.1.7 Upon satisfactory execution of the Contract, the original Bank Guarantee (s) shall be returned to the Contractor/Supplier on receipt of a request from the Contractor/Supplier.
- 1.7.1.8 No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of Contract.

#### 1.7.2 Performance Bank Guarantees (PBGs)

- 1.7.2.1 The Contractor/Supplier shall furnish to the Purchaser an interest free Performance Bank Guarantee (PBG) for 3% total contract/order basic value (excluding taxes and duties) by way of providing a Bank Guarantee from one of the banks mentioned in clause [1.7.1.2](#) on a non-judicial stamp paper of appropriate value for the satisfactory performance of the Items supplied against the Contract. The Performance Bank Guarantee (PBG) will be effective from the date of successful completion of Final/site acceptance test and shall remain in force until completion of warranty period mentioned in the Contract plus applicable claim period (minimum two months).
- 1.7.2.2 In the event that the Bank Guarantee needs extension, the Contractor/Supplier shall extend the validity of PBG for suitable period at his expenses. On the performance and completion of all contractual obligations including warranty, the original PBG shall be returned to the Contractor/Supplier without any interest on receipt of a request from the Contractor/Supplier. The Performance Bank Guarantee format is given in **Annexure-3**.
- 1.7.2.3 In the event, the Contractor/Supplier fails to fulfil any of the warranty obligations under the Contract; the Purchaser shall have the right to encash the PBG.

#### 1.7.3 Bank charges

- 1.7.3.1 All bank charges, if applicable, shall be borne by Contractor/Supplier only.

### 1.8 Contract Price, Payment and Recoveries

#### 1.8.1 Terms of Prices

- 1.8.1.1 The unit prices for this Contract shall be **firm with no price variation** during the validity and extended validity of the Contract.
- 1.8.1.2 Price/s are required to be quoted according to the units indicated in the Price Bid (Part-B). When quotations are given in terms of units other than those specified in the Price Bid, relationship between the two sets of units must be furnished.
- 1.8.1.3 Cost for travel, accommodation, lodging and other expenses which will be necessary for execution of the Contract/Purchase Order will be borne by respective Parties.

#### 1.8.2 Basis of Delivery

- 1.8.2.1 The price quoted should be inclusive of packing & forwarding, on Free Door Delivery



basis including insurance (transit), inclusive of assembly, final/site acceptance testing and for complete scope of supply and work as per Part-A(II) of the tender. Please refer clause no. [1.11.2](#) for details of “delivery address”.

### 1.8.3 Taxes and Duties

- 1.8.3.1 The price quoted should be exclusive of all applicable Indian taxes, levies, duties which are to be mentioned separately in the Price Bid (Part-B) at the prevailing rates.
- 1.8.3.2 **GST registration:** Bidder shall submit a copy of GST Registration certificate along with the bid.
- 1.8.3.3 GST will be extra as applicable at the prevailing rates. ITER-India, IPR is entitled to avail benefit of concessional rate of GST @5% against submission of exemption certificate under below mentioned notifications by the Purchaser:
- Integrated Tax (IGST) as per Notification by Department of Revenue, Ministry of Finance, Govt. of India Notification No. 47/2017 - Integrated Tax (Rate) dated 14<sup>th</sup> November, 2017
  - Central Tax (CGST) as per Notification by Department of Revenue, Ministry of Finance, Govt. of India Notification No. 45/2017-Central Tax (Rate) dated 14<sup>th</sup> November, 2017
  - State Tax (SGST) as per Finance Department, Govt. of Gujarat Notification No. 45/2017 – State Tax (Rate) dated 15<sup>th</sup> November, 2017
- 1.8.3.4 Supplier shall be liable to undertake assessment of likely GST impact on the price of the supplies being made to the Purchaser in light of the anti-profiteering provisions being proposed. After completion of such assessment, Supplier shall forthwith inform the Purchaser of the extent of reduction in cost so that the prices may be renegotiated accordingly and amendments can be made in the contracts. In case any deviation is found at subsequent stage, wherein GST impact has not been given effect to the cost for any reasons whatsoever, then any consequences arising thereof shall be borne by the supplier. The Supplier hereto agrees that all liabilities arising out of any default from complying with the aforesaid directions and consequences thereof will be of the Supplier and Purchaser is authorised to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the Supplier.
- 1.8.3.5 Supplier shall be liable to evaluate compliance requirements under GST and ensure proper mechanism for undertaking the same is put in place so that there is no loss of any kind to the Purchaser due to non-compliance on supplier. The Supplier agrees that in case of any loss arising out of acts of the Supplier or any non-compliance on the part of the Supplier, Purchase is authorised to recover the same along with interest from the Supplier and/or the same can be deducted from the amount payable to the supplier.
- 1.8.3.6 Supplier shall be liable to update GSTN and HSN Code as and whenever applicable to the item(s) supplied on Invoice and any mis-match/rejection due to GSTN/ HSN Code will be on supplier’s account and any loss of credit arising due to any non-compliance by the Supplier will be recovered from Supplier along with interest and / or the same can be deducted from the amount payable to the Supplier.

### 1.8.3.7 Custom Duty:



ITER-India is exempted from payment of Customs Duty. Hence, Custom Duty payable in India should not form a part of the bid (**Applicable for import material cleared in India**). The Purchaser will issue the customs duty exemption certificate for materials and bought out items, which are part and deliverables to order ITEMS. Purchaser shall neither issue customs duty exemption certificate nor reimburse the customs duty paid by the Contractor for the machines & tools purchased by the Contractor which are not a part/deliverable of the Contract. **List of materials and bought out items to be imported to India for this tender shall be submitted by the bidder along with the bid submission.** This List should include description of items and tentative quantity. The Contractor shall furnish priced purchase order copy of all items being imported for the Contract at least **60** days before actual import. Copy of L/C wherever applicable, shall also be furnished by the Contractor if the purchase of such components being imported to India, have been bought through L/C. Contractor has to maintain the list of all the Raw materials purchased, consumed and scrap for this Contract, in case the Custom Duty exemption is availed. Any proceeds received on the left out portion/scrap etc. of goods cleared through customs authority under the custom duty exemption provided by the Purchaser, applicable amount shall be given by the Contractor to the applicable Government authority and proof of payment to be submitted by the Contractor for release of final payment under the Contract/Order. All expenses including applicable GST, except customs duty, towards procurement of the imported materials should be borne by the Contractor.

1.8.3.8 Tax Deducted at Source (TDS) or any other leviable taxes and or duties:

1.8.3.8.1 Income tax (TDS), if applicable, at a prevailing rate will be deducted from the supplier's invoice(s). Certificate of TDS will be issued by the Purchaser.

1.8.3.8.2 TDS at the prevailing rate as per GST Act will be deducted from the supplier's invoice(s). A TDS certificate (Form GSTR-7A) will be issued to this effect.

1.8.3.9 In case, there is any other applicable taxes and duties, same should be informed by the bidder in the bid.

1.8.4 Mode of Payment and Payment Schedule:

ITER-India is fully funded by Government of India and the normal terms of payment are as follows:

1.8.4.1 **Mode of Payment:** Payment shall be made through RTGS/NEFT in INR within 30 days from the date of acceptance against each payment milestone as per [Table-2](#) and on receipt of error free invoice and other mentioned documents complete in all respects. Necessary mandate form for RTGS/NEFT will be provided at the time of Contract/order.

1.8.4.1.1 Wherever, advance payment is involved, it will be made subject to submission of Bank Guarantee (BG) for an equivalent amount from State Bank of India (SBI) / any Nationalized



bank or from one of the banks namely AXIS, HDFC, ICICI, IDBI. BG for advance payment should be furnished by Contractor/Supplier as per format given in **Annexure-2**.

1.8.4.1.2 Release of payment shall be subject to:

- i. Signing of Contract/order by both the Parties
- ii. Submission of Security Deposit as specified (refer: [1.7.1](#))
- iii. Submission of Advance Bank Guarantee (ABG) as specified

#### 1.8.4.2 Payment Schedule

1.8.4.2.1 The payment in INR to the Contractor/Supplier will be made as per the following terms (Table-2), on production of the requisite documents:

**Table-2: Payment Schedule:**

Sr. No.	Mile-stone for payment	% of PO value (basic amount) for payment	Documents required from the Supplier for release of payment
01	Advance against submission of Bank Guarantee for an equivalent amount	10%	A. Proforma invoice (Triplicate) B. Advance Payment Bank Guarantee for an equivalent amount of advance
02	Submission of Engineering Design Documents describing hardware and software architecture and selection/approval of documents including RFSoc against submission of Bank Guarantee for an equivalent amount	15%	A. Proforma invoice (Triplicate) B. Acceptance note issued by ITER-India for approval of Engineering Design Document, hardware & software and RFSoc C. Advance Payment Bank Guarantee for an equivalent amount
02	Payment against delivery of all hardware and software (complete delivery) items to On-Site address	50% [plus 100% of all applicable taxes and any other expenses (if applicable)]	A. A copy of Dispatch Clearance Note issued by Purchaser B. Tax Invoice describing the items delivered, quantity, unit rate (as applicable), their total value, in triplicate C. Delivery Challan duly inward at Security Gate and signed by ITER-India representative as delivery acknowledgement D. Copy of Lorry Receipt / Transporter's Way Bill
03	Payment against successful completion of Final/site acceptance of all the deliverables specified in the Contract/Order including training.	15%	A. A copy of Final Acceptance Note issued by the Purchaser B. Duly signed Pro-forma Invoice in triplicate C. Duly Signed Warranty Certificate



			D. Duly signed training completion certificate
04	Submission of all approved document deliverables and Performance Bank Guarantee (PBG)	10%	A. Duly signed Pro-forma Invoice in triplicate indicating list of approved document deliverables B. Performance Bank Guarantee (PBG) for 3% of total order basic value (excluding taxes and duties) C. Proof of payment of applicable duty to Government authority as mentioned in clause no. 1.8.3.7
Total		100%	

1.8.4.2.2 Validity of Advance payment bank guarantee – Advance Bank Guarantee (against Sr. No. 1 & 2 of Table-2) shall remain valid till complete delivery of all the Items plus applicable claim period (minimum two months).

#### 1.8.5 Recovery of advance payments in case of breach of Contract

1.8.5.1 In case the Contractor/Supplier fails to execute the Contract due to reasons not attributable to the Purchaser and which do not fall under force majeure as per the Contract conditions, the outstanding advance payments made shall be recovered, along with the interest at the prevailing Benchmark Prime Lending Rate (BPLR) of State Bank of India as on date of the Contract. This shall be without prejudice to the other remedies available to the Purchaser under this Contract.

#### 1.8.6 Recovery of Sums Due

1.8.6.1 Wherever any claim for the payment of Liquidated Damages or damage or loss suffered by the Purchaser arises in terms of money out of the Contract against the Contractor/Supplier, the Purchaser shall be entitled to recover such sums from any due payment under the Contract. In the event of this amount being insufficient, then the amount of damages or loss shall be recoverable from the payment that may become due, to the Contractor/Supplier from this Contract or any other Contract with the Purchaser. Should this sum be not sufficient to cover the amount of damages or loss that may be recoverable, the Contractor/Supplier shall pay to the Purchaser on demand, amount due. Similarly if the Purchaser had made any claim against the Contractor/Supplier under this Contract or any other Contract with the Purchaser, the payment of all sums payable under the Contract to the Contractor/Supplier shall be withheld to the extent of claims due according to the Purchaser till such claims of the Purchaser are finally paid by the Contractor/Supplier, pending which the same will be adjusted. Notwithstanding the provision for recovery through adjustment the Purchaser shall be free to recover his claims from the Contractor/Supplier as per the terms of the Contract.



## 1.9 Inspections and Dispatch Clearance

Refer Part-A (II) for more details regarding Inspection and acceptance test requirements.

### 1.9.1 Manufacturing & Inspection Plan

1.9.1.1 The Purchaser's representative or an authorized third Party shall be entitled at all reasonable times during manufacturing to inspect, examine and test the material and workmanship of all items to be supplied under this Contract at the Contractor/Supplier's /sub-contractor's/supplier's premises. However such inspection, examination and testing by Purchaser shall not release the Contractor/Supplier from his obligation under this Contract. Refer Part-A(II) for more details.

1.9.1.2 If part of said items/systems/components are being manufactured at other premises (viz. subcontractor/supplier), the Contractor/Supplier shall obtain a permission for the Purchaser's representative to inspect, examine, and test as if the equipment were being manufactured on the Contractor/Supplier's premises.

### 1.9.2 Dispatch Clearance Note

1.9.2.1 Contractor/Supplier shall obtain a Dispatch Clearance Note (DCN) on satisfactory pre dispatch inspection of Items/Systems from ITER-India Commercial Coordinator before effecting the dispatch.

## 1.10 Packing & Labelling

### 1.10.1 Packing Instructions

1.10.1.1 All components are required to be packed with standard soft material to avoid damages to the machined surfaces. All mating surfaces of flanges must be masked with proper covers to avoid damage during handling and transportation. The Contractor/Supplier shall be held responsible for all damages due to improper or poor packing.

1.10.1.2 Packing should be sturdy and rigid enough to withstand shocks and vibrations during transportation. The Contractor/Supplier shall provide suitable packing such as shock/vibration absorption material to avoid damage during transportation. The packing arrangement shall include (but not limited to) a necessary list of documentation and appropriate packing, markings, labelling, handling provisions for the items.

1.10.1.3 Any damage to the components during transportation or due to any other cause, will not be accepted and no compensation shall be paid by ITER-India for the same. The supplier shall take due care regarding packing and forwarding of the system. It is the liability of the supplier to deliver the system in perfect working condition to ITER-India. Damaged components will be repaired/ replaced by the supplier at free of cost.

1.10.1.4 The Contractor/Supplier shall submit a detailed transportation scheme including packing details to the Purchaser in advance for the approval.

### 1.10.2 Marking & Labelling

1.10.2.1 All packages shall be clearly, legibly and durably marked for correct identification with uniform block letters (preferably with waterproof paint) on at least three sides with:

- i. Delivery address (as communicated )
- ii. Contract Number and date
- iii. Net and gross weights



- iv. Sign showing 'SIDE UP'
- v. Any handling and unpacking instructions, if considered necessary.
- vi. In case of spare parts, each spare part shall be clearly marked and labeled on the outside of its packing with its description and catalogue/part number.

### 1.11 Delivery Basis

1.11.1.1 The items shall be delivered to the Purchaser's site (Delivery address given in 1.11.2.2) on free door delivery basis, freight paid and duly insured (covering transit insurance, installation, commissioning till final acceptance). All expenses including the freight, insurance, loading, unloading of items at Purchaser's site, shifting of items within Purchaser's site, installation testing and commissioning are to the account of Contractor/Supplier.

### 1.11.2 Ultimate Consignee & Delivery Address:

1.11.2.1 The ultimate consignee of the Purchaser is:

The Purchase Officer, ITER-India, Ahmedabad  
Phone: +91-79-23 26 96 56 / +91-79-23 26 95 30  
E-mail: [purchase@iter-india.org](mailto:purchase@iter-india.org)

1.11.2.2 Delivery/On-site Address:

ICRH Lab (3<sup>rd</sup> Floor),  
ITER-India Lab building  
Institute for Plasma Research Campus  
Bhat, Gandhinagar-382428  
Gujarat, India

1.11.2.3 Bill To:

Purchase Officer,  
ITER-India, Institute for Plasma Research  
Block A, Sangath Skyz,  
Bhat-Motera Road, Koteswar,  
Ahmedabad 380005

### 1.11.3 Delivery Documents

1.11.3.1 The Contractor/Supplier shall forward in advance to the Purchaser, by rapid Courier Service and scanned copies through e-mail, following documents:

- a. Original GST Invoice in triplicate
- b. Delivery Challan in triplicate
- c. Duly consignment receipted copy of Lorry Receipt.
- d. Despatch clearance note issued by the Purchaser

1.11.3.2 The dispatch documents such as Invoice, Delivery Challan etc., shall bear the "Contract Number", "Contract Date", "Destination/Delivery address"

### 1.11.4 Delivery Inspection

1.11.4.1 The boxes/packages containing the deliverable items, received at the Purchaser's site will



be unpacked by Contractor/Supplier's representative in the presence of Purchaser's representative for identifying the item & visually inspection for any loss/damage during transit.

#### 1.11.5 Risk of Loss/damages

1.11.5.1 The Contractor/Supplier shall be responsible, liable and accountable for risk of any loss or damages to deliverable items during transportation, till the Final Acceptance of complete system/deliverables at the Purchaser's site (ITER-India Lab, Gandhinagar, Gujarat, INDIA).

#### 1.12 Delay, Extension & Postponement

##### 1.12.1 Extension of Time (due to Contractor/Supplier)

1.12.1.1 In the event, the contractual delivery dates cannot be adhered to for any cause(s) attributable to the Contractor/Supplier, an application for extension of time with sufficient reasons shall be made by the Contractor/Supplier to the Purchaser. If failure, on the part of the Contractor/Supplier to deliver the items/completion of work in scheduled time shall have arisen from any causes which the Purchaser may find as reasonable ground for an extension of time (and his decision shall be final), he may allow such additional time as he may consider justified in the circumstances of the case through a formal notification. However, this extension shall be without prejudice to the Purchaser's right to recover Liquidated Damages (LD) as stipulated in clause [1.12.3](#). The Contractor/Supplier shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual delivery date / completion time.

1.12.1.2 If the Contractor/Supplier fails to apply and secure extension of Contract delivery date(s) (before effecting the supply of the items as in the Contract) acceptance of such supplies by the Purchaser, shall not entitle the Contractor/Supplier to claim payment on account of escalation or extra payment on account of increase of statutory levies or new statutory levies that may be payable at higher rate after the expiry of Contract delivery dates/Contract completion date (clause [1.12.2](#) ).

##### 1.12.2 Delay in delivery dates/completion time

1.12.2.1 Should the Contractor/Supplier fails to comply with contractual delivery dates and the reasons for such failures are attributed to the Contractor/Supplier, it shall be construed as a breach of the Contract and the Purchaser shall be entitled at his option to the following:-

1.12.2.1.1 To receive the deliverable items under the Contract after prescribed date of delivery with the right to recover the Liquidated Damages as per the clause [1.12.3](#).

1.12.2.1.2 To terminate the total Contract, as per clause [1.19](#) in case the liquidated damages (as per clause [1.12.3](#)) recovered from the Contractor/Supplier reaches maximum value. However, the Purchaser will inform in writing one month in advance to the Contractor/Supplier before exercising this clause.

##### 1.12.3 Liquidated Damages (LD)

1.12.3.1 If the Contractor/Supplier fails to deliver the items (as per Part-A(II)) within the time specified in clause No. [1.5.2.1](#) and the delay or part thereof is attributable to the Contractor/Supplier, the Purchaser shall recover from the Contractor/Supplier as liquidated damages for delay, sum of half percent (0.5 percent) of the Contract basic price per week (each full calendar week) of delay or part of the week of delayed period that is

attributable to the Contractor/Supplier. The total liquidated damages shall not exceed five percent (5%) of the Contract basic price. Applicable GST shall be charged, at the rate prevailing at that time, on LD amount. Delay in Final acceptance of Items/System shall not be covered under LD provisions.

1.12.3.2 Items will be deemed to have been delivered only when all its items and component parts are also delivered. If certain items/components are not delivered in time, the items will be considered as delayed until such time as the missing parts are delivered.

1.12.3.3 However, the payment of liquidated damages shall not in any way relieve the Contractor/Supplier from any of its obligations to complete the supplies and work scope or from any other obligations and liabilities of the Contractor/Supplier under the Contract.

#### 1.12.4 Force Majeure

1.12.4.1 Force Majeure is herein defined as any cause which is beyond the control of the Contractor/Supplier or the Purchaser, as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract, such as: Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.

1.12.4.2 Acts of any Government, domestic or foreign including but not limited to war-declared or undeclared, priorities, quarantines, embargoes.

1.12.4.2.1 Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-down in Contractor/Supplier's works.

1.12.4.2.2 Provided that Parties shall not be liable for delays in performing its obligations resulting from any Force Majeure causes as referred to/or defined above. The date of completion will subject to hereinafter provided, be extended by reasonable time even though such cause may occur after Contractor/Supplier's performance of his obligations has been delayed for other cause. However, the Contractor/Supplier is not entitled to increase in statutory levies that has come into force during the extended delivery period.

1.12.4.2.3 If the single period of Force Majeure goes beyond 90 days or total aggregate period of Force Majeure during the execution of contract goes beyond 180 days, then both the Parties shall mutually agree on financial implications, if any

#### 1.13 Support during integration and Final/Site Acceptance:

##### 1.13.1 Support during integration

Contractor/supplier shall provide support of technical man-power at site, to resolve any issues if arise during integration of RF measurement & control module with actual system. However, the responsibility of performance of integrated system lies with ITER-India

Note: The Contractor has to carry out Site Work/Support in a protected area and shall strictly follow ITER-India/IPR Security & Safety Protocol during execution of Site Work.

##### 1.13.2 Final Acceptance

Final Acceptance i.e. Site Acceptance of the Items will be subject to the fulfilment of requirements given in Part-A (II).

## 1.14 Rejection of defective goods & Contractor/Supplier's Liability

### 1.14.1 Rejection against Damages during Transit:

If the items/Systems/components or any portion thereof is damaged during transit, the Purchaser shall give notice to the Contractor/Supplier setting forth particulars of such items/Systems/Components damaged during transit. The replacement of such Systems/Components/Items shall be effected by the Contractor/Supplier within a reasonable time to avoid unnecessary delay in the intended usage of the Systems/Items. The costs of replaced items shall be borne by the Contractor/Supplier.

### 1.14.2 Rejection before final acceptance:

1.14.2.1 In the event that any of the items/components supplied by the Contractor/Supplier are found defective in material or workmanship or not in conformity with the requirements of the Contract specifications, before the final acceptance, the Purchaser shall reject the same and request the Contractor/Supplier in writing to repair or to replace the defective items free of cost to the Purchaser within a mutually agreed time period. However, such extension of time if any, shall be without prejudice to the Purchaser's right to recover liquidated damages as stipulated in clause [1.12.3](#).

### 1.14.3 Accident Liabilities during onsite work

1.14.3.1 Contractor/Supplier and his sub-contractors shall insure its own personnel and tools & equipments deployed at Purchaser's site against all risk, such as injuries, loss of life etc. The Contractor/Supplier will be fully responsible for payment of compensation to its own personnel.

1.14.3.2 The Contractor/Supplier shall take all possible precautions and avoid loss/damages to equipment/items/Purchaser's property during performing technical man-power support at site. In the event of loss or damage to Purchaser's property/any item(s)/equipment and/or injury or loss of life to Purchaser's personnel during the course of onsite work as a result of fault(s) in the items supplied under the Contract or due to the reasons attributable to the Contractor/Supplier's personnel, then, the Contractor/Supplier will be fully responsible for such damages/losses and payment of appropriate compensation. The Contractor/Supplier agrees to relieve the Purchaser from all the liabilities under this clause.

### 1.14.4 Limitation of liability

1.14.4.1 Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the Contractor/Supplier to the Purchaser, whether in tort or otherwise, shall not exceed the total Contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

1.14.4.2 The Purchaser being a research institute, indirect losses, that is loss of production and loss of profit is not applicable.

## 1.15 Indemnity

The Contractor/Supplier shall at all times indemnify and hold harmless the Purchaser and its employees and officers from and against all claims which may be made in respect of supplies covered by this Contract against infringement of any right protected by patent registration, law of designs, trademarks, utility model, copyright and other intellectual property rights registered or otherwise existing.

## 1.16 Warranty, Defect Liability, Latent defect

### 1.16.1 Warranty

- 1.16.1.1 The Contractor/Supplier shall warrant that the items i.e. FPGA based RF Control System supplied under this Contract comply fully with the specifications laid down, for material, workmanship and performance. The items shall be new, unused and free from any defects.
- 1.16.1.2 The Contractor/Supplier shall provide a warranty covering repair or replacement of the Items up to **2 years** from the date of final acceptance at On-Site. Warranty of (OEM) bought out items / procured components, if more than 2 years shall be intimated by the Contractor and will be applicable for all such items.
- 1.16.1.3 The Purchaser may accept the supplies, if it is complete in all respects or alternatively accept the same on such terms as may be considered appropriate. If the supplies, after the acceptance thereof is discovered to have defects, latent or otherwise, notwithstanding that such defects could have been discovered at the time of inspection, or any defects therein are found to have developed during the warranty/defect liability period, the Purchaser shall be entitled to give a notice to the Contractor/Supplier and within 60 days thereafter, setting forth details of such defects or failure and Contractor/Supplier shall forthwith make the defective supplies good or alter the same to make it comply with the requirements of the Contract at his own cost.
- 1.16.1.4 A reasonable time limit for repair or replacement of defective item(s) under warranty shall be guaranteed by the Contractor/Supplier and agreed by the Purchaser.
- 1.16.1.5 The repair or replacement of items under warranty by the Contractor/Supplier shall be on Free Door Delivery basis at On-Site address as per clause no. [1.11.2.2](#). The Contractor/Supplier shall be responsible for taking the damaged items under warranty from On-site and after delivering the replaced item.
- 1.16.1.6 If any supplied item is repaired/replaced during the warranty period, the Contractor/Supplier shall warrant all such items for a further period of at least 12 months from the date of repair/replacement, or remaining original warranty period, whichever is longer.
- 1.16.1.7 Further, if in the opinion of the Purchaser, defects are of such a nature that the same cannot be made good or repaired without impairing the efficiency or workability of the system or if in the opinion of the Purchaser, such opinion being final, the components cannot be repaired or altered to make it comply with the requirements of the Contract, the Contractor/Supplier shall remove and replace the defective component confirming in all respects to the stipulated specifications at the Contractor/Supplier's own cost.

### 1.16.2 Contractor/Supplier's Failure to Repair/Replacement of defective Goods

- 1.16.2.1 If the Contractor/Supplier fails to repair or replace the damaged/defective items within the agreed time period during the warranty period, the Purchaser at his option either :
  - 1.16.2.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor/Supplier
  - 1.16.2.1.2 Acquire the defective items/Systems/components at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses [1.16](#) and [1.14](#).



If the Contractor/Supplier fails to make the required repairs/ replacement within mutually agreed time, then in pursuant to clause [1.16.2.1.1](#), such repairs/replacement shall be carried out by the Purchaser, with due information on the actual costs incurred by the Purchaser in carrying out such work in connection therewith, against documentary proof by the Purchaser, shall be paid by the Contractor/Supplier to the Purchaser or recovered by the Purchaser from the payment due to the Contractor/Supplier. In such case, the Purchaser shall be entitled to use the items in a reasonable and proper manner on a mutually agreed basis for such time as sufficient to enable the Purchaser to obtain repair / replacement.

### 1.17 CHANGES

- 1.17.1.1 The Purchaser shall have the right to propose and order the Contractor/Supplier from time to time during the execution of the Contract to make any change, modification, addition or deletion to, in or from the supplies (hereinafter called “Change”), provided that such change falls within the general scope of the supplies and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the supplies and the technical compatibility of the change envisaged with the nature of the supplies as specified in the Contract.
- 1.17.1.2 The Contractor/Supplier may from time to time during its execution of the Contract propose to the Purchaser any change that the Contractor/Supplier considers necessary or desirable. The Purchaser may at its discretion approve or reject any change proposed by the Contractor/Supplier.
- 1.17.1.3 Notwithstanding Clause [1.17.1.1](#) and Clause [1.17.1.2](#), no change made necessary because of any default of the Contractor/Supplier in the performance of its obligations under the Contract and/or for Contractor/Supplier’s convenience, shall be deemed to be a change and such change shall not result in any adjustment of the Contract price or the time for completion.
- 1.17.1.4 If any of the items in addition to the schedule of supply of materials is required during execution of the Contract due to change in specifications, drawings, designs etc., which in the opinion of the Purchaser, if not procured promptly may delay the completion of the supplies, the Contractor/Supplier shall procure the required material as per the specifications to the extent required to keep the progress of work unhindered. The Contractor/Supplier shall be paid for such additional procurement in the following manner:
  - 1.17.1.4.1 If the required item/cost for change(s) proposed by the Purchaser is available in the Contract, the same unit rate/rate shall be used as cost for such change.
  - 1.17.1.4.2 If the required item/cost for change(s) proposed by the Purchaser is not available in the Contract, the Purchaser reserves the right to get the detailed break up with valid documentary evidence from the Contractor/Supplier. Contractor/Supplier shall provide the details asked by the Purchaser within the stipulated time. Purchaser and Contractor/Supplier shall mutually agree on such cost for change within 90 days from the date of such change proposed by the Purchaser.

### 1.18 Foreclosure of Contract

- 1.18.1.1 If at any time after acceptance of the tender / during execution of work, the Purchaser shall decide to abandon or reduce the scope of the work for any reason whatsoever and hence not require the whole or any part of the work to be carried out, the Purchaser

shall give notice in writing to that effect to the Contractor/Supplier and the Contractor/Supplier shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of the foreclosure of the whole or part of the Contract.

1.18.1.2 Upon receipt of the notice of foreclosure under sub-clause [1.18.1.1](#), the Contractor/Supplier shall either immediately or upon the date specified in the notice of foreclosure

- (a) Cease all further work, except for such work as may be specified in the notice of termination for the sole purpose of protecting that part of the items already supplied.
- (b) Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause (d) (ii) below
- (c) Stop all further purchasing and/ or subcontracting activities related to work foreclosed.
- (d) In addition, the Contractor/Supplier, subject to the payment specified in sub-clause [1.18.1.3](#) shall
  - (i) supply to the Purchaser the parts of the items procured by the Contractor/Supplier up to the date of foreclosure
  - (ii) to extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor/Supplier to the supplies and to the plant and equipment as of the date of foreclosure, and, as may be required by the Purchaser, in any subcontracts concluded between the Contractor/Supplier and its subcontractors.
  - (iii) Supply to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor/Supplier or its subcontractors as at the date of foreclosure in connection with the supplies.

1.18.1.3 In the event of foreclosure of the Contract under sub-clause [1.18.1.1](#), the Purchaser shall pay to the Contractor/Supplier the amount at Contract rates, properly attributable to supplies completed and/or the parts of the items supplied by the Contractor/Supplier and accepted by the Purchaser as of the date of foreclosure. If such cost of items supplied and accepted is not readily available in the Contract, same shall be mutually agreed between both the Parties.

## 1.19 Cancellation/Termination of Contract

### 1.19.1 Termination of Contract for default

1.19.1.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor/Supplier, terminate the Contract in whole or in part in circumstance detailed hereunder:

1.19.1.1.1 If the Contractor/Supplier fails to supply/provide any or all of the deliverable items, within the time period(s) specified in the Contract or any extension thereof granted by the Purchaser or within the period (10 weeks) till which the maximum LD amount is reached.

1.19.1.1.2 If the Contractor/Supplier fails to perform any other obligation(s) under the Contract within the period specified in the Contract or any extension thereof granted by the Purchaser

1.19.1.2 In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may take recourse to any one or more of the following actions. However, the Contractor/Supplier shall continue to perform the Contract to the extent not terminated.

1.19.1.2.1 Forfeiture of Security deposit

1.19.1.2.2 Recovery of Liquidated Damages (LD) as per the Contract.

1.19.1.2.3 To purchase from elsewhere, after (thirty) 30 days notice to the Contractor/Supplier, at risk and cost of the Contractor/Supplier, the supplies, materials and equipment, not delivered or other items of similar description when such deliverable exactly complying with the particulars are not in the opinion of the Purchaser readily procurable, such opinion being final, without cancelling the Contract in respect of the consignments not yet due for supply.

1.19.1.2.4 To cancel the total Contract or balance portion thereof, and if so desired, to purchase or authorize the purchase of the supplies, materials and equipment not so delivered or other deliverable of similar description, when such deliverable exactly complying with the particulars are not, in the opinion of the Purchaser, readily procurable, such opinion being final, at the risk and cost of the Contractor/Supplier.

1.19.1.3 In the event of action being taken under sub-clause [1.19.1](#) above, the Contractor/Supplier shall be liable for any loss which the Purchaser may sustain on that account. Contractor/Supplier shall not however be entitled to gain on such purchase made on account of his default. The manner and method of such alternate purchase shall be at the entire discretion of the Purchaser, whose decision shall be final. This right shall be without prejudice to the right of the Purchaser, to recover the damages for breach of Contract by the Contractor/Supplier as provided in the Contract.

1.19.1.4 If the Contract is terminated as provided in clause [1.19.1](#), the Purchaser in addition to any other rights provided in the clause, may require the Contractor/Supplier to transfer title and deliver to the Purchaser any completed items that are found to be useful and acceptable to the Purchaser. The Purchaser shall pay to the Contractor/Supplier, the Contract price of such completed items that are delivered to and accepted by the Purchaser.

1.19.1.5 The termination will not relieve the Contractor/Supplier from submitting the Performance Bank Guarantee for the portion not terminated.

#### 1.19.2 Termination of Contract for insolvency

If the Contractor/Supplier becomes bankrupt or otherwise insolvent or goes into liquidation, the Purchaser may, at any time, terminate the Contract, by giving a written notice to the Contractor/Supplier, without compensation to the Contractor/Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

#### 1.19.3 Termination of Contract for convenience

After placement of Contract, there may be some unforeseen situations compelling the Purchaser to cancel the Contract. In such a case, the Purchaser will send a suitable notice at least one month in advance to the Contractor/Supplier for cancellation of the Contract, in whole or in part, for Purchaser's convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the Purchaser suitably compensates the Contractor/Supplier on mutually agreed terms for terminating the Contract.



## 1.20 Precedence

In case of Conflict between the parties, the decision of Purchaser shall have precedence over this Tender.

## 1.21 Settlement of disputes and Arbitration

### 1.21.1 Settlement

1.21.1.1 Any disputes or difference arising out of or in connection with the Contract shall be to the extent possible settled amicably between the parties involving management from either side within one hundred and twenty(120) days. If amicable settlement cannot be reached within one hundred and twenty (120) days, then all disputed issues shall be settled by Arbitration as per clause [1.21.2](#)

1.21.1.2 Notwithstanding any reference to the arbitration as herein before provided (a) the Parties shall continue to perform their respective obligations under the Contract with due diligence, unless they otherwise agree, (b) the Purchaser shall continue to pay any undisputed amount to the Contractor/Supplier.

### 1.21.2 Arbitration

1.21.2.1 All disputes or differences arising out of or in connection with the Contract including the one connected with the validity of the Contract or any part thereof, should be settled by bilateral discussions.

1.21.2.2 The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor/Supplier. In case, the said Arbitrators are not able to settle the dispute by themselves, the matter shall be referred to the Arbitrator mutually nominated by the Purchaser and the Contractor/Supplier and whose decision shall be final and binding on both the parties. The sole Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed to between the parties. The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation (Amendment) Act, 2015 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only. The Courts of Ahmedabad, Gujarat shall only have exclusive jurisdiction to deal with and decide any legal or dispute arising out of the Contract.

1.21.2.3 Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

1.21.2.4 The parties shall continue to perform their respective obligations under the Contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

## 1.22 The Contract/Purchase Order

### 1.22.1 Signing of Contract/Purchase Order:

The Contract/Purchase Order shall be signed by authorized representatives of Contractor/Supplier and Purchaser

### 1.22.2 Amendments

Any amendment to the Contract/Purchase Order including its Attachments, Appendices and Annexures which may be necessary will be a result of a mutual agreement between



the Parties. It will be established within a reasonable time in the form of an amendment to the Contract, to be signed by both the Parties.

### 1.22.3 Coming into Force (Effect of Contract/Purchaser Order)

The Contract shall come into force from the date of Letter of Intent.

## 2 Annexures

The Attachments and Annexes referred to in this section shall form an integral part of this collaborative Contract.

1. Annexure-1: Bank Guarantee (Security Deposit)
2. Annexure-2: Bank Guarantee (Advance Payment)
3. Annexure-3: Performance Bank Guarantee (PBG)
4. Annexure-4: Non-disclosure Agreement (NDA)
5. Annexure-5: Intellectual Property Rights Provisions



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Annexure-1: Bank Guarantee (Security Deposit)

(On non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. \_\_\_\_\_ DATE: \_\_\_\_\_

THIS DEED OF GURANTEE MADE AT \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2021 between \_\_\_\_\_ having its registered office at \_\_\_\_\_ and one of its branches at \_\_\_\_\_ (hereinafter called “the Bank” which expression shall mean and include the said \_\_\_\_\_ and its successors and assigns) of the one part AND ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad 380005, Gujarat, INDIA (hereinafter called “the Purchaser” which expression shall mean and include the said ITER – India, AHMEDABAD and its successors and assigns) of the other part.

WHEREAS \_\_\_\_\_ (hereinafter called “the Contractor/Supplier”) having its registered office at \_\_\_\_\_ have entered into a Contract having Contract value of INR. \_\_\_\_\_ (In words \_\_\_\_\_) with the Purchaser being Contract No. \_\_\_\_\_ dated \_\_\_\_\_ for \_\_\_\_\_ in accordance with the terms, specifications and conditions contained therein.

AND WHEREAS under the terms of the aforesaid Contract, the Contractor/Supplier is to furnish to the Purchaser a Bank guarantee for an amount of INR. \_\_\_\_\_ (Rupees \_\_\_\_\_) being 3% of the total value of the Contract by way of security for fulfilment of the Contractual obligations on the part of the Contractor/Supplier there under.

AND WHEREAS the Contractor/Supplier has requested the Bank to guarantee the due payment of the aforesaid amount by the Contractor/Supplier to the Purchaser in case the Contractor/Supplier fails to fulfil any of the aforesaid Contractual obligations.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Bank hereby agrees unequivocally and unconditionally to pay within 48 hours, on demand, in writing from the Purchaser or any officer authorised by it in this behalf and without recourse to the Contractor and without any demur, or protest or objection, any amount up to and not exceeding INR. \_\_\_\_\_ (Rupees \_\_\_\_\_) to the Purchaser on behalf of the Contractor/Supplier.
2. This guarantee is valid and binding upon the Bank till final acceptance of the Items under this Contract and shall not be terminable or affected by notice of any change in this constitution of the Bank or of the firm of Contractor/Supplier or on account of any reason whatsoever.
3. The liability of the Bank hereunder shall not be impaired or discharged by any extension of time or variations or alterations made or conceded or agreed within or without the knowledge or consent of the Bank or by or between the parties to the said Contract.



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4. The liability of the Bank under this deed is restricted to the sum of INR. \_\_\_\_\_ (Rupees \_\_\_\_\_) and same shall remain in force two months beyond Final Acceptance of the ordered Items. In case any further extension of the present guarantee is required the same shall be granted on receiving instructions in writing there for from the Contractor/Supplier on whose behalf this guarantee is issued.
5. Unless proceeding for enforcing this guarantee is commenced against the Bank within ..... (specify applicable claim period, minimum 2 months required) from the expiry of the aforesaid period or such extended period or periods as aforesaid all the rights of the Purchaser under this guarantee shall be extinguished and the Bank shall be relieved and discharged from all liabilities hereunder.
6. The neglect or forbearance of the Purchaser in enforcement of any of its rights under the aforesaid Contract against the Contractor/Supplier shall in no way relieve the Bank of its liability under this deed.
7. OUR GUARANTEE shall remain in force until ..... successful completion of Final acceptance of the Items under this Contract and unless a claim under the guarantee is lodged on or before the above date, all rights of Purchaser under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

In witness whereof, we the \_\_\_\_\_ have executed this.

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

For \_\_\_\_\_  
(Indicate the name of bank with Postal address, Fax Number & email address)

Witnesses:

(1) Name: \_\_\_\_\_ Signature \_\_\_\_\_

(2) Name: \_\_\_\_\_ Signature \_\_\_\_\_



Annexure-2: Bank Guarantee (Advance Payment)

(On non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. \_\_\_\_\_ DATE: \_\_\_\_\_

1. WHEREAS on or about the \_\_\_\_\_ day of \_\_\_\_\_ 2021 M/s \_\_\_\_\_, a company registered under the companies act and having its registered office at \_\_\_\_\_ (hereinafter referred to as "the Contractor/Supplier") entered into Contract bearing No. \_\_\_\_\_ date \_\_\_\_\_ with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad 380005, Gujarat, India (hereinafter referred to as "The Purchaser") for the supply of \_\_\_\_\_ (hereinafter referred to as "the Equipment")
2. AND WHEREAS under the terms and conditions of the Contract an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) representing \_\_\_\_\_ percent advance payment out of the Contract value of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) is to be paid by the Purchaser.
3. AND WHEREAS ITER-India has agreed in pursuance of the said terms and conditions of the Contract to make an advance payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to the Contractor/Supplier on the Contractor/Supplier furnishing a Bank Guarantee in the manner herein contained.
4. NOW WE, \_\_\_\_\_ (Name and Address of the Bank) in consideration of the Purchaser having agreed to pay to the Contractor/Supplier an advance payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) do hereby agree and undertake to indemnify the Purchaser and keep the Purchaser indemnified to the extent of a sum not exceeding the said sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) against any damage or loss that may be suffered by the Purchaser by reason of non-fulfillment of any of the terms and conditions of the Contract by the Contractor/Supplier.
5. WE, \_\_\_\_\_ (Bank) do hereby undertake to pay the amount due and payable under this guarantee without recourse to the Contractor and without any demur, or protest or objection, merely on a demand from the Purchaser stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Purchaser by reason of breach by the said Contractor/Supplier(s) of any of the terms and conditions contained in the said Contract or by reason of the Contractor/Supplier(s)'s failure to perform the said Contract. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only).
6. WE, \_\_\_\_\_ (Bank) undertake to pay to the Purchaser any money so demanded notwithstanding any dispute or disputes raised by the Contractor/Supplier(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present guarantee being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor/Supplier(s) shall have no claim against us.



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7. AND WE, \_\_\_\_\_ (Bank) hereby further agree that the decision of the said Project Director, ITER-India as to whether the Contractor/Supplier has committed breach of any such terms and conditions of the Contract or not and as to amount of damage or loss assessed by the said Project Director as damage or loss suffered by the Purchaser/ITER-India on account of such breach would be final and binding on us.
8. WE \_\_\_\_\_ (Bank) further agree with the Purchaser that the Purchaser shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said Contractor/Supplier(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Purchaser against the said Contractor/Supplier(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor/Supplier(s) or for any forbearance, act or commission on the part of the Purchaser or any indulgence by the Purchaser to the said Contractor/Supplier(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving us.
9. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor/Supplier(s).
10. OUR GUARANTEE shall remain in force until \_\_\_\_\_ (complete delivery of ordered items) and unless a claim under the guarantee is lodged on or before ..... (specify applicable claim period, minimum 2 months required), all rights of the Purchaser under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

In witness whereof, we the \_\_\_\_\_ have executed this.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

For \_\_\_\_\_  
(Indicate the name of bank with Postal address, Fax Number & email address)

Witnesses:

(1) Name: \_\_\_\_\_ Signature \_\_\_\_\_

(2) Name: \_\_\_\_\_ Signature \_\_\_\_\_



Annexure-3: Performance Bank Guarantee (PBG)

**(On non-judicial stamp paper of appropriate value)**

BANK GUARANTEE NO. \_\_\_\_\_ DATE: \_\_\_\_\_

1. WHEREAS on or about the \_\_\_\_ day of \_\_\_\_\_ 2021 M/s \_\_\_\_\_, a company registered under the Companies and having its registered office at \_\_\_\_\_ (hereinafter referred to as "the Contractor/Supplier") entered into an Contract bearing No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as "The Contract") with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block A, Sangath Skyz, Bhat-Motera Road, Koteswar, Ahmedabad 380005, Gujarat, India (hereinafter referred to as "The Purchaser") for the supply of \_\_\_\_\_ (hereinafter referred to as "the Equipment").
2. AND WHEREAS under the terms and conditions of the Contract an amount of INR \_\_\_\_\_ (Rupees \_\_\_\_\_ only) representing balance \_\_\_\_ percent payment out of the total value of the Contract of INR \_\_\_\_\_ (Rupees \_\_\_\_\_ only) is to be paid to the Contractor/Supplier on the Final Acceptance of the Items and on the Contractor/Supplier furnishing a bank guarantee in a manner herein contained towards satisfactory performance of the equipment during warranty period, viz.12 months from the date of Final Acceptance of the said items/equipment.
3. NOW WE, \_\_\_\_\_ (Name and Address of the Bank) in consideration of the promises and the payment of said sum of INR \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) by the Purchaser to the Contractor do hereby agree and undertake to pay to the Purchaser the amount due and payable under the guarantee without recourse to the Contractor and without any demur or protest or objection, merely on a demand from the Purchaser stating that the amount claimed is due by way of loss or damage caused to or suffered by the Purchaser by reason of unsatisfactory performance of the equipment during the warranty period. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount no exceeding Rs \_\_\_\_\_ (Rupees \_\_\_\_\_ only).
4. WE, \_\_\_\_\_ (Bank) undertake to pay to ITER-India any money so demanded notwithstanding any dispute or disputes raised by the Contractor/Supplier(s), in any suit or proceeding pending before any Court or Tribunal relating thereto, our liability under this present guarantee bond being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Contractor/Supplier(s) shall have no claim against us for making such payment.
5. WE, \_\_\_\_\_ (Bank) hereby further agree that the decision of the Project Director, ITER-India as to whether the said equipment is giving satisfactory performance or not during the warranty period and as to the amount of damages suffered by the Purchaser on account of the unsatisfactory performance of the said equipment shall be final and binding on us.



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6. AND WE, the \_\_\_\_\_ (Bank) do hereby agree that our liability hereunder shall not be discharged by virtue of any Contract between the Purchaser and the Contractor/Supplier whether with or without our knowledge and/or consent or by reason of the Purchaser showing any indulgence or forbearance to the Contractor/Supplier whether as to payment, time for performance, or any other matter whatsoever relating to the Contract which but for this provision would amount to discharge of the surety under the law.
7. THIS GUARANTEE will not be discharged due to the change in the constitution of the Bank or the Contractor/Supplier(s).
8. OUR GUARANTEE shall remain in force until \_\_\_\_\_ (completion of Contract warranty period) and unless a claim under the guarantee is lodged with us on or before ..... (specify applicable claim period, minimum 2 months required), all rights of the Purchaser under the guarantee shall be forfeited and we shall be relieved and discharged from all our liabilities thereunder.

In witness whereof, we the \_\_\_\_\_ have executed this.

Dated the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

For \_\_\_\_\_

(Indicate the name of bank with Postal address, Fax Number & email address)

Witnesses:

(1) Name: \_\_\_\_\_ Signature \_\_\_\_\_

(2) Name: \_\_\_\_\_ Signature \_\_\_\_\_



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#### Annexure-4: Non-Disclosure Agreement

CONTRACTOR/SUPPLIER agrees following points to maintain non-disclosure of proprietary and/or confidential information that are presented/referred in the ITER-India Contract for “-----  
-----” vide Contract No.\_\_\_\_\_.

1. Any information from the referred documents will not be disclosed to any other third party or person for making any kind of references without the prior permissions from ITER-India.
2. In case information are to be revealed to a sub-contractor/ consortium partner, CONTRACTOR/SUPPLIER will sign similar ‘Mutual Non-Disclosure Agreement’ with the sub-contractor/ consortium partner and will submit a copy of the same to ITER-India for conforming the compliance of this ‘Mutual Non-Disclosure Agreement’.
3. Any information from the referred documents of this tender will not be used or published for any purposes other than necessary for the present Contract.

CONTRACTOR/SUPPLIER will take all necessary steps to protect the secrecy of the proprietary and/or confidential Information provided along with the Contract.

Date:

Place:

CONTRACTOR/SUPPLIER  
(Name and signature of responsible officer with SEAL)



## Annexure-5 - INTELLECTUAL PROPERTY RIGHTS PROVISIONS

### Intellectual Property and Provision

#### 1. General terms & definitions:

1.1 As defined in Article 1.2 & 1.3 of Annex on Information and Intellectual Property (IIP Annex) of the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (ITER Agreement), the following definition applies to information and intellectual property:

##### 1.1.1 Information:

“Information” shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in 1.1.2

“Information” shall also include confidential information like specifications, 3-D models, samples and prototypes.

##### 1.1.2 Intellectual property (IP):

“Intellectual Property” shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. It may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

- (a) have been held in confidence by their owner,
- (b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents and any form of electronic records
- (c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and
- (d) are not available to the receiving party without an obligation concerning confidentiality.

##### 1.1.3 Background Intellectual property:

“Background Intellectual Property” shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of the Contract, or outside of the scope of this Contract. (Entry into force shall be the date of Letter of Intent (LoI), in case the actual contract is signed after the LoI).



#### **1.1.4 Generated Intellectual Property:**

“Generated Intellectual Property” shall mean Intellectual Property that is generated or acquired with full ownership by ITER-India or by the Contractor and its subcontractors, pursuant to and in the course execution of this Contract

## **2. Provisions under background Intellectual Property:**

### **2.1 Declaration of background:**

2.1.1 The Contractor shall declare all Intellectual Property and Information which is held by the Contractor prior to the signature of the Contract or outside its scope and which is needed for carrying out the Contract – this information & Intellectual Property shall be subsequently be referred to as “the background”. The declaration shall provide detailed information on the origin and ownership of the background as well as any legal restrictions relating to its use of which the Contractor is aware. The declaration of the background forms part of the Contract.

2.1.2 The Contractor may identify additional background information after the signature of the contract. However, in such a situation, the Contractor needs to justify why such a background was not invoked originally into the Contract. The use of this Background information shall be authorized only after discussion with ITER-India.

2.1.3 The Contractor must clearly identify the use background information that belongs to a third party for which the Contractor has a license agreement. Further, he must obtain the rights form third party to allow him to use the background in conformity with 2.1.1 and 2.1.2.

2.1.4 The Contractor must clearly identify the Background information that is confidential. ITER-India shall preserve (in a manner agreed mutually with the Contractor) the confidentiality of the same. On transfer of component to IO, the Background confidential information so provided shall be communicated to IO and shall be protected by IO in a manner described in clause 2.2.2.

2.1.5 The background information provided by the Contractor shall be owned exclusively by the Contractor.

### **2.2 Access to Background information:**

2.2.1 The Contractor who has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items supplied to the ITER-India and the background information so provided is required:

- to construct, operate, use or integrate technology for research and development in relation to the IO facilities,
- to maintain or repair the item provided, or
- when deemed necessary by ITER-India, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such Background Intellectual Property to ITER-India, other Members (of IO) and to the IO either directly or through ITER-India, with the right of the IO to sub-license and the right of the ITER-India and other Members (of IO) to sub-license to their research institutes and



institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programme.

2.2.2 The Contractor who has incorporated background confidential information into the items provided to ITER-India and the background confidential information is required:

- to construct, operate, use or integrate technology for research and development in relation to the IO facilities,
- to maintain or repair the item,
- when deemed necessary by ITER-India in advance of any public procurement, or
- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that ITER-India and the IO have an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the IO facilities.

The confidential information shall be transmitted maintaining the protection for confidentiality in accordance with section 2.1.4. The recipient for such information shall use it only for the provisions identified above. IO guarantees this protection and compensation for damages arising from the misuse of the background confidential information shall be the responsibility of IO.

2.2.3 The Contractor's attention is drawn to Article 4.2.4 and 4.2.5 of the IIP Annex of ITER Agreement, whereby the contractor shall use its best efforts to either grant licenses to the background incorporated into the goods supplied under the Contract or to supply such goods to IO Members under the conditions established in Article 4.2.4 and 4.2.5 of the IIP Annex of JIA.

2.2.4 The Contractor is encouraged to make its background incorporated into the goods supplied under the Contract available for commercial purposes under the conditions established in Article 4.2.6 of the IIP Annex of ITER Agreement.

2.2.5 The Contractor shall grant on fair and reasonable conditions a license to use the background information & Intellectual Property, applicable to this Contract to any third party nominated by ITER-India for the purpose of fulfilling a Contract with ITER-India.

### **3. Provisions under Generated Intellectual Property**

3.1 All Information (defined in 1.1.1 above) provided by or on behalf of ITER-India to the Contractor shall remain the property of ITER-India. These shall not be shared without permission from ITER-India.

3.2 The background intellectual property provided by ITER-India will continue to be the property of the ITER-India. Any further extension of the IP during the course of execution of the Contract will also belong to the ITER-India.

3.3 If, during the process of execution of the contract, any improvement, refinement or technical changes and modifications are effected by the contractor to the background Information and IP owned by ITER-India and given to the Contractor for execution, such changes shall not affect



the title to the property of the ITER-India and it shall continue to own the modified Information and IP. ITER-India shall have absolute rights to assign, transfer, sublet, use and transmit all such Information and IP to its consultants, agents and collaborators. Contractor shall not have any claim or right whatsoever in respect of the above Information and IP.

- 3.4 Any information and Intellectual property generated during the course of execution of the Contract including those generated at the subcontractors end working for this Contract shall be communicated to ITER-India immediately and ITER-India shall have the first right to protect such generated intellectual property on its name. The Contractor shall take appropriate legal and administrative measures to enable ITER-India protect it in its own name.
- 3.5 In specific cases ITER-India may waive its right to take protection. In such a situation, the Contractor can take the protection of IP in its name and solely at its cost after reimbursing costs incurred by ITER-India (if any) on such a protection. At all times ITER-India shall be entitled to a royalty-free, non-exclusive, worldwide, irrevocable license with the royalty-free right to grant sublicenses on the resulting registered right.
- 3.6 If the Contractor or its employees desires to claim rights on the generated intellectual property, it shall be ensured that the same is possible, subject to compatibility with the Contractor's obligations under the Contract and also ensuring that the rights of ITER-India remain unaffected.
- 3.7 The Contractor shall be permitted to use the generated Intellectual Property for his own needs. For this, he needs to obtain license from ITER-India. The terms shall be mutually agreed.
- 3.8 The Contractor is made aware of the fact that ITER-India may at its discretion, decide to seek protection of a generated intellectual Property, outside India.
- 3.9 For generated IP where ITER-India, decides to seek protection, the inventors will assign their rights to ITER-India.
- 3.10 ITER-India will seek protection through DAE-IPR Cell.
- 3.11 Should the Contractor wish to seek protection of IP generated on the subject matter on the Contract within a period of 24 months after conclusion of the Contract, the same shall be conveyed to ITER-India. It may be noted that the subject of these IPs shall be considered to be a part of the Generated Intellectual Property (and subject to provision 3.3 above), unless the Contractor demonstrates that these have been created outside the scope of the Contract.

#### **4 Indemnities, repair rights and copyrights:**



Title: Development of FPGA (Field Programmable Gate Arrays)  
based RF Control System for RF Source

Tender Notice No.

I-ITN21002

- 4.1 In case the Contractor needs to use the intellectual property belonging to a third party, the Contractor shall indemnify ITER-India from any action for infringement associated with the third party intellectual property.
- 4.2 The Contractor shall have the first right to attend to repairs for proprietary supplies which incorporate background intellectual property owned by him. However, should the Contractor not be successful in effecting repairs for such supplies in the first instance, ITER-India shall have the right to effect repairs by whomsoever it may think fit.
- 4.3 The Contractor shall be responsible for obtaining all permits, license and copyrights required for the implementation of the Contract, as per laws applicable to the place where the Contract is executed. In case of inability to seek the necessary permits, licenses and copyrights, the Contractor shall inform the same to ITER-India and ITER-India shall decide whether to acquire the rights at costs payable by the Contractor or effect a decision to discontinue all or some part of the work

**Signed and delivered by**

Purchaser  
(Official Seal)

Contractor  
(Official Seal)