

**PART-A : ANNEX ‘III’**

**PARTNER AGREEMENT**

The Parties have agreed to enter into this agreement (the “**Agreement**”), made on .....20....

**BETWEEN**

**DAHER INTERNATIONAL**, a company duly incorporated under the laws of France, registered in Marseille under no 068 803 055, having its registered office at 10 place de la Joliette 13567 Marseille, France, represented for the purposes of the signature of this contract by M. Jean-Paul LAFITTE, its President,

Hereinafter referred to as the "**DAHER INTERNATIONAL**"

**AND**

**(INSERT NAME)**, a company duly incorporated under the laws of India registered in (...) under no (...), having its registered office at (...), represented for the purposes of the signature of this contract by (...), its President,

hereinafter referred to as the "**Partner**",

hereinafter referred to jointly as the “Parties” and individually as a “Party”

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## **APPLICABLE DOCUMENTS**

The **Special Conditions** and the **General Conditions** below and the following **Annexes** mentioned in their order of precedence:

**ITER Contract (ITER Organisation and DAHER) – Will be provided to Empanelled bidder(s)**

**Implementation Agreement (between INDA and DAHER) (Refer Annex - IV to the Tender Document)**

**Technical Specifications (Refer Annex I to the Tender Document)**

**Financial Annex (Refer Annex II to the Tender Document)**

**Template of Task-Orders (Refer Annex V to the Tender Document)**

Which form an integral part of this Agreement.

It is further agreed that:

The terms set out in the Task Orders shall take precedence over those in this Agreement.

## **PREAMBLE**

WHEREAS:

the ITER Organization and the ITER Members (European Union, Japan, the People's Republic of China, India, the Republic of Korea, the Russian Federation and the USA) intend to construct the ITER Tokamak and its associated plant systems ("**ITER Project**") in Europe, at Cadarache, in southern France

the ITER Members have each established a Domestic Agency to manage and provide the components and the supplies they have in their respective scope to ITER Organization;

the ITER Organization and the Domestic Agencies have retained the services of DAHER INTERNATIONAL as Logistic Service Provider in connection with the management of all transportation, logistics, insurance and related services for the loads to be transported from each ITER Member and delivered to the ITER Cadarache site in France;

the ITER Organization has therefore entered into an agreement with DAHER INTERNATIONAL on February 10, 2012 (the "**ITER Contract**" as referred in Annex 1);

the subject of the ITER Contract is to establish a framework for the provision of global transport and logistics services and global transport insurance and the ordering of such Services by the Beneficiaries and/or their suppliers for the ITER Project;

the Parties agree that the terms and conditions of the ITER Contract will be applicable to this Agreement;

the ITER Contract provides that DAHER INTERNATIONAL as global logistics services and global transport insurance provider shall enter into an agreement with each Partner in order to

define for the ITER Project the level of delegation granted by DAHER INTERNATIONAL to such Partner to sign and execute Task Orders in accordance with the terms of the ITER Contract;

the ITER Contract provides that the Partner shall be the exclusive subcontractor of DAHER INTERNATIONAL on the territory of the Domestic Agency in which it is located;

the Partner is experienced in providing transportation, logistics, and related services and is capable of providing such transportation, logistics and related services for the ITER Project in India, France, EU, Switzerland, USA, South Korea, China, Japan, Italy, Russia and the Partner is duly accredited as Custom Authorised Operator (AEO);

the Partner hereby agrees to provide the Services described in this Agreement and in the Annexes attached hereto and forming a part hereof;

the Partner recognises the role of the ITER Organization's suppliers, the Domestic Agency and/or the Domestic Agency's Suppliers and agrees that they may be the initiators and the requestor of the Services in place of DAHER INTERNATIONAL through Task Orders; and

this Agreement does not create any obligation for the ITER Organization's suppliers, the Domestic Agency and/or the Domestic Agency's Suppliers to order Services exclusively to the Partner as they are entitled to request such Services from other local economic operators.

NOW, THEREFORE, in consideration of the covenants hereinafter contained, DAHER INTERNATIONAL and the Partner agree as follows:

## **DEFINITIONS**

In the Agreement, the following words and expressions shall have the meanings hereby assigned to them, except where in the context another meaning is obviously required:

**Partnership Agreement** shall mean the present Agreement agreed between DAHER INTERNATIONAL and the Partner.

**Beneficiaries** shall mean ITER Organization, the Domestic Agency and also includes its mandated Suppliers.

**Conventional Exceptional Loads (CEL)** shall mean those loads that cannot be transported in a shipping container and may require a permit to transport over public roads regarding regulations about dimension and weight allowances.

**Conventional Loads (CL)** shall mean loads that can be transported in a shipping container by common commercial carrier/liner service or within standard trailers.

**Indian Domestic Agency (INDA)** shall mean the legal entity created by the Indian Government as a Member of the ITER Organization in order to complete the ITER Project at ITER Site.

**Highly Exceptional Loads (HEL)** shall mean those loads that cannot be transported over French classic roads but have to travel over the ITER heavy haul itinerary from La Pointe harbour to the ITER site.

**ITER Organization (IO)** shall mean the ITER International Fusion Energy Organization established for the joint implementation of the ITER Project.

**ITER Project** means the design, construction, assembly, testing, commissioning, ownership and maintenance of the ITER Project at a site located in Cadarache, France.

**ITER Site** means the land leased to IO by the CEA by notarial deed with a possible extension on which the facilities necessary for the ITER Project are to be constructed.

**ITER Strategic Management Plan** presents the time-phased reference strategic plan with key milestones for the IO and DA's and establishes the boundary conditions of project performance. The SMP is milestone-driven and assists top management in the IO and DAs with project decision-making. The SMP represents a "roll-up" from integrated Detailed Working Schedules (DWS) in the IO and DAs that contain the activities, milestones and interfaces encompassing the detailed scope of the project and that support the Council-approved Overall Project Schedule (OPS), which is the Level-0 reference schedule.

**Load** means any Heavy Exceptional Loads, Conventional Exceptional Loads or Conventional Loads.

**Members of the ITER Organization** means any Party to the ITER Agreement and currently the European Atomic Energy Community, the Government of the People's Republic of China, the Government of the Republic of India, the Government of Japan, the Government of the Republic of Korea, the Government of the Russian Federation, and the Government of the United States.

**Partner** shall mean [XXXXX] as the Transport and Logistic Service Provider, Party to this Agreement.

**Partner Staff** means those directors, officers, employees, agents and servants employed by the Partner from time to time in the performance of its duties and obligations in relation to the Services, including, without limitation, the senior Manager with ongoing responsibility for the relationship and the Operations Director.

**Requesting Party** means the entity (DAHER INTERNATIONAL, the ITER Organization's Suppliers, the Domestic Agency and/or the Domestic Agency 's Suppliers) requesting the performance of Services through a Task Order.

**Services** shall mean any service related to global logistics, transport and insurance, the Partner shall be required to perform in the performance of any agreed Task Orders, as described in the Technical Specifications attached as Annex-III.

**Subsidiary** shall mean any entity which controls, is controlled by, or is under common control with the Partner. For purposes of this definition, "control" means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) ownership of more than fifty percent (50%) of the stock or voting rights.

**Subcontractor** shall mean an economic operator or consortium who is under contract to the Partner to perform any parts of the Services.

**Subcontractor's Staff** shall mean with respect to any Subcontractor, those directors, officers, employees, agents, and servants employed by such Subcontractor from time to time in discharging its duties under its Subcontractor.

**Supplier** shall mean any economic operator which supplies or otherwise provides to the DA or ITER components.

**Task Order** shall mean the formal contractual agreement ordering a service, logistic or transport, insurance, to be performed by the Partner and DAHER INTERNATIONAL.

**Third Party Surveyor** shall mean an independent instance, acting in the role of verifier/arbitrator and being responsible for the controls at each handling point from the first loading at the Supplier's dock or shop floor to the final off loading at the ITER site. The foregoing described responsibility also includes the control of the safety aspects of the Itinerary before and during the transports.

Words importing the singular also include the plural and vice versa where the context requires.

## **SPECIAL CONDITIONS**

### **ARTICLE I.1: SUBJECT OF THE AGREEMENT**

I.1.1 The subject of this Agreement is to establish a framework with the Partner for the provisions of any service related to transport, logistics and insurance for the ITER Project as further specified in the Technical Specifications annexed to this Agreement and the ordering of such Services by the Requesting Parties.

I.1.2 The Services to be provided can be categorized as follows:

Logistic services to **ITER-India (INDA) and/ or INDA's Suppliers**, DAHER INTERNATIONAL, the ITER Organization's suppliers, as described in the Technical Specifications attached in Annex III.

Transport and insurance services for different types of loads defined hereunder in paragraph I.1.3 below and as described in the Technical Specifications attached in Annex 3.

Should the Partner be requested to provide additional services not identified in the present Agreement, the detailed terms and conditions shall be agreed between the Partner and DAHER INTERNATIONAL in compliance with the provisions of this Agreement.

Services shall only be provided by the Partner upon acceptance and signature of a Task Order between a Requesting Party, the Partner and the countersignature of DAHER INTERNATIONAL in accordance with the provisions of Articles I.2 and I.7 below.

All Task Orders pursuant to the Contract shall conform to the terms set out therein and may specify details of specific conditions to be implemented under the Task Order.

I.1.3 The different loads to be transported once ordered through a Task Order are the following:

- a. HEL: Highly Exceptional Loads.
- b. CEL: Conventional Exceptional Loads
- c. CL: Conventional Loads
- d. Any other piecemeal shipment

### **ARTICLE I.2: BENEFICIARIES/ REQUESTING PARTIES/ PARTNER**

I.2.1 As provided under the ITER Contract, the Beneficiaries and/or their Suppliers shall contract Services through Task Orders:

- directly from DAHER INTERNATIONAL; or
- from the Partner located in the Domestic Agency territory requesting the Services with DAHER's countersignature.

Task Orders placed by the Beneficiaries and/or their Suppliers to the Partner shall create independent contractual relationships between the respective contracting parties.

If the Partner refuses and/or fails to deliver Services in accordance with this Partnership Agreement, DAHER INTERNATIONAL shall, without prejudice to any other rights or remedies which it possesses, propose an alternative solution to perform the Services. Any costs incurred by DAHER INTERNATIONAL due to the performance of the Services will be notified and invoiced to the Partner.



I.2.2 The Partner shall be instructed to perform Services under the terms and conditions of this Agreement:

by DAHER INTERNATIONAL, when the Beneficiaries and/or their Suppliers decide to contract Services directly from DAHER INTERNATIONAL and subsequently DAHER INTERNATIONAL decides to subcontract the execution of a Task Order arising from the Beneficiaries and/or their Suppliers to the Partner, or directly by the ITER Organization's Suppliers, the INDA, and/or the INDA's Suppliers.

The Partner recognises the role of the ITER Organization's suppliers, and the INDA, and/or the INDA's Suppliers agrees that they may be the initiators and the requestor of the Services in place of DAHER INTERNATIONAL through Task Orders.

I.2.3 The Partner has exclusive relationship for the ITER Project with DAHER INTERNATIONAL in the Indian territory.

However, this Agreement does not confer any exclusive right to the Partner to supply any Services referred to in the above paragraph as the ITER Organization's Suppliers, and the INDA, and/or the INDA's Suppliers may intend to choose local economic operator other than the Partner for the performance of defined portions of the Services pursuant to the terms of the ITER Contract. Said economic operator shall be approved by DAHER INTERNATIONAL, be integrated in the industrial organization of DAHER INTERNATIONAL with agreed suitable procedures and controlling requirements.

### **ARTICLE 1.3: PARTNER'S DUTIES AND STATUS**

I.3.1 The objectives of the Requesting Parties are to have:

all Loads delivered to the ITER Site for the construction of the ITER Project, as further described in the Technical Specifications (Annex3),

the Agreement completed within budget and schedule (Strategic Management Plan), and

the Partner utilize its skill and expertise in order to achieve the foregoing objectives, in accordance with the standards of care set forth below and with the other terms and conditions of this Agreement.

I.3.2 DAHER INTERNATIONAL appoints the Partner according to this Agreement, who agrees, to:

- a. provide logistics ,transport and insurance services,
- b. perform or cause to be performed all of the duties, obligations, responsibilities and covenants under this Agreement,
- c. complete the Services in accordance with the objectives set out in this Agreement

The Partner further agrees to:

- a. provide-logistics ,transport and insurance services through a Task Order placed by one of the Requesting Party,

- b. perform or cause to be performed all of the duties, obligations, responsibilities and covenants under this Agreement,
- c. complete the Services in accordance with the objectives set out in this Agreement,
- d. provide any documents and services needed by DAHER INTERNATIONAL to establish the Transportation and Logistics Global Plan, the Management Plan and Quality Plan,
- e. support DAHER INTERNATIONAL for the duration of the Agreement to meet the Beneficiaries' requirements,
- f. utilize its skill and expertise in order to achieve the objectives set out in this Agreement, in accordance with the standards of care set forth below;
- g. furnish its best skill and judgment, in an expeditious and economical manner, in furthering the interests of the ITER Project;
- h. comply with applicable laws, ordinances, codes, rules, regulations, international conventions, insurance practices or orders of any public authority; and
- i. use best efforts to cause others to comply with the applicable laws, ordinances, codes, rules, regulations, international conventions, insurance practices or orders of any public authority.

I.3.3 The Partner shall only execute customs related documents on behalf of the Requesting Parties upon agreement between the Partner and the Requesting Party and after recommending the specific terms and conditions of such documents to the Requesting Party and receiving the prior written authorization of the Requesting Party to execute such specific documents. The Partner shall notify the Requesting Party concerned if the Partner believes any decision, or course of action proposed or undertaken by the Requesting Party is not prudent or is not in the ITER Project's best interest.

I.3.4 The Partner warrants that it is financially solvent and that it can deploy the necessary personnel, materials, supplies and equipment required to complete the Services (as defined in the Technical Specification in Annex 3) in a timely manner.

#### **ARTICLE I.4: PARTNER'S UNDERTAKINGS**

I.4.1 The Partner shall perform the Services set forth in this Agreement and the Annex III.

I.4.2 The Partner hereby agrees to provide to the Requesting Party during the duration of this Agreement the Transportation Logistics Services specified in the following paragraphs of this Section. The Partner shall provide such Services in accordance with the Technical Specifications set forth in Annex 3. In fulfilment of its obligations to the Requesting Party hereunder, the Partner shall:

- a. Arrange for and carry out the Services associated with the shipment of Loads from and to any Requesting Party when such service is requested in a Task Order;
- b. Arrange for the safe and timely shipment of products throughout the world, to, from and between Beneficiaries, their Suppliers and other recipients of the Loads, and any warehouse as specified in the respective Task Orders;

- c. Assist DAHER INTERNATIONAL and the Requesting Party with the definition and design of the packages and the frames of the loads to be transported if so requested by the Requesting Party;
- d. As time is of the essence with respect to shipment of Loads, provide all equipment necessary to effect the timely and safe shipment of Loads from origin to destination. In view of the latter, the Partner shall not give priority to other client(s) for the use of its equipment for their projects if this would delay the ITER delivery schedule;
- e. Provide direct services wherever possible or practical from origin to destination for the Loads;
- f. Where practical and in compliance to the Task Order conditions, propose to DAHER INTERNATIONAL to consolidate Tasks Orders to optimize Loads for delivery by the same mode of transport. The Partner shall also maximize equipment utilisation and provide cost savings solutions. Access to the Load optimization system shall be given to DAHER INTERNATIONAL in order to perform load optimization, testing and modelling as needed;
- g. Use its best efforts to effect cost savings for the Requesting Party either by optimising the rates charged or by improving the processes and procedures for shipment of Loads. He shall also seek competitive options when replying to a Task Order Request for a defined transport and justify DAHER INTERNATIONAL and Requesting Party its choice based on costs, schedule constraints. When competition is not possible as the Partner is also the transporter, he shall provide evidence that the prices proposed are the best ones taking into account the different operational constraints related to the said transportation;
- h. Propose to DAHER INTERNATIONAL a Third Party Surveyor from nominated companies by DAHER to inspect the goods in accordance with the terms of the Technical Specifications (Annex III).

I.4.3 The Partner undertakes to respect the applicable laws of the places of execution, security instructions and safety precautions in the best interest of the work of its personnel, the handling of the cargo and the custody of the ITER equipment and components.

I.4.4 The Partner shall have the right to subcontract, part of the ordered transportation and logistics services. Subcontracting to third party shall be allowed on condition that the envisaged Subcontractor complies with all the specifications required by the Requesting Party concerned by the Task Order. Subcontracting is only with the approval of requesting party and DAHER. The envisaged Subcontractor shall be qualified to perform the ordered transportation and meet the criteria indicated below. All Subcontractors appointed by the Partner shall be subject to the terms and conditions set forth herein. Sub-contracting shall not relieve the Partner from its overall responsibility to provide the Services.

I.4.5 The Partner shall not be entitled to have any lien on any freight, consignments or documents relating to shipments in its possession, custody or control for any sums due at any time.

## **ARTICLE I.5: KEY PERSONNEL**

Article II.1a of the General Conditions shall be completed with the following provisions:

I.5.1 Partner's Project Director is considered as Key Personnel for the duration of this Agreement.

I.5.2 Assignment and Conduct of Employees

The Requesting Party and DAHER INTERNATIONAL reserve the right to approve Key Personnel assigned to the ITER Project, and reserves the right to require the removal from the location of any Partner's Staff who, in the reasonable opinion of the Requesting Party (a) misconducts himself, (b) is incompetent or negligent in the proper performance of his duties, or (c) consistently does not abide by the standards set forth in this Agreement. The Requesting Party shall notify the Partner in writing of the reasons for any instruction to remove Partner's Staff under this Article.

If any Partner personnel are unable due to illness or other incapacity or for any other reason to supply the Services on any day on which the Partner is required to provide the Services, the Partner will notify or cause the relevant Partner personnel to notify the Requesting Party as soon as possible.

## **ARTICLE I.6: RIGHTS OF INSPECTION**

The Partner shall keep accurate and up to date records showing all amounts due and all amounts paid by the Requesting Party for the Services and all other activities ordered and performed by the Partner, and shall keep these records for a period of five (5) years after the term of this Agreement.

During the whole duration of the Agreement, the Partner shall permit the Requesting Party and DAHER INTERNATIONAL to verify the Partner's performance records referenced herein for their own ordered services. For that purpose the Requesting Party's designated auditors or other personnel, or its regulators, at their own expense, shall be allowed to review the records related to their own expenses. Notification of the inspection shall be given to the Partner with ten (10) day prior written notice.

Inspectors shall verify the records at all reasonable times during Partner's normal business hours and respect the confidentiality requirements of the Partner.

## **ARTICLE I.7 – TASK ORDER PROCEDURE**

I.7.1 Task Orders placed to DAHER INTERNATIONAL, when the Beneficiaries and/or their Suppliers decide to contract Services directly from DAHER INTERNATIONAL, DAHER INTERNATIONAL shall subcontract to the Partner the Services to be performed from the manufacturing site until the point of export from DA territory under the terms and conditions of this Agreement and the Implementing Agreement entered into between the Domestic Agency and DAHER INTERNATIONAL.

I.7.2 Task Orders placed to the Partner with DAHER INTERNATIONAL countersignature Pursuant to the ITER Contract, it is understood that the ITER Organization's Suppliers, the Domestic Agency, and/or the Domestic Agency's Suppliers are entitled to directly contract with the Partner for the performance of Services.

I.7.3 INDA and/or mandated their Suppliers shall identify the tasks and requirements for the Services to be performed. The Task Order will be signed by INDA or its Supplier (s) and it will be countersigned by INDA, Local Partner, DAHER, EU DA and the mandated Supplier.

When the Requesting Party places a Task Order directly to the Local Partner:

- The Partner shall submit the Quotation for Services (applicable only for HELs) to the Requesting Party.
- The Task Order shall be placed by the Requesting Party in accordance with the terms and conditions of the Implementation Agreement and this Agreement.

- DAHER INTERNATIONAL shall countersign the Task Order.

I.7.4 DAHER INTERNATIONAL shall act as a Global Logistics Service Provider as per the ITER Contract and shall give the Partner the necessary instructions to be in a position to perform any and all its duties and obligations under the ITER Contract as well as in the Task Order. The Parties shall establish a common set of proceedings to govern their relationship in connection with this role of Global Logistics Service Provider.

I.7.5 If for any reasons whatsoever, the Requesting Party contract with the Partner for performance of defined portions of Services and without DAHER INTERNATIONAL's countersignature, the partner shall then be directly responsible for the Services towards the Requesting Party under the corresponding Task Orders.

I.7.6 Task Orders placed to DAHER INTERNATIONAL, When the Beneficiaries and/or their Suppliers decide to contract Services directly from DAHER INTERNATIONAL. DAHER INTERNATIONAL shall subcontract to the Partner the Services to be performed from the manufacturing site until the point of export from Indian Territory under the terms and conditions of this Agreement and the Implementing Agreement entered into between the INDA and DAHER INTERNATIONAL.

I.7.7 The Task Order shall be issued in accordance with the template attached as Annex V hereto. The signature process of a Task Order shall always comply with the following:

- (a) any Task Order placed with the Partner shall be countersigned by DAHER INTERNATIONAL;
- (b) all Task Orders providing transportation services from point of origin to the ITER Site with a point of entry at the Harbour 'Grand Port Maritime de Marseille' or Marignane Airport, shall be approved or countersigned by the European Domestic Agency.
- (c) without prejudice to the condition in paragraph b) above, all Task Orders requested by a Supplier shall be countersigned by INDA or by the ITER organization for IO Suppliers.

I.7.4 The Task Orders stipulated in Article I.7.3 b) above shall explicitly detail two phases of transportation, in addition to all requested information mentioned in the Task Order Request:

The first phase shall describe all the Services from the place of origin to the point of entry at the Harbour 'Grand Port Maritime de Marseille' or Marignane Airport, with a dedicated price and related conditions;

The second phase shall describe the Services from the point of entry (delivered on quay at the Harbour 'Grand Port Maritime de Marseille' for Marseille Harbour or ground for Marignane Airport) up to the ITER Site either by the dedicated itinerary or the classic road infrastructures, with a dedicated price in euro and related conditions.

The two phases shall be invoiced separately as identified in Article I.12 below.

The payment terms mentioned in the respective Task Order (s) will prevail for the Services or the part of Services which will be executed with Domestic Agency (DA) other than European DA.

Notwithstanding the above structural split, the overall responsibility in relation with a Task Order request and implementation remains with the Requesting Party requesting the transport.

## **ARTICLE I.8 – LIABILITY AND INSURANCE**

I.8.1 The Partner shall at all time during the performance of the Agreement be liable to comply with the requirements of the Agreement, including any of the formal contractual documents provided to him such as Task Orders.

Except as otherwise provided in the Agreement, the Partner shall be fully liable for the non-performance of the Agreement, including the Task Orders, or of any of related services, as a result of and to the extent of:

- the negligent acts, wilful misconduct, fault, errors, omissions, or;
- breach of the Agreement.

The Partner shall be responsible and liable for acts and faults of his Subcontractors or Subsidiaries.

I.8.2 Damage to Property of DAHER INTERNATIONAL and/or the Beneficiaries and to persons caused by the Partner, its Subcontractors, and/or its Subsidiaries:

The Partner shall bear any and all loss of or damage (including deterioration or theft) to property and any bodily injury (including death) and all consequences, whether direct or indirect, of such loss, damage (including deterioration or theft) or bodily injury (including death), which it or its Subsidiaries and Subcontractors may sustain, directly or indirectly, arising out of the performance of the present Agreement.

I.8.3 Damage to DAHER INTERNATIONAL's or the Beneficiaries' properties, the Beneficiaries' entrusted loads and their contents made available to the Partner and/or its Subsidiaries:

The Partner assumes responsibility for the care, custody and risk for the Beneficiaries' assets, the entrusted loads and their contents made available to him from the date of their hand over by the Beneficiary and/or DAHER INTERNATIONAL to the Partner.

The Partner is liable in the same condition if the services are implemented by any of its Subsidiaries or Subcontractor.

The Partner is liable for any damage or loss to the Beneficiary assets, entrusted loads and their contents while they are under its care and custody (including deterioration or theft) except when the damage is due to the wilful misconduct of the Beneficiaries and/or DAHER INTERNATIONAL or their respective personnel.

The Partner shall not be liable in the following occurrences:

- Force Majeure, as defined in Article II.12 of the General Conditions,
- Loss damage or pollution of the loads which has occurred prior to the hand over of the loads to the Partner,
- Latent defect of the loads occurred after their duly accepted delivery.
- In any time, the Partner shall always do his best efforts to prevent entrusted loads from damages.

I.8.4 Indemnification

The Partner shall take all necessary and reasonable steps to foreclose claims for loss, damage or bodily injury (including death) sustained by him, any Subsidiaries and/or Subcontractors involved in the Services.

The Partner agrees to a no-fault, no-subrogation, inter-party waiver of liability and indemnity for loss, damage or bodily injury (including death) as well as its Subsidiaries and/or Subcontractors may sustain.

#### **I.8.5 Liability for Damages Suffered by Third Parties**

The Partner shall be liable for all loss, damage or bodily injury (including death) sustained, whether directly or indirectly, by any third party, which is caused by the Partners and/or its Subsidiaries and/or its Subcontractors arising out of or relating to the performance this Agreement.

In the event of any proceeding, whether judicial, arbitral, administrative or otherwise, by a third party against DAHER INTERNATIONAL and/or ITER Organization and/or INDA and/or their Suppliers on account of any loss, damage or bodily injury (including death), caused by the Partner and/or its Subsidiaries and/or its Subcontractors, or by their property, whether directly or indirectly, the Partner shall indemnify and hold harmless DAHER INTERNATIONAL and/or ITER Organization and/or INDA and/or their Suppliers, as the case may be, and shall advance any funds necessary to defend their interests.

#### **I.8.6 Restoration of Property**

The Partner shall restore at its expense, all property damage caused or contributed to by the negligence, tortuous conduct, contractual or statutory breach or wilful misconduct of himself or Subsidiaries, or Subcontractors, and their respective employees including, without limitation, buildings, fences, hedges, roads, railroads, bridges, culverts, drainage ditches, irrigation ditches, levees, and all other property damaged, occupied, or crossed during performance of the Partner Services or any part thereof. Damage resulting from normal wear and tear shall not be remedied by the Partner.

#### **I.8.7 Insurances**

The Partner shall be additional insured on the Full Value Ad Valorem insurance subscribed by DAHER following terms and conditions :

Partner will invoice INDA or its mandated Supplier for ad valorem insurance premium and remit such funds to DAHER.

“A Full value Ad Valorem insurance for all entrusted loads, covering as well services to be performed by all Subsidiaries, Partners and/or Subcontractors required to be involved). This Ad Valorem insurance shall be contracted in accordance with the following Terms and Conditions:

- Automatic insurance coverage for all the loads and all the shipments;
- “All Risks” insurance conditions, covering any and all material damages and losses, notably general average, theft, missing, fire, explosion, handling damages, falling of racks, damages from water, crash, storm, hail, snow, impact of land vehicles (or parts thereof) belonging to third parties, falling air or spacecraft, strikes, riots, civil commotions, war risks, terrorism, malevolence, vandalism ...;
- The limit of compensation in case of material damages and losses shall be at least EUR 200.000.000 (two hundred millions) per conveyance;
- Intermediate storage shall be covered at same conditions and without any limit of time;
- Non apparent damages on delivery clause;
- 50/50 compensation clause between Ad Valorem and Construction & Assembly insurance (already placed by IO and the European Domestic Agency, also covering storage of loads after their delivery by the Contractor);

- Any “coinsurance clause”/”proportional rule” usually applied by insurers to determine level of compensation shall be abrogated.

At all-time the Contractor shall always do his best efforts to keep values cumulated on the same shipment or at the same location below the considered compensation limit mentioned above. In case of cumulative values above the compensation limit on the same shipment or at the same location for any reasons, the Contractor shall keep the loads insured.

The Contractor acknowledges that the ITER Organization shall be declared in the policy as Loss payee for the Ad Valorem insurance.

Should a Domestic Agency decline such insurance due to governmental coverage of the risks, the Contractor shall be informed accordingly.

The Partner shall take out the following insurances and shall provide upon request evidence of such insurances policies to the Requesting Party:

- a. A third party liability insurance covering the Partner for all its activities, including its Subcontractors, and for any material and non material damages caused to any third party including bodily injuries, extra costs and financial losses. The General Third Party Liability shall amount to a minimum of 50.000.000 EUROS.
- b. Any other insurances as mentioned below when requested by DAHER INTERNATIONAL or a Beneficiary on a case by case basis:
  - Professional Liability including contractual liability, covering logistic liability and negligence;
  - Customs Agent Liability;
  - Charter Liability;
  - Motor Liability with a minimum of EUR 50,000,000 or statutory limit applicable in each country;
  - Property Damages Insurance, in case premises or facilities are owned, hired and occupied by the Partner and/or Subcontractors to perform their services.

Insurance coverage shall apply for all Services provided by the Partner.

I.8.8 The Partner shall settle all liabilities, and shall indemnify and hold DAHER INTERNATIONAL and/or the Beneficiaries harmless from DAHER INTERNATIONAL or Beneficiaries’ property loss or damage and bodily injury (including death) arising from the Services when caused to third parties by the transportation means for any amount in excess of the insured limits of said insurance policy.

## **ARTICLE I.9 - DURATION OF THE AGREEMENT**

I.9.1 The Agreement shall enter into force at the date of signature by both DAHER INTERNATIONAL and the Partner. This Agreement will remain valid initially for a period of three years. This period and all other periods specified in the Agreement are calculated in calendar days.

I.9.2 The Agreement may be renewed for a period of three (3) years before expiry and with the express written agreement of the Parties. Such renewal shall be agreed three (3) months at the latest before the expiry of the Agreement. Renewal does not imply any modification or deferment of existing obligations.



I.9.3 In addition to renewals provided for in I.9.2, further renewal of one to four years may be agreed between the Parties. Such renewals shall be agreed three (3) months at the latest before the expiry of any renewed period.

I.9.4 The Agreement shall be renewed under the same terms and provisions, unless the Parties agree otherwise at the time of renewal.

I.9.5 The provisions of the Agreement shall continue to apply to Task Orders placed before its expiry, as further defined in II- General Conditions, placed by the Requesting Party before the Agreement expires.

## **ARTICLE I.10- TERMS OF DELIVERY**

I.10.1 The specific time for delivery of each Load shall be agreed to by the Parties of the respective Task Orders.

I.10.2 Timely performance of the delivery is subject to the timely receipt of individual Task Orders detailing the characteristics of the load, by the Partner. To the extent above mentioned conditions are not fulfilled on time, the time for delivery shall be extended accordingly unless the Partner is responsible for the delay. Any extension to such delivery period will be at the discretion of INDA and it will be without prejudice to the right of INDA to recover Liquidated Damages.

I.10.3 In case of late delivery due to a Force Majeure Event as per Article II.12 below, time for delivery shall be extended by the length of the delay and its consequences.

I.10.4 In case of late delivery due to direct faults and/or negligence in the performance of the Agreement by the Partner, the Partner shall be deemed responsible for the delay. By derogation to the Transport International Conventions and local regulations the Partner shall compensate the Requesting Party with a daily compensation of 5 per thousand (5‰) of the individual Task Order Price per calendar day of delay. The total amount of compensation shall not exceed 10 per cent (10 %) of the individual Task Order Price.

I.10.5 The overall performance of the Partner with respect to deliveries and all related Services allowing a timely delivery will be measured by **INDA and DAHER INTERNATIONAL** according to the following criteria:

- Poor goods delivery performance (delay)
- Cost overrun
- Damage in transit
- Delay in replies to Requests for quotation of a Task Order

The overall performance of the Partner with respect to deliveries and all related Services allowing a timely delivery will be measured by **INDA and DAHER INTERNATIONAL** for the performance of the Services in relation to their own expenses.

The Partner shall be requested to guarantee the Requesting Party for the proper implementation of all steps required for a timely delivery of the loads and related documents.

## ARTICLE I.11- AGREEMENT PRICE

Prices for the Services to be provided shall be clearly identified in the Financial Annex (Annex 4 to the Agreement), and/or in each Task Order. It is understood that the Partner shall be paid by the Requesting Party of the Fixed Direct Cost, Management Cost, Gross Profit and Indirect Overheads, such three elements up to the point of entry at the Harbour “Grand Port Maritime de Marseille” or Marignane Airport, and Insurance Premiums (as the case maybe).

For the Task Orders placed to DAHER INTERNATIONAL as per Article I.7.1 or to the Partner with DAHER INTERNATIONAL countersignature as per Article I.7.2, the Partner shall pay to DAHER INTERNATIONAL the Management Costs, the Gross Profit and Indirect Overheads, both up to the point of entry at the Harbour “Grand Port Maritime de Marseille” or Marignane Airport, and Insurance Premiums (as the case may be) in accordance with following provisions which shall replace the provisions of Articles I.12 and II.5.3.

The Partner shall inform DAHER INTERNATIONAL of the issuance of the documents required under Implementation Agreement and/ or Task Order for the payment by the Requesting Party and DAHER INTERNATIONAL shall send the relevant invoices to the Partner, indicating the reference number of the Agreement and of the Task Order to which they refer.

## ARTICLE I.12- PAYMENT

I.12.1 The payment plan for each Task Order shall be agreed and identified in the Task Order itself.

I.12.2 The Partner shall invoice the Services subject of the Task Order as mentioned in the Task Order.

For Task Orders mentioned under Article I.7.4 the Partner or DAHER INTERNATIONAL shall invoice according to the following:

The first phase of the transportation shall be invoiced by the Partner to the Requesting Party of the Task Order, and

The second phase shall be invoiced by DAHER INTERNATIONAL to the European Domestic Agency, it being understood that the payment terms are set forth in Article I.11.

I.12.3 The Partner shall submit its invoice after delivery and receipt of the Loads by the ITER Organization, the ITER Organization’s Suppliers, the Domestic Agency or Domestic Agency’s Suppliers. The request for payment shall be admissible if accompanied by:

Shipment Delivery Certificate of the Loads provided by ITER Organization, the ITER Organization’s Suppliers, any Domestic Agency or Domestic Agency’s Suppliers;

The relevant invoices **along with the supporting documents as agreed in the Implementation Agreement (signed between INDA and DAHER) and/or Task Order**, indicating the reference number of the Agreement and of the Task Order to which they refer.

Payment will be made within thirty (30) days after all required documents, including the invoice, have been received. Payments under the Agreement shall be made in accordance with **Implementation Agreement (signed between INDA and DAHER)**, and shall be executed only if the Partner has fulfilled all his contractual obligations by the date on which the invoice is

submitted. Payment terms agreed in the Implementation Agreement signed between INDA and DAHER International will be applicable.

I.12.4 Services will be invoiced and paid in the respective local currency (**Indian Rupees**) of the Task Order requestor as mentioned in the Task Order, except for the part of the Task Order to be invoiced to the European Domestic Agency which will be invoiced and paid in Euros. Exceptions to this will be agreed upon between the Parties of the respective Task Order at the time of order placement.

#### **ARTICLE I.13- EXPORT CONTROL REGULATIONS**

Partner's obligation to fulfil this Agreement and the respective Task Order(s) is subject to the provision that the fulfilment is not prevented by impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions, in particular export control provisions.

The ITER Organizations' Suppliers, the Domestic Agency (INDA) and/or its Suppliers may indicate specific provisions related to Export regulations.

In any cases, the ITER Organizations' Suppliers, the Domestic Agency (INDA) and/or its Supplier are responsible to fulfil the national export control regulations.

#### **ARTICLE I.14- BANK ACCOUNT**

Payments shall be made to the Partner's bank account and as stipulated in the Task Order, except otherwise agreed in the specific Task Order. The bank Account shall be identified by a duly filled in Financial Identification Form. The Domestic Agency (INDA) will inform the Partner about the financial identification form(s) needed for such Domestic Agency (INDA).

It is the Partner's obligation to return this form to the Requesting Party. No payments can be made until the Requesting Party is in possession of this document when required by the Requesting Party.

#### **ARTICLE I.15- GENERAL ADMINISTRATIVE PROVISIONS**

##### **(a) Communication**

Any communication relating to the Agreement shall be made in writing and in English, and shall bear the Agreement and the Task Order number. All letters, notices and communications between the Parties shall be sent by e-mail, facsimile, registered letter or by any other proper means, notice of receipt requested, at the addresses mentioned here below, and any change in the Parties' address, email, telephone or fax number shall be immediately notified to the other Party in writing.

Communications shall be sent to the following addresses:

Partner :

Technical Content:

[XXX ]

To the attention of [XXX ]

Contractual Content:

[XXX ]

To the attention of [XXX ]

Invoicing:  
as specified in each Task Order

DAHER INTERNATIONAL :

Technical Content:  
Daher International  
10 Place de la Joliette  
13567 Marseille  
To the attention of François Genevey

Contractual Content:  
Daher International Office of General Counsel  
1, allée Maryse Bastié  
91325 Wissous cedex  
To the attention of Philippe Valendru

a) Changes to the Agreement

No alteration or amendment to this Agreement shall be valid unless such alteration or amendment is reduced to writing and signed between the Parties of this Agreement.

b) Language of the Agreement

This Agreement is prepared and signed in the English language and may be for local purposes translated into another language. In case of any conflict between this English language version and any said translation, the English version shall have precedence.

## **ARTICLE I.16- SAFETY AND SITE ACCESS**

I.16.1 The Partner shall be responsible for the observance by himself, his employees, partners, associates and sub-contractors of all safety precautions necessary for their protection and the protection of any other persons, including all precautions required to be taken by or under or pursuant to any applicable legislation. For the avoidance of doubt this includes the ITER Organization Internal Regulations concerning work, health, and safety and security for persons undertaking activities at the ITER site.

I.16.2 The Partner shall adhere to the site access procedures when entering the ITER Organization's or DAHER INTERNATIONAL's site. The ITER Organization and DAHER INTERNATIONAL shall provide the Partner with any necessary information and documentation for site access.

## **ARTICLE I.17- SECURITY DEPOSIT**

Local Partner will submit Security Deposit to INDA from any Indian nationalized bank or from ICICI, AXIS Bank, HDFC, and IDBI for 1% of Task Order value towards execution of all the Tasks assigned to them from time to time for the entire period of the Implementation Agreement.

## **ARTICLE I.18- OTHER CONDITIONS**

- I.18.1 This Agreement embodies the entire agreement between the Parties as to the subject matter hereof and supersedes all previous negotiations and agreements between the Parties. This Agreement shall remain in full force and effect until the expiration or termination of this Agreement.
- I.18.2 The invalidity, illegality or unenforceability of any of the provisions, terms or conditions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions, terms or conditions of this Agreement.
- I.18.3 Nothing contained in this Agreement shall be construed to create any partnership or joint venture between the Parties.
- I.18.4 The headings in this Agreement are intended for reference only and shall not in any way limit or affect the meaning of any term.
- I.18.5 The terms, covenants, contracts, representations and warranties contained herein shall insure to the benefit of the respective permitted successors and assigns of the Parties and their constituent entities and shall be binding upon all successors and assigns of the Parties.

## **ARTICLE I.19 – PROCEDURAL REQUIREMENTS**

**Partner will comply with DAHER requirements in term's of**

- **QHSE policy and operating procedures**
- **Compliance with technical specifications**
- **IT interface and updating**
- **KPIs**

**Detailed procedures for these requirements will be developed in conjunction with partners during planning phase.**

## **GENERAL CONDITIONS**

### **ARTICLE II.1 - PERFORMANCE OF THE AGREEMENT**

**II.1.1** The Partner shall perform the Agreement to the highest professional standards. The Partner shall have sole responsibility for complying with all legal obligations incumbent on it, notably those resulting from employment, tax and social legislation.

**II.1.2** The Partner shall have sole responsibility for taking the necessary steps to obtain any permits, visas, copyrights or licenses required for performance of the Agreement under the laws and regulations in force at the place(s) where the tasks assigned to it are to be executed. In particular, the Partner is responsible to obtain any export licenses, and such licenses shall be obtained within delivery period and are included in the Task Order price.

**II.1.3** Without prejudice to Article II.3 any reference made to the Partner's staff in the Agreement shall relate exclusively to individuals involved in the performance of the Agreement.

**II.1.4** The Partner must ensure that any staff performing the Agreement has the professional qualifications and experience required for the execution of the tasks assigned to them.

**II.1.5** The Partner shall not represent DAHER INTERNATIONAL and/or the ITER Organization and/or the Domestic Agencies or its Suppliers nor behave in any way that would give such an impression.

The relationship between DAHER INTERNATIONAL and the Partner shall not create a teaming agreement, joint venture, partnership or other such arrangement; rather, the Parties shall at all times stand in relation to each other as independent contractors and neither Party shall hold itself out to any third party as agent of the other.

The Partner shall inform third parties that it does not belong to DAHER INTERNATIONAL, the ITER Organization and/or the Domestic Agencies and/or their Subsidiaries and/or Suppliers.

**II.1.6** The Partner shall have sole responsibility for the staff who executes the tasks assigned to it. The Partner shall make provision for the following employment or service relationships with its staff:

- staff executing the tasks assigned to the Partner may not be given orders directly by DAHER INTERNATIONAL, the ITER Organization and/or the Domestic Agencies;
- the ITER Organization, the Domestic Agency (INDA) and its mandated Suppliers, DAHER INTERNATIONAL may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of ITER Organization, the Domestic Agency and its mandated Supplier, or DAHER INTERNATIONAL any right arising from the contractual relationship between the ITER Organization and the Partner

**II.1.7** In the event of disruption resulting from the action of a member of the Partner's staff working on ITER Organization, the Domestic Agency (INDA) or its mandated Supplier's, or DAHER INTERNATIONAL premises or in the event of the expertise of a member of the Partner's staff failing to correspond to the profile required by the Agreement, the Partner shall replace the member of staff without delay. The ITER Organization, the Domestic Agencies (INDA) or its mandated Supplier's, or DAHER INTERNATIONAL shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Agreement under the same contractual conditions. The Partner shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of staff in accordance with this Article.

**II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Partner shall immediately and on its own initiative record it and report it to DAHER INTERNATIONAL. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Partner to ensure full compliance with its obligations under the Agreement. In such event the Partner shall give priority to solving the problem rather than determining liability.

**II.1.9** Should the Partner fails to perform its obligations under the Agreement in accordance with the provisions laid down therein, the Requesting Party may – without prejudice to its right to

terminate Agreement and/or the Task Order - reduce or recover payments in proportion to the scale of the failure.

## **ARTICLE II.1a – REPLACEMENT OF PERSONNEL**

**II.1a.1** The Partner shall not make changes to the agreed key personnel without the prior written approval of DAHER INTERNATIONAL. The Partner must on its own initiative propose a replacement in the following cases:

- (a) In the event of death, in the event of illness or in the event of accident of expert personnel.
- (b) If it becomes necessary to replace expert personnel for any other reasons beyond the Partner's control (e.g. resignation, etc.).

**II.1a.2** Moreover, in the course of performance, and on the basis of a written and justified request, DAHER INTERNATIONAL can ask for a replacement if it considers that the expert personnel are inefficient or does not perform its duties under the Contract.

**II.1a.3** Where expert personnel are to be replaced, the replacement must possess at least equivalent qualifications and experience. Where the Partner is unable to provide a replacement with equivalent qualifications and/or experience, DAHER INTERNATIONAL may either decide to terminate the Contract, if the proper performance of it is jeopardized, or, if it considers that this is not the case, accept the replacement, provided that the rates of the latter are renegotiated to reflect the appropriate qualifications and/or experience.

**II.1a.4** Additional costs incurred by the replacement are the responsibility of the Partner. DAHER INTERNATIONAL makes no payment for the period when the expert to be replaced is absent. The replacement of any expert, whose name is listed in the Contract or a Task Order, must be proposed by the Partner within fifteen (15) calendar days from the first day of the expert's absence.

**II.1a.5 DAHER shall consult INDA before initiating any action under this Article.**

## **ARTICLE II.2 – LIABILITY**

**II.2.1** The Requesting Party shall not be liable for damage sustained by DAHER and the Partner in performance of the Agreement except in the event of wilful misconduct or gross negligence on the part of the Requesting Party.

**II.2.2** The Partner shall be liable for any direct loss or damage and death or personal injury caused by itself in performance of the Agreement including in the event of subcontracting under Article II.13. The Requesting Party shall not be liable for any act or default on the part of the Partner in performance of the Agreement.

**II.2.3** The Partner shall provide compensation in the event of any action, claim or proceeding brought against DAHER INTERNATIONAL and INDA/IO by a third party as a result of damage caused by the Partner in performance of the Agreement.

**II.2.4** In the event of any action brought by a third party against the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL in connection with performance of the Agreement, the Partner shall assist against the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL.

**II.2.5** DAHER INTERNATIONAL and its Local Partner shall be liable towards the INDA under the terms and conditions of the ITER Contract, Implementation Agreement and respective Task Order. DAHER shall be at the option of INDA to be jointly and/or individually liable in respect of the breach by its local partner. In the event DAHER is individually liable, to the extent related to the First Phase of transportation, for the purpose “Arbitration”, the term Local Partner shall be replaced by DAHER. In the event DAHER is jointly liable with the Local Partner, for the same phase, the term Local Partner shall be replaced by Local Partner and DAHER.

Damages shall be claimed as per the provisions set forth under the ITER Contract. DAHER INTERNATIONAL and/ or its Local Partner will remain irrevocably and unconditionally liable to INDA at all time during performance of the Implementation Agreement/respective Task Order(s) as per the terms of Implementation Agreement and Framework Contract, except if the ITER Organization has already sought the liability of DAHER INTERNATIONAL and/or its Local Partner for a same purpose. In such case, DAHER INTERNATIONAL and/ or its Local Partner shall only be liable towards the ITER Organization.

**II.2.6** The Partner shall respect and abide by all relevant laws and regulations in force in location where the services are performed and shall ensure that its personnel, experts and Subcontractors’ personnel also respect and abide by all such laws and regulations. The Partner shall indemnify DAHER INTERNATIONAL against claims and proceedings arising from any infringement by the Partner, its personnel, experts and Subcontractors’ of such laws and regulations.

### **ARTICLE II.3 – CONFLICT OF INTERESTS**

**II.3.1** The Partner shall take all necessary measures in order to prevent any situation that could compromise the impartial and objective performance of the Agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Agreement must be notified to DAHER INTERNATIONAL with intimation to INDA in writing without delay. In the event of such conflict, the Partner shall immediately take all necessary steps to resolve it.

**II.3.2** DAHER INTERNATIONAL reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set. The Partner shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interest. Without prejudice to Article II.1 the Partner shall replace, immediately and without compensation from DAHER INTERNATIONAL any member of his staff exposed to such a situation.

**II.3.3** The Partner shall abstain from any contact likely to compromise his independence.



**II.3.4 The Partner declares:**

- that he has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Agreement,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to the performance of the Agreement.

**ARTICLE II. 4 PAYMENT**

Payment terms agreed in the Implementation Agreement signed between INDA and DAHER International will be applicable. In accordance with the payment schedule indicated in each Task Order, the Partner shall submit a formal request for the payment to INDA or its duly mandated Supplier accompanied by the following documents for the first phase of successfully executed services (from the place of origin to the point of entry at the Harbour Grand Port Maritime de Marseille or Marignane Airport or any other Port or Airport mentioned in the respective Task Order):

- (a) The relevant invoices indicating the reference number of the Contract and the reference of the Task Order number to which they refer. Each invoice shall reflect milestones or services completed and payable under the Implementation Agreement and the cumulative amount of all invoices to date and along with any other supporting document for claimed amount.
- (b) Clean, Stamped On Board and duly signed Bill of Lading/Airway Bill.
- (c) A copy of Insurance Certificate.
- (d) A copy of Shipping Bill with the related documents if any (for Export).
- (e) A copy Bill of Entry (for Import).
- (f) A signed Shipment Delivery Certificate as per packing list by the Consignee (i.e. IO/INDA/INDA'S mandated Suppliers) including all its annexes.

If any other documents are a condition for payment, on receipt the Beneficiaries shall have such a period of time agreed upon the parties in which:

- To approve it, with or without comments or reservations
- To suspend such period and request additional information; or
- To reject it and request a new report.

If DAHER INTERNATIONAL and/or the Beneficiary do(es) not react within 30 days from the date of receipt of the documents, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where DAHER INTERNATIONAL and/or the Beneficiaries request(s) a new document because the one previously submitted has been rejected, this shall be submitted within two weeks. The new report shall likewise be subject to the above provisions.

## **ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.5.1** Payments shall be deemed to have been made on the date on which DAHER INTERNATIONAL's or the Beneficiary's account is debited.

**II.5.2.** The payment periods referred to in Article I.12 of ITER Contract may be suspended by DAHER INTERNATIONAL and/or the Beneficiaries at any time if it informs the Partner that its payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, DAHER INTERNATIONAL and/or the Beneficiaries may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

DAHER INTERNATIONAL and/or the Beneficiaries shall notify the Partner accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter.

## **ARTICLE II.6 –RECOVERY**

**II.6.1** If total payments made exceed the amount actually due under the Order or if recovery is justified in accordance with the terms of this Agreement, the Partner shall reimburse the appropriate amount in euro or other currency indicated in the contract on receipt of the debit note, in the manner and within the time limits set by DAHER INTERNATIONAL and/or the Beneficiaries.

**II.6.2** In the event of failure to pay by the deadline specified in the request for reimbursement, DAHER INTERNATIONAL and/or the Beneficiaries may, after informing the Partner, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Partner also has a claim on the Communities that is certain, of a fixed amount and due.

## **ARTICLE II.7 – PROPERTY OF BENEFICIARIES AND PROPERTY OF DAHER INTERNATIONAL**

**II.7.1** Where for the purpose of the Agreement the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL provide to the Partner access to drawings, files, technical data, computer programs, source codes, and any other item of property, the providing entity remains the sole owner of any item provided.

Where for the purpose of the Agreement the Partner provides to the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL access to drawings, files, technical data, computer programs, source codes, and any other item of property, the providing entity remains the sole owner of any item provided.

**II.7.2** These items may only be used by the receiving entity for the purposes of the Agreement. The distribution, reproduction or use by a third party without prior written approval by the providing entity is strictly forbidden.

**II.7.3** All property of the Partner while at the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL premises shall be at risk of the Partner and the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL shall accept no liability for any loss or damage to that property or caused by that property except where any such loss or damage was caused only by wilful misconduct or gross negligence of any employee of the ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL acting in the course of their employment. The ITER Organization, the Domestic Agencies, their Suppliers and/or DAHER INTERNATIONAL shall accept liability only to the extent to which such loss or damage is so caused or contributed to.

## **ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

**II.8.1** Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Agreement, shall be owned solely by the ITER Organization which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Agreement being entered into. The ownership of background intellectual property will not change unless otherwise agreed by the ITER Organization and the Partner.

**II.8.2** The Parties agree that any software, property of the Partner, modified and used by the Partner for the purpose of performing the Services, shall remain the property of the Partner.

## **ARTICLE II.9 – CONFIDENTIALITY**

**II.9.1** The Partner undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Agreement. The Partner shall continue to be bound by this undertaking after completion of the tasks.

**II.9.2** The Partner shall obtain from each member of its staff, and its subcontractors/subsidiaries, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

## **ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION**

**II.10.1** The Partner shall authorize the Requesting Party to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Agreement, in particular the identity of the Partner, the subject matter, the duration, the amount paid and the reports.

**II.10.2** Unless otherwise provided by the Special Conditions, the Requesting Party shall not be required to distribute or publish documents or information supplied in performance of the

Agreement. If it decides not to publish the documents or information supplied, the Partner may not have them distributed or published elsewhere without prior written authorization from the Requesting Party and/or the ITER Organization.

**II.10.3** Any distribution or publication of information relating to the Agreement by the Partner shall require prior written authorization from the Requesting Party. It shall state that the opinions expressed are those of the Partner only and do not represent the Requesting Party's official position.

**II.10.4** The use of information obtained by the Partner in the course of the Agreement for purposes other than its performance shall be forbidden, unless the Requesting Party has specifically given prior written authorization to the contrary.

## **ARTICLE II.11 – TAXATION**

**II.11.1.** The Partner shall have sole responsibility for compliance with the tax laws which apply to it. Failure to comply shall make the relevant invoices invalid.

**II.11.2** Only if the direct exemption of taxes and duties at the source is legally not possible, the Partner shall invoice them.

**II.11.3** The partner shall be responsible for making payment of Service Tax invoiced to the Indian Tax Authorities.

## **ARTICLE II.12 – FORCE MAJEURE**

**II.12.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Agreement, was not due to error or negligence on their part or on the part of a Subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

**II.12.2** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Partner is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for tasks actually executed.

**II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum. The Task Order and/or the Agreement and/or part of the contract shall be suspended for as long as the Force Majeure is on-going. The contractual obligations to be suspended shall be discussed

on a case by case basis between the parties. The execution of Task Order and/or of the Agreement and/or part of the Agreement shall resume when the Force Majeure ceases to exist.

## **ARTICLE II.13 – SUBCONTRACTING**

**II.13.1.** DAHER INTERNATIONAL may impose a Subcontractor to the Partner. If not, the Partner is entitled to choose its Subcontractor itself only for services up to C&F French ports and or any other port/airport agreed in the Task Order.

**II.13.2.** The Partner shall none the less remain bound by its obligations to DAHER INTERNATIONAL, the Domestic Agency or the ITER Organization under the Agreement and shall bear liability for proper performance of the Agreement.

**II.13.3.** The Partner shall make sure that the subcontract does not affect rights and guarantees to which DAHER INTERNATIONAL, the Domestic Agency or the ITER Organization is entitled by virtue of the Agreement and the ITER Contract.

## **ARTICLE II.14 – ASSIGNMENT**

**II.14.1.** The Partner shall not assign the rights and obligations arising from the Agreement, in whole or in part, without prior written authorization from DAHER INTERNATIONAL.

**II.14.2.** In the absence of the authorization referred to in II.14.1 above, or in the event of failure to observe the terms thereof, assignment by the Partner shall not be enforceable against and shall have no effect on DAHER INTERNATIONAL.

## **ARTICLE II.15 – TERMINATION OF THE AGREEMENT**

### **II.15.1 Termination by DAHER INTERNATIONAL**

DAHER INTERNATIONAL may terminate the Agreement in the following circumstances:

- a) where the ITER Contract is terminated either by DAHER INTERNATIONAL or the ITER Organization; DAHER INTERNATIONAL shall notify the Partner and shall be entitled to terminate this Agreement immediately,
- b) where the Partner is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- c) where the Partner has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
- d) where the Partner has been guilty of grave professional misconduct proven by any means which DAHER INTERNATIONAL and/or the Beneficiaries can justify;
- e) where the Partner has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country

in which it is established or with those of the country applicable to the Agreement or those of the country where the Agreement is to be performed;

- f) where DAHER INTERNATIONAL seriously suspects the Partner of fraud, corruption, involvement in a criminal organization or any other illegal, unlawful activity detrimental to DAHER INTERNATIONAL's and/or any Requesting Party (INDA,IO and their mandated Suppliers), and/or the Beneficiaries' financial interest and that a complaint is lodged before any jurisdiction and/or judicial investigation is pending;
- g) where the Partner is in material breach of its obligations;
- h) where the Partner was guilty of misrepresentation in supplying the information required by DAHER INTERNATIONAL and/or the Beneficiaries as a condition of participation in the Agreement procedure or failed to supply this information;
- i) where a change in the Partner's legal, financial, technical or organizational situation could, in DAHER INTERNATIONAL's opinion, have a significant effect on the performance of the Agreement. The decision shall be substantiated by a report of independent auditors to be nominated by the DAHER INTERNATIONAL.
- j) where execution of the tasks has not actually commenced within period mentioned in the Task Order, and the new date proposed, if any, is considered unacceptable by DAHER INTERNATIONAL;
- k) where the Partner is unable, through its own fault, to obtain any permit or license required for performance of the Agreement;
- l) where the Partner fails to fulfill its contractual obligations, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of its contractual obligations.
- m) where the Partner is declared as insolvent or bankrupt.

In the event the Domestic Agency terminates the Implementation Agreement signed by and between DAHER INTERNATIONAL and the Domestic Agency for any reason whatsoever, DAHER INTERNATIONAL shall immediately inform the Partner.

**II.15.2.** In case of force majeure, notified in accordance with the provisions of this Agreement, either contracting party may terminate part of the Agreement, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in the Task Order affected by the Force majeure. Should the Force Majeure affect the entire scope of the Partner's obligations under the Agreement, either Party may terminate the Agreement, where performance thereof cannot be ensured for the total scope of the Agreement for a period superior to three (3) months.

On receipt of the letter terminating the Agreement, the Partner shall take all appropriate measures to minimize costs, prevent damage, and cancel or reduce its commitments including suspension of subcontracting. It shall draw up and send to DAHER INTERNATIONAL and/or the Beneficiaries the documents required by the Agreement for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Partner shall be entitled to recover any sums due by DAHER INTERNATIONAL or the Beneficiaries for the Services performed prior to the effective date of termination of the Agreement.

**II.15.3.** Prior to termination under point d), f), g), h), i) or l) of II.15.1, the Partner shall be given the opportunity to submit its observations in writing and communication with DAHER INTERNATIONAL. Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Agreement is received by the Partner, or on any other date indicated in the letter of termination.

**II.15.4.** Consequences of termination pursuant to the Article II.15.A) 1:

In the event of DAHER INTERNATIONAL terminating the Agreement in accordance with this Article and without prejudice to any other measures provided for in the Agreement, the Partner shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Agreement, the Partner shall take all appropriate measures to minimize costs, prevent damage, and cancel or reduce its commitments. It shall draw up the documents required by the Agreement for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

DAHER INTERNATIONAL may claim compensation for any damage suffered and recover any sums paid to the Partner under the Agreement.

On termination DAHER INTERNATIONAL may engage any other contractor to complete the services. DAHER INTERNATIONAL shall be entitled to claim from the Partner all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Agreement.

**II.15.5** A Domestic Agency may decide to terminate the Services provided to him by the Partner or Tasks Orders or any part thereof for the same events and conditions than those listed in Articles II.15.1 to Article II.15.4 above; for the purpose of the implementation of this Article the terms “DAHER INTERNATIONAL” should then be replaced by the “Domestic Agency”.

## **ARTICLE II.16 – TERMINATION BY NOTICE**

DAHER INTERNATIONAL may, at its own discretion and without being required to pay compensation other than the one mentioned from a) to d) below, terminate the Agreement by serving a three (3) months formal prior notice to the Partner. On receipt of the letter terminating the Agreement, the Partner shall take all appropriate measures to minimize costs, prevent damage, and cancel or reduce its commitments. In such case, the Parties will indicate in writing the conditions of this termination, including the planning about the remaining services to be performed or to be assigned, and the means to be used.

Should DAHER INTERNATIONAL terminate the Agreement, the Partner shall only be entitled to payment corresponding to the services delivered and objectively justified irrevocable commitments entered into before the termination date, such as described below:

- a) the cost of the rents of the premises dedicated to the performance of the services between the date of the termination for convenience of the Agreement and the date of the termination of the leases.

- b) all costs incurred by the demobilization and/or dismissal of the personnel of the Partner affected to the performance of the services under the Agreement.
- c) the cost of the hardware, the equipment and any other justified specific materials purchased or created by the Partner for the performance of the Agreement, on the basis of the net book value, or for a price to be defined between the Parties, and
- d) all costs incurred by the termination of any agreements signed with suppliers, vendors and/or sub-contractors for the purpose of or in connection to the Agreement.

The Partner shall draw up technical and financial reports for services rendered and irrevocable commitments up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

## **ARTICLE II.17–SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

**II.17.1** Where, after the award of the Agreement, the award procedure or the performance of the Agreement prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Partner, DAHER INTERNATIONAL and/or the Beneficiaries may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Partner, in proportion to the seriousness of the errors, irregularities of fraud.

## **ARTICLE II.18 – JOINT AND SEVERAL LIABILITY IN CASE OF JOINT VENTURES/ CONSORTIA, ETC.)**

**II.18.1** When the Partner is a joint venture or consortium, all partners of such an undertaking agree hereby to DAHER INTERNATIONAL that they shall exercise and will continue to exercise, in the performance of the Services and their other duties, obligations and liabilities pursuant to this Agreement, all such reasonable skill, care and diligence as may be expected of a properly qualified and competent company experienced in carrying out work of a similar size, scope and complexity to the services, and the other duties, obligations and liabilities of the Partner pursuant to this Agreement in respect of the Services, and shall be jointly and severally liable to DAHER INTERNATIONAL for any failure.

## **ARTICLE II.19 – INSURANCES**

**II.19.1.** The Partner shall take out insurance against risks and damage relating to performance of the Agreement as required in the Agreement and those required by the relevant applicable legislation. It shall also take out supplementary insurance as reasonably required by standard practice in the industry.

## **ARTICLE II.20 – LIQUIDATED DAMAGES**

**II.20.1** Should the Partner fail to perform its obligations under the Agreement within the time limits set by the Agreement, then, without prejudice to the Partner's actual or potential liability incurred in relation to the Agreement or to DAHER INTERNATIONAL's right to terminate the Agreement or the Requesting Party's to terminate the Services -, DAHER INTERNATIONAL and/or the Requesting Party may decide to impose liquidated damages of a percentage of the



amount specified in Article I.10.4 per calendar day of delay. This percentage will be specified in the Task Order.

The Partner may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on its part or of written withdrawal by DAHER INTERNATIONAL and/or the Requesting Party within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. DAHER INTERNATIONAL and/or the Requesting Party and the Partner expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

**II.20.2** Liquidated damages will be determined individually for each Task Order.

## **ARTICLE II.21 – AMENDMENTS**

No waiver, alteration or modification of any of the provisions of this Agreement shall be binding upon either DAHER INTERNATIONAL or the Partner unless the same shall be in writing and signed by both DAHER INTERNATIONAL and the Partner.

## **ARTICLE II.22 – SUSPENSION OF THE AGREEMENT**

**II.22.1** Without prejudice to DAHER INTERNATIONAL's right to terminate the Agreement, DAHER INTERNATIONAL may at any time, provided it notifies the Partner within two (2) months prior such suspension by sending a written notice and gives a reasonable reason for such decision, suspend execution of the tasks under the Agreement or any part thereof. When however for operation reasons duly justified, the suspension may take immediate effects, such a notice period of two (2) months shall not apply. Suspension shall take effect on the day the Partner receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. DAHER INTERNATIONAL may within sixty (60) calendar days following suspension give notice to the Partner to resume the work suspended or terminate the Agreement following Article II.16 procedure. If the suspension under this Article II.22 is cancelled or the period of the notification or any extension thereof expires, the Partner shall resume work. DAHER INTERNATIONAL will make an equitable adjustment in the delivery schedule or a Task Order price, or both, and the Agreement shall be modified, in writing, accordingly if: 1) the suspension results in an increase in the time required for, or in the Partner's cost properly allocable to the performance of any part of the Agreement; and 2) the Partner asserts its right to the adjustment within thirty (30) days after receiving it.

## **ARTICLE II.23- GOVERNING LAW AND SETTLEMENT OF DISPUTES**

**II.23.1** Law will be applicable in the following manner to the obligations under this agreement between the Local Partner (Name of the Partner) and DAHER INTERNATIONAL, France:

(a) The complete First Phase of transportation under {i.e. from any point of origin in India to 'Grand Port Maritime de Marseille' for Marseille Harbour or Marignane Airport in France} will be governed by the Indian Law.

(b) The complete Second Phase of transportation {i.e. from 'Grand Port Maritime de Marseille' for Marseille Harbour or Marignane Airport in France to the ITER Site in

Cadarache France or to a designated staging/storage facility} will be governed by the Law stated under the French Law.

**II.23.2** In the event of any dispute or difference arising under this Agreement, to the extent related to the first phase of transportation {i.e. from any point of origin in India to 'Grand Port Maritime de Marseille' for Marseille Harbour or Marignane Airport in France}, the matter shall be referred to the Arbitrators one each nominated by the Local Partner (name of the partner) and one by DAHER INTERNATIONAL from their respective organisations. 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 Local Partner (name of the partner) and DAHER INTERNATIONAL and whose decision will be final and binding on both the parties. The venue of arbitration will be at any mutually agreed place in India as. Subject to as aforesaid the Indian Arbitration and Conciliation Act, 2015 and the rules there under and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this Agreement.

**II.23.3** In the event of any dispute arising out of or in connection with Second Phase of the Transportation, the Parties agree to submit the matter to settlement proceedings under the International Chamber of Commerce in Paris dispute settlement mediation ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the Parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed in accordance with the said Rules of Arbitration and the arbitration proceedings in English shall take place in Paris, unless otherwise agreed by the parties.

**II.23.4** It is expressly agreed between the parties that ITER-India (INDA) shall refer the dispute to Arbitration against both DAHER INTERNATIONAL and its Local Partner, where situation arises to do so. Notwithstanding the above, if for any reason whatsoever, the INDA and/or its duly mandated supplier contract with the Local Partner for performance of defined portions of Services without DAHER INTERNATIONAL's countersignature, the Local Partner shall then be directly and solely liable for the Services towards them under the corresponding Task Orders and in no event shall DAHER INTERNATIONAL be liable for whatsoever reasons in connection therewith. The courts at Gandhinagar, exclusion of all other courts, shall have exclusive jurisdiction to try and entertain any dispute whatsoever, arising under this Implementation Agreement.

**DAHER INTERNATIONAL**

**THE PARTNER**

By:\_\_\_\_\_

By:\_\_\_\_\_

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

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

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

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

Official Seal:\_\_\_\_\_

Official Seal:\_\_\_\_\_