

	ITER-India (Institute For Plasma Research)	Global Tender Notice No.
		I-ITN19006 dated 11.10.2019

Title	Supply, Installation, Commissioning and Final Acceptance Testing of 2 units of High Resolution Spectrometer System with Accessories
Sub Title	PART-A (III): Terms and Conditions of Contract

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



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Title	Supply, Installation, Commissioning and Final Acceptance Testing of 2 units of High Resolution Spectrometer System with Accessories
Sub Title	PART-A (III) : Terms and Conditions of Contract (TCC)

Distribution list	Interested Bidders
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Written by	Reviewed by	Approved by
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Abbreviations

A

ABG · *Advance Bank Guarantee*

B

BG · *Bank Guarantee*

H

HDFC · *Housing Development Finance Corporation*

HP · *Hold Point*

I

ICICI · *Industrial Credit and Investment Corporation of India*

IDBI · *Industrial Development Bank of India*

L

LD · *Liquidated Damages*

N

NP · *Notification Point*

P

PBG · *Performance Bank Guarantee*

PLR · *Prime Lending Rate*

PM · *Project Manager*

S

SBI · *State Bank of India*

T

TRO · *Technical Responsible Officer*

1 Terms and Conditions of Contract (TCC)

Following are the Terms and Conditions of Contract (TCC) applicable to this tender. The Contract 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) **“BID” or “TENDER” or “QUOTATION”** shall mean the tender offer and quotation in response to the tender enquiry/notification.
- (b) **“BIDDER” or “TENDERER” or “VENDOR”** shall mean the entity who seeks to supply the specified goods by submitting Tender/Bid/Quotation
- (c) **“COMPLETION”** shall mean that all activities specified under the scope of supply and work as per Tender Part-A (II) have been successfully completed to the complete satisfaction of the Purchaser in all aspects and approved & accepted by the Purchaser.
- (d) **“CONTRACT”** shall mean the communication or document signed by the Purchaser and the Contractor confirming the agreement on the terms and conditions and complete technical details mentioned or referred to in the said communication or document, including all attachments and appendices thereto, for supply of items and any subsequent amendments there to made on the basis of mutual agreement.
- (e) **“CONTRACTOR”** shall mean the firm or company with whom or with which the Contract for **“Supply, Installation, Commissioning and Final Acceptance Testing of 2 units of High Resolution Spectrometer System with Accessories”** is placed and shall be deemed to include the Contractor's legal successors and/or assignees (approved by the Purchaser), representatives, heirs, executors and administrators unless excluded by the Contract.
- (f) **“CONTRACTOR RELEASE NOTE” (CRN)/ “DISPATCH CLEARANCE NOTE” (DCN)** shall mean the signed document sent by Purchaser's commercial coordinator authorizing the Contractor to release the Items for shipment.
- (g) **“DAY” or “DAYS”** shall mean a Gregorian calendar day or days of twenty-four (24) hours each.
- (h) **“DELIVERABLES”** shall mean all the Items, Products, Components, Services, Documentation that are part of the scope of supply as defined in this Tender.
- (i) **“EFFECTIVE DATE OF CONTRACT” or “COMMENCEMENT DATE OF CONTRACT”** shall mean the date of Purchase Order Or Contract, on which the Contract shall come into force.
- (j) **“FACTORY ACCEPTANCE”** shall mean acceptance of items at factory as described in Part-A (II).
- (k) **“FINAL ACCEPTANCE”** shall mean acceptance of items at on-site as per “Site Acceptance” described in PART-A (II).

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- (l) **“FCA”** shall mean **Free Carrier** (designated place). A shipping term as per INCOTERM 2010 which indicates that the Contractor/Seller must deliver the goods, cleared for export, to the carrier nominated by the Purchaser at the named/designated place/airport. The Contractor shall be responsible for delivery until the named place/airport.
- (m) **“INCOTERMS”** shall mean INCOTERMS 2010.
- (n) **“ITER-INDIA (IPR)”** is a project of Institute for Plasma Research, Bhat, Gandhinagar and it is Indian Domestic Agency for the execution of ITER Project
- (o) **“ITEM(S)” or “GOODS” or “MATERIALS” or “PRODUCTS” or “SUPPLIES”** shall mean and include entire scope of supply and work which the Contractor has agreed to supply and perform as specified in the Contract (as per Part-A(II) of this tender).
- (p) **“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.
- (q) **“MONTH”** shall mean a month according to Gregorian calendar.
- (r) **“ON-SITE”** shall mean **ITER-India lab (DNB), Institute for Plasma Research, Bhat, Nr. Mother Dairy, Gandhinagar, Ahmedabad – 382 428, Gujarat, India**
- (s) **“PARTY”** shall mean either the PURCHASER or the CONTRACTOR
- (t) **“PARTIES”** to the Contract are the Contractor and the Purchaser named in the Contract.
- (u) **“PRICE”** shall mean the prices quoted by the bidder in his bid proposal for the entire scope of supply as per the specifications as defined in Part-A (II) of this tender.
- (v) **“PROJECT DIRECTOR”** shall mean Project Director of ITER-India, who is appointed by a competent authority.
- (w) **“PROJECT MANAGER” or “PM”** shall mean the person authorized to act as Project Manager (PM) by a competent authority of ITER-India.
- (x) **“PURCHASER”** shall mean ITER-India (IPR), acting through the Project Director or his authorized representative.
- (y) **“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.
- (z) **“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.
- (aa) **“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 and includes its legal successor or permitted assignees, and unless otherwise stated, all the sub-contractor s and suppliers to such person and the term sub-contract shall be construed accordingly.
- (bb) **“TECHNICAL RESPONSIBLE OFFICER (TRO)”** shall mean the person nominated by

the Purchaser to carry out all technical functions concerning the Contract including ITER-India review of technical documents, post Contract technical follow up and such other technical functions with the approval of Project Manager.

- (cc) **“THIRD PARTY”** shall mean the party authorized to carry out the assigned job on behalf of the Purchaser.
- (dd) **“TOTAL CONTRACT VALUE” or “TOTAL CONTRACT PRICE”** shall mean the total price as mentioned in the Contract i.e. it is the Contract price excluding taxes, duties and levies (if any)
- (ee) **“UNIT RATE”** shall mean the rate per unit quoted by the bidder which can be used for addition or deletion purposes.
- (ff) **“WARRANTY PERIOD”** shall mean the period during which the Contractor 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.

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 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 shall be required to comply with all the applicable laws with regard to

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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 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, shall at all times, remain the absolute property of the Purchaser. The contractor 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, 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. The technical information, 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, 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 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 with the prior consent of the Purchaser. In such cases, the contractor shall ensure and obtain similar obligation of confidence, from other parties in question.
- 1.2.6.4 The Contractor shall at his own cost procure from his own employees, agents, suppliers or sub-contractor s (and agents, suppliers and sub-contractor s of such agents, suppliers and sub-contractor s) all such acts, deeds and things to cause such employees, agents, suppliers and sub-contractor s to whom the confidential information is given, to be bound by similar confidentiality obligations as the Contractor is bound under this Agreement.
- 1.2.6.5 In the event of any breach of this provision, the contractor shall indemnify the Purchaser from any loss, cost or damage or any other claims whatsoever from any parties claiming from or through him in respect of such breach.

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

1.4 The Contractor

1.4.1 Permits, Licenses or Approvals

- 1.4.1.1 The Contractor 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, including, without limitation, visas for the contractor 's and sub-contractor's personnel and any entry permit. The contractor 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 shall comply with all laws in force in India and in their country where the items/equipment are manufactured. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the contractor . The contractor 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 or its personnel, including the sub-contractor s and their personnel.

1.4.3 Contractor's representative

- 1.4.3.1 The contractor shall appoint the contractor's key representatives, who are responsible for execution of managerial, technical and commercial aspects of the Contract. The details of the contractor representatives including their roles and responsibilities shall be intimated to the Purchaser before signing of the contract.
- 1.4.3.2 The contractor's representatives shall represent and act for the contractor 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 under the Contract shall be given to the contractor 's representative(s), except as herein otherwise provided.
- 1.4.3.3 The contractor shall promptly inform the Purchaser if there is any change in the Contractor '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, the resulting damages/liabilities if any, shall not be attributable to the Purchaser.

1.4.4 General obligations

- 1.4.4.1 The Contractor shall procure / manufacture (including associated purchases and/or

sub-contracting), and supply the Items with due care and diligence in accordance with the Contract, and shall remedy any defects in the supplies occurring in warranty period.

1.4.4.2 The Items supplied by the Contractor shall be of brand new with the best quality and workmanship and shall comply in all respects with the specifications of the Contract.

1.4.4.3 The Contractor 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 and contingencies.

1.4.5 Sub-contracting, subletting or assignment of Contract

1.4.5.1 The Contractor 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-contractor s are required to be appraised and approved by the Purchaser, before placement of orders by the Contractor). However, such consent shall not be unreasonably withheld by the Purchaser, if such items/equipment are not normally manufactured by the Contractor. Such assignment or subletting shall not relieve the Contractor from any contractual obligation or responsibility under the Contract.

1.4.5.2 Any breach of this condition shall entitle the Purchaser to cancel the Contract or any part thereof and to purchase from other sources at the risk and cost of the Contractor in terms of clause **1.17.1** hereof and/or recover from the Contractor damages arising from such cancellations.

1.4.5.3 The Contractor shall be responsible for coordination of all activities with his sub-contractors

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

1.4.5.5 All payment to the sub-contractor(s) shall be made by the Contractor

1.4.6 Alteration of specifications

1.4.6.1 The Purchaser reserves the right to alter specifications, whenever necessary. As from that date, the supplies shall be in accordance with the specifications so altered which the Contractor 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 **1.14** (Changes).

1.5 Contract Work Scope and Completion Time

1.5.1 Scope of Supply and Specifications:

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

1.5.2 Delivery Dates and Completion Time

- 1.5.2.1 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.

1.5.2.2 Required Delivery Schedule for Items:

- 1.5.2.2.1 Delivery will be on Free Door Delivery basis (For Indian Contractor) and on FCA (nearest Air Port) basis (For Foreign Contractor) as per Incoterms 2010.

- 1.5.2.2.2 The Contractor shall supply the items complete in all respect **within 8 months** from the date of Contract. The Contractor's representative shall be available at site for installation and Site Acceptance Testing (SAT) of the deliverables after the receipt of site clearance letter from the Purchaser. The site clearance letter shall be issued by the Purchaser after safe receipt of Items at Purchaser's On-site. Successful installation, commissioning and Final/Site acceptance testing shall be completed by the Contractor maximum within **2 months** from the date of Site Clearance letter issued by the Purchaser.

1.5.3 Security Deposit (SD)

- 1.5.3.1 Within four weeks from the date of signing of Contract, the Contractor shall submit an irrevocable Bank Guarantee (BG) equal to 10% (ten percent) of total Contract value on a non-judicial stamp paper, as "Security Deposit" towards satisfactory execution and performance of the Contract.

- 1.5.3.2 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 ICICI, HDFC, AXIS and IDBI. In case if BG is issued by a Foreign Bank (in case of foreign contractor), it should be from a first class bank of international repute and acceptance of the same will be subject to confirmation by SBI, in India. The format of the Security Deposit is given in [Annexure-1](#).

- 1.5.3.3 The Bank Guarantee shall remain valid till the expiry of (60) sixty days from the date of Final acceptance of items/system under this Contract. If need arises, the Contractor shall extend the validity of the Bank Guarantee for suitable period at his expenses.

- 1.5.3.4 If the Contractor fails to provide the Security Deposit, within the period as specified in clause no. [1.5.3.1](#) such failure shall constitute a breach of Contract and the Purchaser shall be entitled to cancel the Contract and make alternate arrangements for the purchase of contracted items from other sources at the risk and expenses of the Contractor and recover from the Contractor the damages arising from such cancellation.

- 1.5.3.5 In the event, the Contractor fails to fulfil any of the obligations under the Contract; the Purchaser shall have the right to encash the Security Deposit.
- 1.5.3.6 Where the Contractor fails to maintain the Contractual delivery date/completion time, the Contractor 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.
- 1.5.3.7 Upon satisfactory execution of the Contract, the original Bank Guarantee (s) shall be returned to the Contractor on receipt of a request from the Contractor .
- 1.5.3.8 No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of Contract.
- 1.5.3.9 **Bank Guarantee Confirmation:** Contractor's Bank needs to provide bank guarantee confirmation in following way:
- a) Foreign Contractor: Bank Guarantee Confirmation through SWIFT on our Banker State Bank of India (SBI) having SWIFT Code 'SBININBB209'
 - b) Indian Contractor: Bank Guarantee Confirmation through SFMS on our Banker State Bank of India (SBI) having IFSC Code 'SBIN0001045'

1.5.4 Advance Payment Bank Guarantee

- 1.5.4.1 Wherever, advance payment is involved, it will be made subject to submission of Bank Guarantee (BG) for an equivalent amount from one of the banks mentioned in [1.5.3.2](#). BG for advance payment should be furnished by contractor as per format given in [Annexure-2](#). Advance Bank Guarantee shall remain valid two months beyond the complete delivery of ordered items. Bank Guarantee Confirmation shall be provided as per clause No. [1.5.3.9](#).

1.5.5 Performance Bank Guarantee (PBG)

- 1.5.5.1 The Contractor shall furnish to the Purchaser an interest free Performance Bank Guarantee (PBG) for 10 % (Ten percent) of the total Contract value by way of providing a Bank Guarantee from one of the banks mentioned in clause [1.5.3.2](#) for the satisfactory performance of the Items supplied against the Contract. The Performance Bank Guarantee (PBG) will be effective from the date of final acceptance and shall remain in force two months beyond the warranty period mentioned in the Contract.
- 1.5.5.2 In the event that the Bank Guarantee needs extension, the Contractor 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 without any interest on receipt of a request from the Contractor. The Performance Bank Guarantee format is given in [Annexure-3](#).
- 1.5.5.3 In the event, the Contractor/Supplier fails to fulfil any of the warranty obligations under the Contract/Purchase Order; the Purchaser shall have the right to encash the PBG.
- 1.5.5.4 Bank Guarantee Confirmation shall be provided as per clause No. [1.5.3.9](#).

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1.5.6 Bank charges

- 1.5.6.1 **For Indian Contractor:** All bank charges, if applicable, shall be borne by Contractor only.
- 1.5.6.2 **For Foreign Contractor:** All the bank charges within India shall be borne by ITER-India. Similarly all the charges outside India shall be borne by the contractor including the charges towards advising amendment commission. Subsequent amendment charges will be in the account of the party who is responsible for such amendments.

1.6 Contract Price, Payment and Recoveries

1.6.1 Terms of Prices

- 1.6.1.1 The unit prices for this Contract shall be inclusive of packing and forwarding and shall remain **firm** during the validity and extended validity of this Contract, if required. Break-up of price should be furnished. Unit rate/s should be valid throughout the validity of Contract period for addition/deletion purposes. The quoted price should not be subject to price escalation. The quoted price shall be firm, fixed and non-revisable during the validity/extended validity of Contract. However, any variation in the scope of supply to meet the intent of this specification and to be in line with good engineering practice and manufacturing feasibility during execution of contract shall not be subject to price change. The Contractor shall issue valid fumigation certificate and/or dangerous cargo certificate, as required without any additional cost to the Purchaser.
- 1.6.1.2 Prices are required to be quoted according to the units indicated in the Price Bid.

1.6.2 Basis of Delivery

- 1.6.2.1 For Foreign Contractor: Delivery will be on FCA (nearest airport port) basis as per Incoterms 2010
- 1.6.2.2 For Indian Contractor: Delivery will on Free doo delivery at Purchaser's site i.e. on-site.

1.6.3 Taxes and Duties

- 1.6.3.1 **All prevailing** taxes and duties applicable to this tender shall be clearly mentioned at the prevailing rate in the Part-B of bid.
- 1.6.3.2 **In respect of Foreign Bidder:** i) The price/s quoted should be inclusive of all applicable taxes, levies, duties arising in the bidder's/manufacturer's country or any other country/ies except India. Tax Deducted at Source (TDS) will not be applicable for this tender.
- ii) In respect of Indian Bidder:** The price/s quoted should be exclusive of all applicable Indian taxes, levies, duties which are to be mentioned in the Price Bid (Part-B) at the prevailing rates. **ITER-India, IPR is entitled to avail concessional rate of GST@5% on items/goods against submission of certificate under below mentioned notifications by the Purchaser:**
- a) Integrated Tax (IGST) as per Notification by Department of Revenue, Ministry of Finance, Govt. of India Notification No. 47/2017 - Integrated Tax (Rate) dated 14th November, 2017

- b) Central Tax (CGST) as per Notification by Department of Revenue, Ministry of Finance, Govt. of India Notification No. 45/2017-Central Tax (Rate) dated 14th November, 2017
- c) State Tax (SGST) as per Finance Department, Govt. of Gujarat Notification No. 45/2017 – State Tax (Rate) dated 15th November, 2017
- d) 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.
- e) 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 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.
- f) 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 to the Supplier will be recovered from Supplier along with interest and / or the same can be deducted from the amount payable to the Supplier.

1.6.3.3 Goods and Service Tax (GST) (For Indian bidder) – Applicable GST along with the HSN code for the quoted items should be mentioned clearly in the un-price bid format [[Annexure –A4](#) of Part A(I)] and in the Price bid format (Part-B).

1.6.3.4 GST registration (For Indian bidder): Bidder shall submit a copy of GST Registration certificate along with the bid.

1.6.3.5 Tax Deducted at Source (TDS) or any other leviable taxes and or duties.

1.6.3.5.1 Income tax (TDS, applicable for Indian Contractor) at a prevailing rate as per section 194C of Income Tax Act will be deducted from the supplier's invoice(s). Certificate of TDS will be issued by the Purchaser.

1.6.3.5.2 TDS (applicable for Indian Contractor) 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.

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

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1.6.3.7 **Custom Duty** - ITER-India is exempted from payment of Customs Duty in terms of Notification No. 39/96-CUSTOMS dated 23.07.1996 as amended vide Notification No. 5/2012-CUSTOM Dated 07/02/2012 (S. No. 37) & IGST NOTIFICATION NO. 47/2017 DATED 14.11.2017. 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 to Indian Contractor for materials and bought out items, which are part and deliverables to this Contract. 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 Indian bidder along with the bid submission. This List should include description of items and tentative quantity. The Indian Contractor shall furnish priced purchase order copy of all items being imported for this Contract at least **60** days before actual import. Copy of L/C wherever applicable, shall also be furnished by the Indian Contractor if the purchase of such components being imported to India, have been bought through L/C. Indian 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 Indian contractor either to Customs authority or to ITER-India on demand from the Purchaser/customs authority. All expenses, except customs duty, towards procurement of the imported materials should be borne by the Indian Contractor.

1.6.4 Mode of Payment and Payment Schedule:

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

- 1.6.4.1 **Payment terms for Indigenous Contractor** – Payment shall be made through RTGS/NEFT.
- 1.6.4.2 **Payment terms for Foreign Contractor** - The payment will be arranged through sight draft State Bank of India(SBI). However, other terms of payment like Wire transfer/ establishment of Irrevocable Letter of Credit (L/C) with payment at sight may be considered by the Purchaser on such terms and conditions as may be agreed upon. (L/C will be opened through Purchaser's Bankers and all bank charges outside India to be borne by the Contractor). However, final payment of 20% will be made through wire transfer (applicable for foreign contractor). Hence, L/C value will be appropriately calculated.
- 1.6.4.3 Opening of L/C will be, subject to signing of a Contract, furnishing order acknowledgement, Security Deposit as specified in the tender documents and Contractor obtaining Export License, if applicable. In case Export License is not required, Contractor shall submit a declaration to this effect along with the Order Acknowledgement.
- 1.6.4.4 **Payment Schedule**

1.6.4.4.1 The payment to the Contractor will be made as per the following terms (Table-1), on production of the requisite documents:

Table-1: Following is the payment schedule to the contract:

Sr. No.	Milestone for Payment	% of Contract value	Documents required for release of payment																
1.	Payment against delivery / shipment of all Items.	80	<table><tr><td>a)</td><td>A copy of Shipment Clearance Note issued by the Purchaser</td></tr><tr><td>b)</td><td>Original on-board clean Airway bill (For Foreign Contractor)</td></tr><tr><td>c)</td><td>Proof of Transit Insurance as per FCA (For Foreign Contractor)</td></tr><tr><td>d)</td><td>Delivery challan with proof of receipt of items by the Purchaser at On-site (For Indian Contractor)</td></tr><tr><td>e)</td><td>Invoice(s) describing the items delivered quantity, unit rate (as applicable), their total value and indicating the country of origin in triplicate.</td></tr><tr><td>f)</td><td>Packing List showing individual weight and dimensions of packages along with other necessary details</td></tr><tr><td>g)</td><td>Declaration by the Contractor that the items in each case are not less than those entered in the invoices and the quality of the items are guaranteed as per the specifications asked for by the Purchaser</td></tr><tr><td>h)</td><td>Valid Phytosanitary or Fumigation Certificate and/or dangerous cargo certificate : ISPM 15 certificate or its equivalent certificate approved by a competent authority</td></tr></table>	a)	A copy of Shipment Clearance Note issued by the Purchaser	b)	Original on-board clean Airway bill (For Foreign Contractor)	c)	Proof of Transit Insurance as per FCA (For Foreign Contractor)	d)	Delivery challan with proof of receipt of items by the Purchaser at On-site (For Indian Contractor)	e)	Invoice(s) describing the items delivered quantity, unit rate (as applicable), their total value and indicating the country of origin in triplicate.	f)	Packing List showing individual weight and dimensions of packages along with other necessary details	g)	Declaration by the Contractor that the items in each case are not less than those entered in the invoices and the quality of the items are guaranteed as per the specifications asked for by the Purchaser	h)	Valid Phytosanitary or Fumigation Certificate and/or dangerous cargo certificate : ISPM 15 certificate or its equivalent certificate approved by a competent authority
a)	A copy of Shipment Clearance Note issued by the Purchaser																		
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c)	Proof of Transit Insurance as per FCA (For Foreign Contractor)																		
d)	Delivery challan with proof of receipt of items by the Purchaser at On-site (For Indian Contractor)																		
e)	Invoice(s) describing the items delivered quantity, unit rate (as applicable), their total value and indicating the country of origin in triplicate.																		
f)	Packing List showing individual weight and dimensions of packages along with other necessary details																		
g)	Declaration by the Contractor that the items in each case are not less than those entered in the invoices and the quality of the items are guaranteed as per the specifications asked for by the Purchaser																		
h)	Valid Phytosanitary or Fumigation Certificate and/or dangerous cargo certificate : ISPM 15 certificate or its equivalent certificate approved by a competent authority																		

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2.	Payment against successful completion of Site Acceptance Test (SAT)	20	<table><tr><td>a)</td><td>A copy of Final Acceptance Note issued by the Purchaser</td></tr><tr><td>b)</td><td>Warranty Certificate from the Contractor</td></tr><tr><td>c)</td><td>Performance Bank Guarantee equivalent to 10% of total contract value valid two months beyond end of warranty period.</td></tr><tr><td>d)</td><td>Duly certified Pro-forma Invoice in triplicate</td></tr></table>	a)	A copy of Final Acceptance Note issued by the Purchaser	b)	Warranty Certificate from the Contractor	c)	Performance Bank Guarantee equivalent to 10% of total contract value valid two months beyond end of warranty period.	d)	Duly certified Pro-forma Invoice in triplicate
a)	A copy of Final Acceptance Note issued by the Purchaser										
b)	Warranty Certificate from the Contractor										
c)	Performance Bank Guarantee equivalent to 10% of total contract value valid two months beyond end of warranty period.										
d)	Duly certified Pro-forma Invoice in triplicate										

1.6.5 Agency Commission (if applicable):

- a. The amount of commission included in the price and payable to the Indian Agent of the Foreign Contractor shall be paid directly to the Indian Agent by ITER-India in equivalent Indian Rupees on the basis of an invoice from the agent applying T.T. buying rate of exchange ruling on the date of placement of the Contract and which shall not be subject to any further exchange variations. The payment will be released to the Indian Agent within 30 days from the date of final acceptance of ITEMS. Indian agent may send the invoice in duplicate to ITER-India after final acceptance of ITEMS. Applicable TDS and other taxes will be deducted from the payment and certificate will be issued.
- b. The Foreign Contractor shall invoice only for the net amount payable to him, after deducting the amount of Agency commission which would be paid to the Indian Agent directly by ITER-India. However, the Foreign Contractor's invoice should separately reflect the amount of commission payable to the Indian Agent.
- c. The Name and address of the accredited Indian Agent, if any, should be mentioned clearly in the Bid with credentials of the Agent. A copy of Agency Agreement shall also be submitted along with Bid (For Foreign bidder).

1.6.6 Insurance

- 1.6.6.1 The foreign Contractor must take an appropriate insurance for all the Items delivered up to **FCA port** against a risk of loss or damage during the transport. Proof of insurance to be submitted to ITER-India along with other shipping documents.
- 1.6.6.2 The Indian contractor shall quote the price /s on Free Door Delivery basis inclusive of packing & forwarding, freight and insurance till delivery site i.e. On-site.
- 1.6.6.3 Purchaser shall make further arrangement for delivery of items from **the Indian Port** to the delivery site at its own cost (For Foreign Contractor).

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1.6.7 Recovery of Sums Due

Wherever any claim for the payment of Liquidated Damages or loss suffered by the Purchaser arises in terms of money out of the Contract against the Contractor, 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 from this Contract. Should this sum be not sufficient to cover the amount of damages or loss that may be recoverable, the Contractor shall pay to the Purchaser on demand, amount due. Similarly if the Purchaser had made any claim against the Contractor under this Contract, the payment of all sums payable under the Contract to the Contractor 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, 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 as per the terms of the Contract.

1.7 Quality Assurance, Inspections and Acceptance Tests

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

1.7.1 Dispatch Clearance

Dispatch Clearance Note/ Contractor Release Note

- 1.7.1.1 Contractor shall obtain approval on Dispatch Clearance Note (DCN)/ Contractor Release Note (CRN) from the commercial coordinator of the Purchaser on satisfactory pre dispatch inspection of Items/Systems at Contractor's site before affecting the dispatch.
- 1.7.1.2 The Contractor is not entitled to make partial shipment without written consent of the Purchaser.

1.8 Packing, Labelling and Dispatch

1.8.1 Packing Instructions

- 1.8.1.1 The Contractor shall pack and crate all items/deliverables for sea shipment and road transportation in a manner suitable for export to a tropical humid climate, in accordance with internationally accepted export practices and in such a manner so as to protect it from damage and deterioration during transportation. The Contractor shall be held responsible for all damages due to improper or poor packing.
- 1.8.1.2 The Contractor shall provide sea-worthy packing with suitable 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. Further, special registers (viz. shock, humidity, temperature, tilt etc.) that are needed to verify the safe transport of the items in particular for the fragile items shall also be incorporated.
- 1.8.1.3 The contractor shall submit a detailed transportation scheme including packing details to the purchaser in advance for approval.
- 1.8.1.4 If packing materials are of any kind of plant origin, Phytosanitary Certificate (ISPM 15) or its equivalent issued by an authorized Officer at the Country of Origin of the consignment in the format prescribed under the International Plant Protection Convention of the food and agricultural organization shall be sent along with the shipping documents. This is a mandatory requirement



under law enacted by the Govt. of India. Deviation from this may result in holding of the consignment at customs causing delay which will be the sole responsibility of Foreign Contractor. In case, the dangerous cargo certificate is required, same needs to be submitted by the Foreign Contractor

- 1.8.1.5 The Contractor shall also ensure that one copy of packing list is enclosed in each box/crate in order to facilitate prompt clearance of deliverables upon arrival.

1.8.2 Marking & Labelling

- 1.8.2.1 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. Dimensions
- iv. Net and gross weights
- v. Sign showing 'SIDE UP'
- vi. Sign showing 'FRAGILE' marks in case of delicate Products
- vii. Sign showing slinging and sling position as well as tilt and shock indicators
- viii. Any handling and unpacking instructions, if considered necessary.
- ix. Identification marks relating them to the appropriate shipping documents
- x. 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.

1.8.3 Delivery Basis:

- 1.8.3.1 The items shall be delivered on Free Door Delivery basis on On-site – For Indian Contractor. The items shall be delivered on FCA (designated airport) basis as per Incoterms 2010 – For Foreign Contractor

1.8.4 Ultimate Consignee & Delivery Address:

The ultimate consignee will be the Purchaser.

1.8.4.1 Bill To:

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

1.8.4.2 Delivery Address (On-Site):

ITER-India Lab Building, Institute for Plasma Research
Near Indira Bridge, Bhat Village,
Gandhinagar 382428

1.8.5 DEMURRAGE/ WHARFAGE

All demurrage, detention, storage, customs inspection, wharfage and allied expenses incurred by ITER-India, if any, due to delayed clearance of items in view of non-receipt, incomplete or delayed receipt by ITER-India of the shipment documents, mis-declaration/wrong declaration of cargo, errors/difference between materials/items specifications mentioned in shipping documents and physically on the materials/items shall be recovered from the payment due to the Contractor . ITER-India shall inform as soon as possible to contractor of such incidences in writing along with the necessary information.

1.8.6 Transfer of Ownership and Title

- a. Transfer of ownership of the Items shall occur upon delivery of each shipment/shipments as per FCA Incoterms 2010 basis (for Foreign Contractor) and upon safe receipt of each consignment at delivery site (For Indian Contractor).
- b. Transfer of Ownership from contractor to ITER-India as per FCA or upon safe receipt shall not in any way relieve the Contractor of its responsibilities and liabilities under the Contract.

1.8.7 Transfer of Risks

From commencement of the work under the Contract, the Contractor shall be responsible at his own risk for the care and custody including theft, damage due to any reasons, of the Items or any part thereof until their respective delivery as per Incoterms (For Foreign Contractor). However, the Contractor shall be responsible and liable for the Items delivered till successful completion of Site Acceptance test.

1.9 Delay, Extension & Postponement

1.9.1 Extension of Time (due to Contractor)

- 1.9.1.1 In the event, the contractual delivery dates/completion time cannot be adhered to for any cause(s) attributable to the Contractor , an application for extension of time with sufficient reasons shall be made by the Contractor to the Purchaser. If failure, on the part of the Contractor 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 [1.9.3](#). The Contractor shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual delivery date / completion time.
- 1.9.1.2 If the Contractor 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 to claim payment on account of escalation or extra payment on account of increase of statutory levies that may be payable at higher rate after the expiry of Contract delivery dates/Contract completion date (clause [1.9.2](#)).

1.9.2 Delay in delivery dates/completion time

- 1.9.2.1 Should the Contractor fails to comply with contractual delivery dates/completion time and the reasons for such failures are attributed to the Contractor , it shall be construed as

a breach of the Contract and the Purchaser shall be entitled at his option to the following:-

- 1.9.2.1.1 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 [1.9.3](#).
- 1.9.2.1.2 To terminate the total Contract, as per clause Termination of Contract for default [1.17.1](#) in case the liquidated damages (as per clause [1.9.3](#)) recovered from the Contractor reaches maximum value. However, the Purchaser will inform in writing one month in advance to the Contractor before exercising this clause.

1.9.3 Liquidated Damages (LD)

- 1.9.3.1 If the Contractor fails to complete the delivery within the time specified in the Contract and the delay or part thereof is attributable to the Contractor, the Purchaser shall recover from the Contractor as liquidated damages sum of half percent (0.5 percent) of the Contract price for each calendar week of delay that is attributable to the Contractor. The total liquidated damages (for each deliverable) shall not exceed five percent (5%) of the Contract price. Applicable GST shall be charged, at the rate prevailing at that time, on LD amount.
- 1.9.3.2 Items/systems/components will be deemed to have been delivered only when all its item and component parts are also delivered. If certain items/components are not delivered in time, the items/systems/components will be considered as delayed until such time as the missing parts are delivered.
- 1.9.3.3 If completion of site installation and site acceptance tests is delayed due to reasons attributable to the Supplier, irrespective of the fact that whether supply of items have been made within the original delivery period, the Contract is to be considered as a whole and Liquidated Damages will be recovered on the total Contract value.
- 1.9.3.4 However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the supplies and work scope or from any other obligations and liabilities of the Contractor under the Contract.

1.9.4 Force Majeure

- 1.9.4.1 Force Majeure is herein defined as any cause which is beyond the control of the Contractor 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:
 - a. Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.
 - b. Acts of any Government, domestic or foreign including but not limited to war-declared or undeclared, priorities, quarantines, embargoes.
 - c. Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-out in Contractor's works.
 - d. 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's performance of his

obligations has been delayed for other cause. However, the Contractor is not entitled to increase in statutory levies that has come into force during the extended delivery period.

1.10 Acceptance

1.10.1 Factory Acceptance:

All Items will be “Factory Accepted” subject to fulfilment of requirements specified in Part-A(II).

1.10.2 Final Acceptance/ Site Acceptance:

Final Acceptance/ Site Acceptance will be carried out at “ON SITE” as specified in Part-A(II).

1.11 Rejection of defective goods & Contractor’s Liability

1.11.1 Rejection against Damages during Transit:

If the items/Systems/components or any portion thereof is damaged during transit due to improper packing or due to the reason(s) attributable to the Contractor, the Purchaser shall give notice to the Contractor setting forth particulars of such items/Systems/Components damaged during transit. The replacement of such Systems/Components/Items shall be effected by the Contractor within a reasonable time as agreed upon by the Purchaser to avoid unnecessary delay in the intended usage of the Systems/Items. The complete cost of replaced items shall be borne by the Contractor and replacement items needs to be delivered at On-site by the Contractor on their cost and risk.

1.11.2 Accident Liabilities during onsite work

1.11.2.1 Contractor shall insure its own personnel deployed at Purchaser’s site against all risk, such as injuries, loss of life etc. The Contractor will be fully responsible for payment of compensation to its own personnel.

1.11.2.2 The Contractor shall take all possible precautions and avoid damages to equipment/items during the execution of site work (assembly, installation and site acceptance test) at purchaser’s site. In the event of loss or damage to Purchaser’s property 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, in such cases, the Contractor will be fully responsible and liable for such damages/losses and payment of appropriate compensation. The contractor agrees to relieve the Purchaser from all the liabilities under this clause.

1.11.3 Limitation of liability

1.11.3.1 Except in cases of criminal negligence or willful misconduct, the aggregate liability of the contractor to the purchaser, whether under the contract, 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, or to any obligation of the contractor to indemnify the purchaser with respect to Intellectual Propriety Rights infringement.

1.11.3.2 The purchaser being a research institute, indirect losses, that is loss of production and loss

of profit is not applicable.

1.11.4 Indemnity

1.11.4.1 The Contractor shall warrant and be deemed to have warranted that all items/systems/components, supplied against this Contract are free and clean of infringement of any patent, copy right or trade mark and shall at all times indemnify the Purchaser against all claims which may be made in respect of the items/systems/components of infringement of any right protected by Patent, Registration of design or Trade Mark and shall risk of accidents or damage which may cause a failure of the supply from whatever cause arising and the entire responsibility for the sufficiency of all the means used by him for the fulfilment of the Contract.

1.12 Warranty, Defect Liability, Latent defect

1.12.1 Warranty

- 1.12.1.1 The Contractor shall warrant that the items 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.
- 1.12.1.2 The Contractor shall provide a minimum warranty covering replacement of the Items up to 12 months from the date of Final acceptance of Items at On-site.
- 1.12.1.3 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 and within 60 days thereafter, setting forth details of such defects or failure and Contractor 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.
- 1.12.1.4 A reasonable time limit for replacement of defective item(s) under warranty shall be guaranteed by the Contractor and agreed by the Purchaser.
- 1.12.1.5 The replacement of items under warranty by the Contractor shall be on **DAP ITER-India** basis as per Incoterms 2010.
- 1.12.1.6 If any supplied item is replaced during the warranty period, the Contractor shall warrant all such items for a further period of at least 12 months from the date of replacement, or remaining original warranty period, whichever is longer.

1.12.2 Contractor's Failure to Replacement of defective Goods

- 1.12.2.1 If the Contractor fails to replace the damaged/defective items within the agreed time period during the warranty period, the Purchaser at his option either :

1.12.2.1.1 Replace or rectify such defective items and recover the actual costs so involved from the Contractor

1.12.2.1.2 Acquire the defective items at a reduced price considered equitable under the circumstances. The provision of this article shall not prejudice the Purchaser's rights under Clauses [1.12](#) and [1.11](#).

If the Contractor fails to make the required replacement within mutually agreed time, then in pursuant to clause [1.12.2.1.1](#), such 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 to the Purchaser or in case, the same is not agreed by the Contractor, then, the Purchaser shall be entitled to encash the PBG. In such case of repair or replacement, 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 replacement.

[1.13 After Sales Services & Availability of Spares](#)

[1.13.1 After Sales Services \(after warranty period\)](#)

1.13.1.1 In case the purchaser desires to avail the contractor's services for repair or maintenance of the supplied items after expiry of warranty conditions mentioned in the contract, the contractor shall provide the same on mutually agreed terms and conditions.

[1.13.2 Availability of Spares](#)

1.13.2.1 The contractor guarantees to the purchaser, that all the spares for the items supplied under the contract will be available at least for 10 years from the date of delivery to the purchaser. Notwithstanding the foregoing, in the event that during the period indicated above, the contractor intends to phase out the items or the components or spare parts become obsolete or not available, the contractor shall inform in writing to the purchaser about his intention of the manufacture discontinuance of the items supplied to the purchaser or about such obsolescence well in time.

1.14 CHANGES

- 1.14.1 The Purchaser reserves the right to propose to the contractor, any necessary changes/modifications, additions/deletions to the contract specifications and requirements, during the contract period. The contractor shall accept such changes as a part of the contract, after a feasibility assessment and following the procedure specified in the clause ([1.14.3](#)).
- 1.14.2 The contractor during the execution of the contract may also propose to the purchaser any change(s) that the contractor considers necessary or desirable. The purchaser may at its discretion approve or reject any such change(s) proposed by the contractor following the procedure specified in the clause ([1.14.3](#)).
- 1.14.3 In either case ([1.14.1](#) and [1.14.2](#)), the Contractor shall submit within a reasonable time to be agreed upon by both parties, a change proposal as to the effect, if any, of such modifications on the price, performance and the delivery schedule taking into account the unit rates of the similar items in the contract. If both parties agree on such change proposal, the Purchaser will decide whether such modifications is to be introduced or not and will advise the Contractor in writing accordingly. When a modification or other change is so authorized by the Purchaser, the Contractor shall proceed with the action.

1.15 Suspension of work

- 1.15.1 The Purchaser may, by notice to the Contractor , order the Contractor to suspend performance of any or all of its obligations under the Contract for not more than 6 months, for any of the following reasons:
- (a) On account of any default of the Contractor with or without impairing safety of the works, or
 - (b) For proper supply of the items or part thereof based on purchaser's convenience for reasons other than the default of the Contractor , or
 - (c) For safety of the supplies or part thereof, for reasons other than the default of the Contractor
- 1.15.2 Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons. Therefore, the Contractor shall there upon suspend performance of such obligation (except those obligations necessary for the care or preservation of the supplies) until ordered in writing to resume such performance by the Purchaser.
- 1.15.3 The Contractor shall not be entitled to an extension of time for, or to payment of the cost incurred in consequence of suspension as per sub-clause [1.15.1\(a\)](#)
- 1.15.4 The Contractor may be entitled to an extension of time as mutually agreed in consequence of suspension as per sub-clause [1.15.1 \(b and c\)](#).

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1.16 Foreclosure of Contract

- 1.16.1 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 and the Contractor 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.
- 1.16.2 Upon receipt of the notice of foreclosure under sub-clause [1.16.1](#), the Contractor 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, subject to the payment specified in sub-clause [1.16.3](#) shall
 - (i) Supply to the Purchaser the parts of the items procured by the Contractor up to the date of foreclosure on mutually agreed rate.
 - (ii) to extent legally possible, assign to the Purchaser all right, title and benefit of the Contractor to the Items as of the date of foreclosure, and, as may be required by the Purchaser.
 - (iii) Supply to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Contractor or its subcontractor as on the date of foreclosure in connection with the supplies.
- 1.16.3 In the event of foreclosure of the Contract under sub-clause [1.16.1](#), the Purchaser shall pay to the Contractor the full amount at Contract rates, properly attributable to supplies completed and/or the parts of the items supplied by the Contractor and accepted by the Purchaser as of the date of foreclosure on mutually agreed basis, in case the unit rates are not available in the Contract.

1.17 Cancellation/Termination of Contract

1.17.1 Termination of Contract for default

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

- a. If the Contractor 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.
- b. If the Contractor 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

1.17.1.2 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 shall continue to perform the Contract to the extent not terminated

- a. Forfeiture of Security Deposit
- b. Recovery of Liquidated Damages (LD) as per the Contract
- c. To purchase from elsewhere, after (thirty) 30 days' notice to the Contractor, at the risk and cost of the Contractor, 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.

1.17.1.3 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 .

1.17.1.4 In the event of action being taken under sub-clause [1.17.1](#) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account. Contractor 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 as provided in the Contract.

1.17.1.5 If the Contract is terminated as provided in clause [1.17.1](#), the Purchaser in addition to any other rights provided in the clause, may require the Contractor 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 , the Contract price of such completed items that are delivered to and accepted by the Purchaser.

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

[1.17.2 Termination of contract for insolvency](#)

If the Contractor 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 , without compensation to the Contractor , 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.

	PART-A(III): Supply, Installation, Commissioning and Final Acceptance Testing of 2 units of High Resolution Spectrometer System with Accessories	Global Tender Notice No.
		I-ITN19006 dated 11.10.2019

1.17.3 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 for cancellation of the Contract, in whole or in part, for Purchaser's convenience, ITER-India, 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 on mutually agreed terms for terminating the Contract.

1.18 Settlement of disputes and Arbitration

1.18.1 Settlement

1.18.1.1 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 [1.18.2](#)

1.18.1.2 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 .

1.18.2 Arbitration

1.18.2.1 For Indian Bidders:

- a. 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.
- b. The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor. 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 and whose decision shall be final and binding on both the parties. The sole Arbitrator shall have its seat in Ahmedabad. 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.
- c. 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.
- d. 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.

1.18.2.2 For Foreign Bidders:

In the event of any dispute or difference arising under the Contract, the matter shall be referred to Arbitration in accordance to the rules of International Chamber of Commerce. The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and Contractor. 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 and whose decision shall be final and binding on both the parties. The Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed between the parties. Award of arbitral tribunal shall be enforceable in Indian Courts only.

Either party may also, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy.

1.19 The Contract

1.19.1 Signing of Contract:

1.19.1.1 The Contract shall be signed by authorized representatives of Contractor and Purchaser (on non-judicial stamp paper of appropriate value, as applicable)

1.19.2 Amendments

Any amendment to the Contract 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 and will be an integral part of the Contract.

1.19.3 Coming into Force (Effect of Contract)

The Contract shall come into force from the date of LoI (Letter for 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: Advance Payment Bank Guarantee
3. Annexure-3: Performance Bank Guarantee (PBG)



Annexure-1: Bank Guarantee (Security Deposit)

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor
(On bank's letter head) – For Foreign Contractor**

BANK GUARANTEE NO. _____ DATE: _____

THIS DEED OF GURANTEE MADE AT _____ this _____ day _____ of _____ 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”) having its registered office at _____ have entered into a Contract having Contract value of _____ (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 is to furnish to the Purchaser a Bank guarantee for an amount of _____ (In words _____) being 10% of the total value of the Contract by way of security for fulfilment of the Contractual obligations on the part of the Contractor there under.

AND WHEREAS the Contractor has requested the Bank to guarantee the due payment of the aforesaid amount by the Contractor to the Purchaser in case the Contractor 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 demur, any amount up to and not exceeding _____ (In words _____) to the Purchaser on behalf of the Contractor .
2. This guarantee is valid and binding upon the Bank two months beyond the 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 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.
4. The liability of the Bank under this deed is restricted to the sum of _____ (In words _____) and same shall remain in force two months beyond the Final acceptance of the Items under this Contract. 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 on whose behalf this guarantee is issued.
5. Unless proceeding for enforcing this guarantee is commenced against the Bank within two months 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. Demand by the Purchaser can also be made by authenticated SWIFT message from ITER-India's correspondent bank/SBI confirming that the original demand has been forwarded to us by courier service and that the said bank has verified ITER-India's signature(s) appearing thereon. However, payment will only be effected as soon as the original demand has been received by the bank. Date of receipt of SWIFT message or written demand, whichever is earlier will be reckoned/treated as demand/claim date.
6. The neglect or forbearance of the Purchaser in enforcement of any of its rights under the aforesaid Contract against the Contractor shall in no way relieve the Bank of its liability under this deed.
7. OUR GUARANTEE shall remain in force until _____ (60 days beyond the Final acceptance of the Items) 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)-For Indian Contractor
(On bank's letter head) – For Foreign Contractor**

BANK GUARANTEE NO. _____ DATE: _____

1. WHEREAS on or about the _____ day of _____ M/s _____, a company registered under the companies act and having its registered office at _____ (hereinafter referred to as “the Contractor”) entered into Contract bearing No. _____ date _____ with ITER-India (INSTITUTE FOR PLASMA RESEARCH) Block-A, Sangath Skyz, Bhat-Motera Road, Koteswar 380005, Gujarat, India (hereinafter referred to as "The ITER-India") for the supply of _____ (hereinafter referred to as “the Equipment”)
2. AND WHEREAS under the terms and conditions of the Contract an amount of _____ (In words: _____ only) representing _____ percent advance payment out of the Contract value of _____ (In words: _____ only) is to be paid by ITER-India.
3. AND WHEREAS ITER-India has agreed in pursuance of the said terms and conditions of the Contract to make an advance payment of _____ (In words: _____ only) to the Contractor on the Contractor furnishing a Bank Guarantee in the manner herein contained.
4. NOW WE, _____ (Name and Address of the Bank) in consideration of ITER-India having agreed to pay to the Contractor an advance payment of _____ (In words: _____ only) do hereby agree and undertake to indemnify ITER-India and keep ITER-India indemnified to the extent of a sum not exceeding the said sum of _____ (In words: _____ only) against any damage or loss that may be suffered by ITER-India by reason of non-fulfillment of any of the terms and conditions of the Contract by the Contractor.
5. WE, _____ (Bank) do hereby undertake to pay the amount due and payable under this guarantee without any demur merely on a demand from ITER-India stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by ITER-India by reason of breach by the said Contractor(s) of any of the terms and conditions contained in the said Contract or by reason of the Contractor(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. Demand by the Purchaser can also be made by authenticated SWIFT message from ITER-India's correspondent bank/SBI confirming that the original demand has been forwarded to us by courier service and that the said bank has verified ITER-India's signature(s) appearing thereon. However, payment will only be effected as soon as the original demand has been received by the bank. Date of receipt of SWIFT message or written demand, whichever is earlier will be reckoned/treated as demand/claim date. However, our liability under this guarantee shall be restricted to an amount not exceeding _____ (In words: _____ only).
6. WE, _____ (Bank) undertake to pay to ITER-India any money so demanded notwithstanding any dispute or disputes raised by the Contractor(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(s) shall have no claim against us.

7. AND WE, _____(Bank) hereby further agree that the decision of the said Project Director, ITER-India as to whether the Contractor 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 ITER-India/ITER-India on account of such breach would be final and binding on us.
8. WE _____(Bank) further agree with ITER-India that ITER-India 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(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by ITER-India against the said Contractor(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(s) or for any forbearance, act or commission on the part of ITER-India or any indulgence by ITER-India to the said Contractor(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(s).
10. OUR GUARANTEE shall remain in force until _____(two months beyond the Contract delivery date) and unless a claim under the guarantee is lodged on or before the above date, all rights of ITER-India 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 _____



Anneuxre-3 - Performance Bank Guarantee (PBG)

**(On non-judicial stamp paper (of appropriate value)-For Indian Contractor
(On bank's letter head) – For Foreign Contractor**

BANK GUARANTEE NO. _____ DATE: _____

1. WHEREAS on or about the _____ day of _____ 20____
M/s _____, a company registered under the Companies and having
its registered office at _____ (hereinafter referred to as "the
Contractor") 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 380005, Gujarat, India (hereinafter
referred to as "The ITER-India") for the supply of _____ (hereinafter
referred to as "the Equipment").
2. AND WHEREAS under the terms and conditions of the Contract an amount of _____ (In
words: _____ only) representing balance _____ percent payment out of the total
value of the Contract of _____ (In words: _____ only) is to be paid to the
Contractor on the final acceptance of the equipment and on the Contractor furnishing a bank
guarantee in a manner herein contained towards satisfactory performance of the equipment
during warranty period, viz. _____ months from the date of final acceptance/commissioning
of the said equipment or _____ months from the date of dispatch of the last lot of consignment
whichever is earlier (Specify as per warranty clause in the Order).
3. NOW WE, _____ (Name and Address of the Bank) in consideration of the promises
and the payment of said sum of _____ (In words: _____ only) by ITER-India
to the Contractor do hereby agree and undertake to pay to ITER-India the amount due and
payable under the guarantee without any demur, merely on a demand from ITER-India stating
that the amount claimed is due by way of loss or damage caused to or suffered by ITER-India
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. Demand by the Purchaser can also be made by authenticated SWIFT
message from ITER-India's correspondent bank/SBI confirming that the original demand has
been forwarded to us by courier service and that the said bank has verified ITER-India's
signature(s) appearing thereon. However, payment will only be effected as soon as the original
demand has been received by the bank. Date of receipt of SWIFT message or written demand,
whichever is earlier will be reckoned/treated as demand/claim date. However, our liability
under this guarantee shall be restricted to an amount no exceeding _____ (In words:
_____ only).
4. WE, _____ (Bank) undertake to pay to ITER-India any money so demanded
notwithstanding any dispute or disputes raised by the Contractor(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(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 ITER-India on account of the unsatisfactory performance of the said equipment shall be final and binding on us.
6. AND WE, the _____(Bank) do hereby agree that our liability hereunder shall not be discharged by virtue of any Contract between ITER-India and the Contractor whether with or without our knowledge and/or consent or by reason of ITER-India showing any indulgence or forbearance to the Contractor 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(s).
8. OUR GUARANTEE shall remain in force until _____ (two months beyond the Contract warranty period) and unless a claim under the guarantee is lodged with us on or before the above date, all rights of ITER-India 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 _____