Title	**Third Party Inspection for Vacuum Vessel (VV) in Wall Shields (IWS)**
Sub Title	**PART-A (III): Terms and Conditions of Contract**

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Sub Title	**PART-A (III) : Terms and Conditions of Contract (TCC)**

Distribution list	Interested Bidders

Written by	Reviewed by	Approved by
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Abbreviations

B

BG · Bank Guarantee

G

GST - Goods and Service Tax

H

HDFC · *Housing Development Finance Corporation*
HP · *Hold Point*

I

ICICI · *Industrial Credit and Investment Corporation of India*
IDBI · *Industrial Development Bank of India*

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*

W

WCT · *Work Contract Tax*, .

1 Terms and Conditions of Contract (TCC)

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

The Contractor shall be deemed to have carefully examined all tender documents and obtained clarifications from the Purchaser where needed, the quantities and nature of work necessary for the completion of the Contract, all necessary information for risks, contingencies and other. The price quoted in the price-bid format (Part-B), which rate and prices shall, except as otherwise provided, cover all his obligations under the contract/order and all matters and things necessary for the satisfactory completion of work. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully supplying the items. No claim on his part which may arise on account of non-examination or misunderstanding of the particulars and/or matter related to site will, in any circumstances, be considered payable by the Purchaser.

1.1 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 "SERVICE PROVIDER" or "Third Party Inspection Agency (TPIA)"** shall mean the entity who seeks to provide On-Site Inspection Services by submitting Tender/Bid/Quotation

(c) **"COMPLETION"** shall mean that all activities specified under the scope of work have been successfully completed to the complete satisfaction of the Purchaser in all aspects and approved and accepted by the Purchaser.

(d) **"CONTRACT"** shall mean the communication or document signed for and on behalf of the Purchaser by an Officer duly authorized confirming the acceptance, for and on behalf of the Purchaser, on the terms and conditions mentioned or referred to in the said communication or document, including all attachments and appendices thereto, while accepting the Bid or Offer of the Contractor for the supply of Service(s) 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 "Third Party Inspection of In-Wall Shielding (IWS) Components" 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) **"DAY" or "DAYS"** shall mean a Gregorian calendar day or days of twenty-four (24) hours each.

(g) **"DELIVERABLES"** shall mean all the Items, Products, Components, Services, Documentation, inspection reports that are part of the scope of work as defined in this

Tender.

(h) **"EFFECTIVE DATE OF CONTRACT" or "COMMENCEMENT DATE OF CONTRACT"** shall mean the date of signing of LoI (Letter of Intent), on which the contract/order shall come into force.

(i) **"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.

(j) **"ITEM(S)"or "GOODS" or "MATERIALS" or "PRODUCTS" or "IWS" or "SYSTEMS" or "EQUIPMENT" or "SUPPLIES" or "TPI"** shall mean and include entire scope of work which Contractor has agreed to supply and provide under the contract deliverables as specified in the Contract (as per Part-A of this tender).

(k) **"MAN-MONTH"** Man-Month shall mean one Inspector's working for 8 hours per day (exclusive of travel time and lunch time) of a Gregorian calendar month considering Sunday/any other week-day (as per company policy, where inspection is being carried out) as holiday and other closed holidays as declared by the company (manufacturer) where inspection is being carried out. There will be no deduction for such holidays.

(l) **"MONTH"** shall mean a month according to Gregorian calendar.

(m) **"ON-SITE"** shall mean following location.

1) Location (C1): -

(1) Larsen and Toubro Limited, Heavy Engineering Division, Hazira Manufacturing Complex, Distt.- Surat- 394510 (L&T, Hazira)

(2) Maruti Engineering, Plot no. 3 & 4, Sardar Patel Ind. Estate, Vanch-Dhamatvan Road Near Bakrol GIDC, Ahmedabad- 382435 (Maruti Engg., Ahmedabad)

2) Location (C2): -

(1) Avasarala Technologies Ltd., No. # 60, K. Choodahalli, Somanahalli Gate, Kanakapura Road, Bengaluru – 560 082 (ATL, Bangalore)

Note: - Onsite location may be any other location within 40-75 km from above mentioned cites.

(n) **"PARTY"** shall mean either the PURCHASER or the CONTRACTOR

(o) **"PARTIES"** to the Contract are the Contractor and the Purchaser named in the Contract.

(p) **"PRICE"** shall mean the prices quoted by the bidder in his bid proposal for the entire scope of work as per the specifications and scope of work as defined in Part-A of this tender.

(q) **"PROJECT DIRECTOR"** shall mean Project Director of ITER-India (IPR), who is appointed by a competent authority.

(r) **"PROJECT MANAGER" or "PM"** shall mean the person authorized to act as Project Manager (PM) by a competent authority of ITER-India.

(s) **"PURCHASER"** shall mean ITER-India (IPR), acting through the Project Director or his authorized representative.

(t) **"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.

(u) **"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.

(v) **"TECHNICAL RESPONSIBLE OFFICER"** shall mean the person nominated by the Purchaser to carry out all technical functions concerning the Contract including inter-alia review of technical documents, post Contract technical follow up and such other technical functions with the approval of Project Manager.

(w) **"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)

(x) **"UNIT RATE"** shall mean the man-month rate quoted by the bidder, which will be used for addition or deletion purposes.

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

The ruling language of the contract and language for documentation and communication shall be English.

1.2.2 Governing Law

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 performance of the Contract.

1.2.3 Jurisdiction

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

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

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

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.

All information, drawings, documents, specifications, datasheets and other related documents forming part of the enquiry, tender or contract are property of the Purchaser and shall not be used for any other purpose, except for bidding and execution of the contract(if awarded). All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, drawings, specifications, records and other documents shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole and/ or duplicated, modified, divulged and/or disclosed to a third party nor misused in any other form whatsoever, without the Purchaser's prior consent in writing, except to the extent required bidding and for the execution of this contract (if awarded).

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. **Non-Disclosure Agreement** as per **Annexure-2** shall be signed by the Contractor along with the Contract.

The Contractor shall at his own cost procure from his own employees, agents, suppliers

or sub-contractors (and agents, suppliers and sub-contractors of such agents, suppliers and sub-contractors) all such acts, deeds and things to cause such employees, agents, suppliers and sub-contractors to whom the confidential information is given, to be bound by similar confidentiality obligations as the Contractor is bound.

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.

1.2.7 Independent Contracts

The TPIA shall be an independent entity performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the TPIA shall be solely responsible for the manner in which the Contract is performed. All employees engaged by the TPIA in connection with the performance of the Contract shall be under the complete control of the TPIA and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract shall be construed to create any Contractual relationship between any such employees or representatives and the Purchaser. The TPIA shall indemnify the Purchaser for any loss suffered or costs incurred by the Purchaser on account of any claims raised by the employees/representatives to whom the TPIA is solely responsible in terms hereof or under the Contract.

1.3 The Contractor

1.3.1 Permits, Licenses or Approvals

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 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.

1.3.2 Compliance with law

The contractor shall comply with all laws in force in India. 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-contractors and their personnel.

1.3.3 Contractor's representative

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.

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.

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.

1.3.4 General obligations

(i) The contractor shall carry out Third Party Inspection with due care and diligence in accordance with the contract and with the Purchaser's instructions.

(ii) Inspection carried out by the contractor will be strictly as per Manufacturing & Inspection Plan, drawings, procedures, codes and standards and other input as provided by ITER-India.

(iii) During the tenure of the Contract with ITER-India, the TPIA (successful Bidder) shall not enter into Contract with manufacturers of IWS or its sub-contractors/vendors for any of the activities related to ITER-India's contract being executed by manufacturer(s) of IWS. Non-compliance to this clause shall result in termination of the Contract.

(iv) The TPIA shall be fully conversant with the National/International Product Specifications, Standards and Codes and shall ensure the direct access/possession of the latest (as on the date of inspection including amendments thereto) applicable International and European standards & codes like ASME, ASTM, French Decrees, European Directives, etc.

1.3.5 TPIA's personnel

The TPIA shall nominate qualified and experienced person working on their pay-roll as its representative who will be the coordinator between the Purchaser and the TPIA for the performance of the Contract. This nomination shall be done within ten (10) days from the date coming into force of the Contract.

No person deployed for Purchaser' work shall be replaced without written permission of Purchaser.

Employees of TPIA shall abide by the rules of IWS manufacturer, its subcontractors and ITER-India during inspection/visit. In case of misbehavior, proven incompetence or gross negligence, the Purchaser shall require the replacement of the personnel deployed for Purchaser's assignment. These personnel shall be replaced with a competent person by the TPIA immediately after taking approval from Purchaser. The Purchaser also has the right to ask for replacement of TPIA personnel without assigning any reason

All Inspection personnel being offered to the Purchaser shall be regular employee(s) or shall be working in contract with TPIA since at least three years prior to the tender date.

The Purchaser has the right to convene review meeting as and when necessary to review the activities carried out by TPIA and has the right to audit the activities carried out by TPIA and the

TPIA shall comply with the same. Each Party shall bear its own expense related to travel, lodging and boarding for visit at other Party's end.

1.4 Facilities provided to TPIA

(i) I-I / IWS manufacturer will arrange sitting place, safe for documents/records and provide internet access. Laptop/Desktop will be arranged by the contractor. Purchaser or EP Contractor or IWS manufacturer shall not be liable and responsible for any loss/damage to the Laptop and/or Desktop used the TPIA during the execution of the Contract.

(ii) The TPIA shall arrange safety equipment like helmet, safety Dress, safety shoes etc. at their own cost. The Purchaser/EP contractor/Manufacturer shall not be responsible and liable for any loss/ damage on this account.

(iii) Meals and snacks would not be provided by the Purchaser or IWS manufacturer, however TPIA can avail the facilities (if any) available on site as per the terms laid by the IWS manufacturer.

(iv) All logistics from TPIA local office or premises to the IWS manufacturing site as well as subcontractors' site around **Surat, Ahmedabad and Bangalore** to be arranged by the contractor on their own cost and risk.

(v) The inspector shall get leaves as per the weekly holiday and holiday list of the company (IWS manufacturer) where he/she is carrying out inspection.

1.5 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.

1.6 Contract Work Scope and Completion Time

1.6.1 Scope of Work and Specifications:

Part-A (II) of this tender specifies the **scope of work and technical specifications** under this Contract.

1.6.2 Validity of Contract and Completion Time

(i) Duration of TPI contract will be **08 months** from date of signing contract. Contract duration can be extended for **04 months** at the same rate and terms & conditions.

(ii) Maximum man-months during contract are **30**, which can be increased to 10 % of ordered man-months if contract is extended for 04 months as per above clause.

(iii) Monthly report comprising of, (i) items inspected with quantities, (ii) processes witnessed, (iii) monitoring of special processes in agreed template, (iv) description of any non-compliance observed, (v) list of inspection calls/monthly schedule etc. will be submitted at the end of each month during execution of the contract.

(iv) Monthly attendance sheet of inspector/s will be submitted.

(v) Inspection schedule will be provided in the Contract.

1.7 Bank Guarantees & Bank Charges

1.7.1 Security Deposit (SD)

Within three 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.

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. The format of the **Security Deposit** is given in **Annexure-1**.

The Bank Guarantee shall remain valid for 32 months

If need arises and if requested by the Purchaser, the Contractor shall extend the validity of the Bank Guarantee for suitable period at his expenses.

If the Contractor fails to provide the Security Deposit, within the period as specified in clause no. **1.7.1** 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 and forfeiture of EMD provided.

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.

Where the Contractor fails to 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.

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.

No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of contract.

Contractor's Bank needs to provide Bank Guarantee Confirmation through SFMS on our Banker

State Bank of India (SBI) having IFSC Code 'SBIN0001045'

1.7.2 Bank charges

All bank charges, if applicable, shall be borne by Contractor only.

1.8 Contract Price, Payment and Recoveries

1.8.1 Terms of Prices

The unit prices for this contract shall be firm and fix during the validity and extended validity of this Contract. The man-month rate quoted should be inclusive of all expenses including travel, lodging & boarding, food, overhead, profit, allowance, management, insurance, incidental, risk, etc. but exclusive of all applicable Indian taxes, levies, duties which are to be mentioned separately in the Price Bid (Part-B) at the prevailing rates.

1.8.2 Taxes and Duties

(i) Goods and Service Tax (GST) – Applicable GST (which needs to be mentioned separately in the Price-Bid (Part-B) shall be paid extra.

(ii) Tax Deducted at Source (TDS) or any other leviable taxes and or duties: Tax deducted at source (TDS) will be deducted under Section 194J of Income Tax Act from every payment at the prevailing rate. Bidder shall submit the PAN along with the bid. Certificate of TDS will be issued by the Purchaser.

(iii) Applicable TDS under GST – TDS applicable under GST act will be deducted from every payment at prevailing rate. Certificate of TDS will be issued by the Purchaser.

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

1.8.3 Mode of Payment and Payment Schedule

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

Mode of Payment: Payment shall be made through RTGS/NEFT in INR within 30 days from the date of acceptance of monthly inspection report and monthly attendance report by IWS Project Manager against receipt of invoice and other necessaruydocuments complete in all respects. Necessary mandate form for RTGS/NEFT will be provided at the time of Contract.

Release of payment shall be subject to:

(a) Signing of Contract by both the parties
(b) Submission of Security Deposit as specified (refer:-**1.7.1**)

Payment Schedule

(1) Payment shall be made on monthly basis after successful completion of services for that month.

(2) Payment will be released subject to,

(a) Submission of monthly inspection report by the contractor and approved by IWS Project manager.

(b) Inspector attendance sheet approved by IWS Project Manager

(c) Error free Tax Invoice

1.8.4 Recovery of Sums Due

Wherever any claim for the payment of Penalty 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 or any other Contract with the Purchaser. Should this sum be not sufficient to cover the amount of damages or loss that may be recoverable, the Contractor shall pay to the Purchaser on demand, amount due. Similarly if the Purchaser had made any claim against the Contractor under this Contract or any other Contract with the Purchaser, 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.

1.9 Quality Assurance, Inspections and Acceptance Tests

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

1.9.1 Inspection Plan

Approved Inspector of TPI shall be entitled at all reasonable times during manufacturing to inspect, examine and test the material and workmanship of all items to be supplied under the Contract with IWS manufacturer's /sub-contractor's/supplier's premises. This monitoring/inspection/testing shall include Notification Points (NP) , Hold Points (HP) at critical steps in the manufacturing process. These quality control points shall be indicated on the Contractor's MIP.

1.10 Force Majeure

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: Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.

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

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

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

Contractors 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.

1.11 Final Acceptance:

1.11.1 Final Acceptance of monthly inspection report will be subject to the approval of fulfilment of requirements given in Part-A (II).

1.12 Indemnity against loss / damage

1.12.1 The TPIA shall indemnify the Purchaser from and against all actions, suits and proceedings by any other third party for the acts/omissions of the agent and all costs, charges, expenses, losses, damages, duties, taxes, penalties, levies, and all other liabilities which the Purchaser may be liable to pay, incur or sustain as a result of performance or non-performance, observance or non-observance by the agent of any of the terms and conditions of this Contract.

1.12.2 The Contractor shall indemnify the Purchaser against any liability in respect of loss and/or damage to any property of TPIA during the Contract execution.

1.12.3 The Contractor shall pay and indemnify the Purchaser against any liability in respect of any fees or charges payable by him under any act of parliament, state laws, any government instrument, rule or order and any regulations or by-laws of any local authority in respect of the supplies and /or services prevailing on the date of submission of tender.

1.12.4 The Contractor shall indemnify and hold the Purchaser harmless from and against all claims, damages and expenses arising out of his failure to obtain all permit and licenses which he is required to comply with in respect of laws, ordinances, and regulations of the central or state government and/or local/public authorities.

1.13 Indemnity for taxes and duties

1.13.1 The Contractor hereby protects, indemnifies and holds harmless the Purchaser from any and all claims or liability for income, or any other taxes, duties, penalties etc., assessed or levied by the government of India or by any appropriate authority thereof or by the government of any other country against Contractor or its subcontractor or against the Purchaser for or on account of any payment made to or earned by Contractor or its subcontractor hereunder.

1.13.2 The Contractor further protects and holds the Purchaser harmless from all taxes assessed or levied against or on account of wages, salaries or other benefits paid to Contractor's employees or employees of its subcontractor and all taxes assessed or levied against or on the account of any property or equipment of the Contractor.

1.13.3 The Contractor shall be responsible for filing all necessary tax returns (including, without limitation, returns for corporate income tax, personal income tax, and service tax, sales

tax and excise duty) with the relevant government authorities in accordance with all applicable statutory requirements and shall be responsible for providing all information requested by such government authorities.

1.13.4 In certain situations, a government authority may treat the Purchaser as the representative assesse of the Contractor and/or its subcontractors and recover the taxes due to the government authority by the Contractor from the Purchaser. In such situations, the Purchaser shall have the following rights:

(a) The Purchaser shall be entitled to recover from the Contractor, the taxes paid on behalf of the Contractor (together with any costs and expenses incurred by the Purchaser in connection therewith) or to retain the same out of any amounts to be paid to the Contractor that may be in its possession (whether due under this Contract of otherwise) and shall pay only the balance, if any, to the Contractor; and

(b) If the Purchaser is required to furnish any details or documents in such capacity, the Purchaser shall request the details or documents to be furnished to it by the Contractor and the Contractor shall immediately furnish the same to the Purchaser. If the Contractor fails to comply with the foregoing, any penalty/interest levied on the Purchaser for non-filing or late filing of details or documents in this regard shall be recoverable from the contractor.

1.14 Limitation of liability

1.14.1 Except in cases of criminal negligence or wilful 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 due to the reasons attributable to TPIA and loss or injury to any Purchaser's personnel and / or IWS manufacturer's personnel due to the reasons attributable to TPIA.

1.15 Insurance

1.15.1 Insurance for Contractor's Personnel

The TPIA, will at its expenses take out and maintain in effect, during the performance of Contract the insurance policies of its deputed employees (as inspectors) and any asset(s)/tool(s)/equipment(s) deployed by TPIA at On-site. The Purchaser shall not bear any responsibility and/ or liability for any mishap to the TPIA personnel and their belongings during the currency of the Contract.

1.16 Penalty and Suspension of Work

1.16.1 Penalty

Refer **section 12** of Part-A (II). GST as applicable will be levied on the Penalty, if imposed, on the Contractor.

1.16.2 Suspension of Work

The Purchaser reserves the right to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligations of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The TPIA shall thereupon suspend performance of such obligations until ordered in writing to resume such performance by the same authority that ordered for suspension. No additional payment will be made to the TPIA on account of suspension of work.

1.17 Foreclosure of Contract

1.17.1 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.

1.17.2 Upon receipt of the notice of foreclosure under sub-clause **1.17.1**, 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) In addition, the Contractor, subject to the payment specified in sub-clause **1.17.3** shall

(i) Supply to the Purchaser all documents prepared by the Contractor as at the date of foreclosure in connection with the Services.

1.17.3 In the event of foreclosure of the Contract under sub-clause **1.17.1**, the Purchaser shall pay to the Contractor the full amount at Contract rates, properly attributable to services completed by the Contractor and accepted by the Purchaser as of the date of foreclosure based on the man-month rate.

1.18 Cancellation/Termination of Contract

1.18.1 Termination of Contract for Default

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:

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 AND/OR adverse feedback regarding quality of services rendered, indulgence in unethical practices or questionable integrity

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.

(i) Forfeiture of Security deposit

(ii) In case the TPIA is not in a position to execute the inspection services or fails to execute the inspection services, the Purchaser reserves the right to get the same services executed by any other TPI agency which the Purchaser may deem fit and all additional costs incurred by the Purchaser shall be recovered from the TPIA.

1.18.2 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.

1.18.3 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, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the Purchaser suitably compensates the contractor on mutually agreed terms for terminating the contract.

1.19 Precedence

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

1.20 Settlement of Disputes and Arbitration

1.20.1 Settlement

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 **1.20.2**

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.

1.20.2 Arbitration

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.

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 or such other place in India as may be mutually agreed to between the parties. The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation (Amendment) Act, 2015 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only. The Courts of Ahmedabad, Gujarat shall only have exclusive jurisdiction to deal with and decide any legal or dispute arising out of the Contract.

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.

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.

1.21 The Contract

1.21.1 Signing of Contract:

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

1.21.2 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.

1.21.3 Coming into Force (Effect of Contract)

The Contract shall come into force from the date of signing of LoI (Letter of Intent).

2 Annexures

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

1. Annexure-1: Bank Guarantee (Security Deposit)
2. Annexure-2: Non-Disclosure Agreement

Annexure-1: Bank Guarantee (Security Deposit)

(On non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO._____ DATE: _____

THIS DEED OF GUARANTEE 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, Koteshwar, 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 INR. _____ (In words _____) with the Purchaser being Contract No. _____dated_____ for_____ in accordance with the terms, specifications and conditions contained therein.

AND WHEREAS under the terms of the aforesaid Contract, the Contractor is to furnish to the Purchaser a Bank guarantee for an amount of INR._____ (Rupees _____) 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 INR._____ (Rupees _____) to the Purchaser on behalf of the Contractor.

2. This guarantee is valid and binding upon the Bank till complete execution of 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 INR._____ (Rupees _____) and same shall remain in force till complete execution fo the 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.

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_____(two months beyond the Contract validity period) 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: Non-Disclosure Agreement

CONTRACTOR agrees following points to maintain non-disclosure of proprietary and/or confidential information that are presented/referred in the ITER-India Contract for "Third Party Inspection of ITER Vacuum Vessel (VV) In-wall Shielding (IWS)" vide Contract No._____.

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

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

Date:

CONTRACTOR
(Name and signature of responsible officer with SEAL)