

SCHEDULE –E1
(See Clause 9.1)

FORMAT OF CONSTRUCTION PERFORMANCE SECURITY

DURING CONSTRUCTION PERIOD

(Bank Guarantee)

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated: _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee:

Shimla Municipal Corporation

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of draft Concession Agreement (hereinafter referred to as the “Agreement”) to be executed amongst Shimla Municipal Corporation (“hereinafter referred to as the “Authority”), Department of Urban Development, Himachal Pradesh (hereinafter referred to as the “Government”) and _____ (hereinafter referred to as the “Concessionaire”) for the Development of Water Supply and Sewerage System at Shimla (hereinafter referred to as the “Project”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “Construction Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement amongst Authority, Government and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. ___ Crores (Rupees ___ Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs.____ Crores (Rupees ____ Crores Only).
3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. ____Crores (Rupees ____ Crores Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. ____Crores (Rupees ____ Crores Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

Authorized Signatory
For Bank

NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE-E2

**FORMAT OF O&M PERFORMANCE SECURITY
DURING OPERATION & MAINTENANCE PERIOD
(Bank Guarantee)**

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated: _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee:

Shimla Municipal Corporation

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Operation & Maintenance Period in respect of Concession Agreement dated..... (hereinafter referred to as the "Agreement" amongst Shimla Municipal Corporation ("hereinafter referred to as the "Authority"), Department of Urban Development, Himachal Pradesh (hereinafter referred to as the "Government") and _____ (hereinafter referred to as the "Concessionaire") for the Development of Water Supply and Sewerage System at Shimla (hereinafter referred to as the "Project"), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. "Performance Bank Guarantee" shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement amongst Authority, Government and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), hereinafter referred to as the "Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor

and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. ___ Crores (Rupees ___ Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. ___ Crores (Rupees ___ Crores Only).
3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. ___ Crores (Rupees ___ Crores Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. ___ Crores (Rupees ___ Crores Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

Authorized Signatory
For Bank

NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

