

## CONTRACT PERFORMANCE BANK GUARANTEE CUM PERFORMANCE BANK GUARANTEE

WHEREAS [●] [insert name of the Employer] (hereinafter referred to as the "Employer" or "You") has placed an order on [●] [insert name of the Contractor] (hereinafter referred to as the "Contractor") vide service order reference number [●], dated [●] and having a value of Rupees [●] (Rs. [●] only) [insert the value of the service order] (hereinafter referred to as the "SO Documents") and has agreed that the Contractor shall furnish to you a Contract Performance cum Performance Bank Guarantee of Rupees [●] (Rs. [●] only) [insert bank guarantee value] for the faithful performance of the Contractor's entire scope of work under the SO Documents, including the Contractor's warranty obligations and rectification of Defects during the Defect Liability Period in accordance with the terms of the aforesaid SO Documents. AND WHEREAS, the Bank (*as defined herein below*) undertakes to furnish an unconditional and irrevocable bank guarantee, on behalf of the Contractor, in the form and manner hereinafter specified. Therefore, we, [●] [insert details of the Bank issuing the guarantee] (hereinafter referred to as the "Bank" or "We" or "Us"), do hereby covenant and agree with You as follows:

1. We hereby irrevocably and unconditionally guarantee and undertake to pay You, forthwith and on your first demand or claim in writing, any and all amounts payable with respect to losses, damages, costs or expenses incurred on account of non-performance on the part of the Contractor for any of the terms of the SO Documents, a sum not exceeding Rupees [●] (Rs. [●] only) (hereinafter referred to as the "Guaranteed Amount"). We shall, forthwith on first demand or claim in writing by You, without recourse and without any demur, reservation, contest or protest whatsoever, pay to You any sum or sums not exceeding in the true total, the Guaranteed Amount, as may be claimed by You to be due from the Contractor by way of such amounts payable by reason of any defaults or non-performance on the part of the Contractor in terms of the SO Documents (hereinafter referred to as the "Guarantee").
2. This Guarantee shall continue and hold good until it is released by You after completion of the Scope of Work and the Defect Liability Period in accordance with the terms of the SO Documents, provided always that this Guarantee shall come into effect from the date of this Guarantee and shall remain in force till [●] [insert date till which this Guarantee is valid] with a claim period of 1 (one) month from such date, i.e. up to [●] [insert date which shall be one month from the end of validity period] or till such date as may be extended in terms of the SO Documents. In the event the time for performance of the Contractor's obligation under the SO Documents is extended, this Guarantee shall be extended by such equivalent time. Upon receipt of such extension notice, validity of this Guarantee and the period to lodge any claims with the Bank shall be extended accordingly.
3. The Contractor has assured the Employer of due performance of all its obligations under the SO Documents in accordance with the terms therein. Any demand or claim made by You in writing, with respect to the amount due and payable by the Bank, shall be conclusive and binding on the Bank, without any proof of such payments having become payable, and shall be payable forthwith without any delay and in any case no later than the next business day from the date of presentation of the letter of invocation of the Guarantee, notwithstanding any claim, dispute, counter claim, assertion or proceedings pending before any court, tribunal, arbitrator or any other authority, as liability under these presents being absolute and unequivocal and the Bank hereby waives all such defences. Notwithstanding anything to the contrary, the Employer's decision as to whether the Contractor has made any such default or defaults as the amount to which You are entitled by reason thereof shall be binding on Us and We shall not be entitled to ask You to establish or provide any evidence in respect of the claims under this Guarantee but shall pay the same on demand without any objection.
4. You shall have the liberty without affecting the Bank's obligation under this Guarantee, to: (a) modify the SO Documents or any part thereof; or (b) extend the time for performance of the SO Documents by the Contractor and either to enforce or forbear to enforce any of the terms and conditions contained in or implied in the SO Documents and We shall not be released from our liability under this Guarantee by reason of any time extension being provided to the Contractor or any other forbearance, act or omission on your part or any indulgence by You to the Contractor or by any variation or modification of the said SO Documents or any other act, matter or thing whatsoever which under the law relating to sureties would, but for the provisions thereof, have effect of so releasing Us from our liability hereunder. Provided always that nothing contained herein shall enlarge our liability hereunder beyond the Guaranteed Amount or extend the period of the bank guarantee beyond the expiry of the validity of this Guarantee, i.e. [●] [insert date on which validity of this Guarantee expires], unless expressly agreed to by the Bank in writing.
5. This Guarantee shall not in any way be affected by: (i) the Employer taking or varying or giving up any securities from the Contractor or any other persons, firm or company on its behalf; (ii) the winding up, dissolution, insolvency, bankruptcy, re-organisation, liquidation or death, as the case may be, of the Contractor; or (iii) inability to perform the

SO Documents or to make payment by the Contractor, for any reason whatsoever and in such cases the Guaranteed Amount shall be promptly paid by the Bank to the Employer on demand.

6. No failure or delay on the Employer's part in exercising any right, power or privilege hereunder and no course of dealing between You and Us, or the Contractor, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
7. We further confirm that our obligations under this Guarantee shall, in all respects, be irrevocable and unconditional during the tenure of this Guarantee until discharged by You.
8. This Guarantee shall cover all claim or claims of the Employer against the Contractor from time to time arising out of non-performance of the Contractor of its obligations in respect of the SO Documents, including warranty obligations and rectification of Defects during the Defect Liability Period under the said SO Documents and in respect of which your demand or notice in writing is received by Us before [●] [insert date on which claim period expires]. The Employer may make more than one demand hereunder provided that the sum total of all demands shall not exceed the Guaranteed Amount.
9. We irrevocably agree that You, at your option, shall be entitled to enforce this Guarantee against Us as a principal debtor and not merely as surety, in the first instance, without proceeding against the Contractor and notwithstanding any security or other guarantee that You may have in relation to the Contractor's liabilities under the SO Documents. This Guarantee and the rights, powers and remedies herein contained are in addition to and not by way of limitation, exclusion or substitution of any rights, powers or remedies which You would otherwise have or any other guarantee here before given to You by Us (whether jointly) with others or alone and now existing and that this Guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.
10. We agree that any notice under or pursuant to this Guarantee can be served upon: (i) the Employer at [●] [insert address of the Employer]; and (ii) the Bank at its office at [●] [insert address of the Bank] or at any branch of the Bank in Ahmedabad, Gujarat, India. If any notice is served after 1700 hours on a day, such notice shall be deemed to have been served on the succeeding day. All notices, request, documents or other communication under or pursuant to this Guarantee shall be deemed to have been served, if served through electronic means, when sent to [insert e-mail address of the Bank], if served by hand delivery, when delivered, or when served through post or courier, within 5 (five) days of dispatch of such post or courier or receipt of such post or courier, whichever is earlier. Either party may change their address for such notice or other communications by prior written notice to the other party.
11. This Guarantee shall not be discharged due to:
  - (a) any change in the constitution of the Contractor or Us nor shall it be affected by any change in the Employer's constitution or by way of any merger or amalgamation thereof or therewith;
  - (b) any time extension or waiver granted to, or arrangement with, the Contractor, or any other person;
  - (c) any unenforceability, illegality or invalidity of any obligation of any person under the SO Documents or of our obligation under this Guarantee; or
  - (d) any part performance of the SO Documents by the Contractor.
12. You may assign this Guarantee to your affiliates, lenders, security agents or investor and in such case You shall inform the Bank in writing. This Guarantee shall not be assigned or transferred by the Bank.
13. We represent and warrant to You that We have duly executed and delivered this Guarantee, and this Guarantee constitutes our legal, valid and binding obligation which is enforceable in accordance with its terms.
14. If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
15. The Bank hereby declares that it has the power to issue this Guarantee under the applicable law in India and the undersigned who are executing this Guarantee on behalf of the Bank have the necessary powers to do so.

16. Notwithstanding anything contained herein, the Bank hereby confirms that:

- (a) our liability under this Guarantee shall not exceed the Guaranteed Amount;
- (b) this Guarantee shall be valid up to \_\_\_\_\_;
- (c) We are liable to pay the Guaranteed Amount or any part thereof under this Guarantee only and only if You serve upon Us a written claim or demand on or before \_\_\_\_\_ [*insert validity of this Guarantee plus claim period*] and if a written claim or demand has been served upon the Bank thereto, the Bank shall be discharged of all liabilities under this Guarantee upon payment of the Guaranteed Amount; and
- (d) this Guarantee shall be operative and payable at any branch of the Bank in Ahmedabad, Gujarat, India.

Dated this \_\_\_day of \_\_\_\_, 20\_\_ at \_\_\_\_\_

For	[_____]	For	[_____]
Authorized Signatory	[_____]	Authorized Signatory	[_____]
Name	[_____]	Name	[_____]
Designation	[_____]	Designation	[_____]
Place	[_____]	Place	[_____]
Date	[_____]	Date	[_____]