

Annexure II

(Standard format for Bank Guarantee for Payment of Arbitral Award Amount)

(To be submitted on non-judicial stamp paper of value applicable in the State where Bank Guarantee is being submitted and to be purchased in the name of the issuing Bank)

No:

Date:

THDC India Ltd.
By Pass Road, Pragatipuram
Rishikesh (Uttarakhand)-249201.

Whereas:

- (A) _____ [name and address of contractor] (hereinafter called the "Contractor") has executed a contract (hereinafter called the "Contract") with the _____ [name and address of the Govt. Department/PSU], (hereinafter called the "Employer") for the execution of the _____ project/work, subject to and in accordance with the provisions of the Contract.
- (B) In accordance with Clause _____ of the Contract, the Contractor/ Employer referred a dispute with the Employer/ Contractor to the arbitration and the Arbitral Tribunal have made arbitral award dated _____ for an amount of Rs. _____ in favour of the Contractor.
- (C) The Employer has challenged the aforesaid arbitral award in a court of law. However, the Employer has to pay 75% of this arbitral award amount, along with the interest amount, to the Contractor against a Bank Guarantee without prejudice to the final order of the court in the matter under challenge in terms of NITI Aayog O.M No, N-14070/14/2016-PPPAU dated Sept 5, 2016.
- (D) In consideration of the above, the Contractor has approached the Bank with a request to issue a guarantee in favour of the employer and We, _____ through our branch at _____ (the "Bank ") have agreed to furnish this bank guarantee (herein after called the "Guarantee") for an amount of Rs. _____ (the "Guarantee Amount"), which is 75% of the arbitral award along with the interest amount.

NOW, THEREFORE, the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Employer, upon its first written demands, and without any demur, reservation, recourse, contest or protest or any dispute/litigation between the Contractor and the employer, and without any reference to the Contractor, such sum or sums up to an aggregate sum not exceeding Guarantee Amount as the Employer shall claim. In this regard, the Employer shall not

require to prove or to show grounds or reasons for its demand and / or for the sums specified therein.

2. A written demand shall be a letter from the Employer, under the hand of an officer not below the rank of AGM stating that :

(a) The arbitral award dated _____ has been set aside/modified by the court or has been decided at an amount less than 75% of the arbitral award inclusive of interest or

(b) An event of default by the Contractor has occurred as per Arbitral Award Escrow Account Agreement. The following events shall constitute an event of default by the Contractor for this purpose :

i) The Contractor causes the Escrow Banker to transfer funds to any account of the Contractor in breach of the terms of Arbitral award escrow Account agreement.

ii) The Contractor fails to make any refund due to the THDC India Limited in breach of the terms of Arbitral award escrow Account agreement within 5 business days of such refund becoming due.

iii) The Contractor commits or causes any other breach of the provisions of Arbitral award escrow Account agreement and fails to cure the same within a cure period of 5 business days or

iv) The Contractor does not renew the Bank Guarantee(s) submitted to THDC India Limited as security for principal as well as interest thereon, 60 days prior to the expiry of validity of the Bank Guarantee.

The written demand as above shall be conclusive, final and binding on the Bank.

3. Any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under the Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.

5. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 6 below and unless a demand or claim in writing is made by the Employer on the Bank and received by the Bank within the validity of this Guarantee, all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

6. The Guarantee shall cease to be in force and effect after _____ irrespective of the fact whether the Bank Guarantee is returned or not by the Employer.

7. On the written request of the Contractor, the Bank undertakes to renew this Bank guarantee from time to time till the Arbitral Award under Challenge is decided by the Court or till the appeal of THDCIL on the decision of a Court in the higher Bench / higher Court is finally decided.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing. Further, the Bank declares and warrants that it has the power to issue this Guarantee and the Officer(s) signing this guarantee has full powers to do so on behalf of the Bank.
9. This Guarantee shall come into force with immediate effect and shall remain in force and effect upto the end of month _____ in the year ____ or until it is released earlier by the Employer pursuant to the provisions of the Contract.
10. Notwithstanding anything contained herein,
 - i) Bank's liability under the Bank Guarantee shall not exceed Rs. _____ (Rupees _____ only).
 - ii) The Bank Guarantee shall be valid upto _____.
 - iii. The Bank is liable to pay the guarantee amount or any part thereof under this Bank Guarantee only on compliance of Para no. 2 above and also if a written claim or demand from the Employer is served upon and received by the Bank on or before expiry of this guarantee.

Signed and sealed this day of _____, 20____ at _____

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the head office of ~ the Bank as well as of the issuing branch should be mentioned on the covering letter of issuing branch