



MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY

MASS RAPID TRANSIT SYSTEM
FOR
VERSOVA-ANDHERI-GHATKOPAR CORRIDOR IN MUMBAI

VOLUME IV A of IV

BANK GUARANTEE FOR PERFORMANCE SECURITY

SCHEDULE E

BANK GUARANTEE FOR PERFORMANCE SECURITY

(To be issued by a Scheduled Bank in India)

[To be issued by a Scheduled Bank based in India and having a net worth of at least Indian Rupees One thousand crores only and having a branch in the proximity of the Project or at any place acceptable to MMRDA]

From:

.....
..... [Bank/Financial
Institution]

To: Metropolitan Commissioner
Mumbai Metropolitan Regional Development Authority
Bandra Kurla Complex
Mumbai

A. *[Concessionaire]* (the "**Concessionaire**") and **Mumbai Metropolitan Regional Development Authority ("MMRDA")** have entered into a **Concession Agreement dated xxxx (the "Agreement")** whereby **MMRDA** has agreed to the **Concessionaire undertaking** to construct and operate the Mass Rapid Transit System for Versova-Andheri Ghatkopar Corridor on a Build Own Operate and Transfer (BOOT) basis (the "**Project**") **subject to and in accordance with the provisions of the Agreement.**

B. The Concessionaire is required to give **MMRDA** a guarantee by a recognized bank or financial institution based in India in the sum of Rs. _____ only (Indian Rupees _____ only) as security for compliance with its obligations under the Concession Agreement during the Concession Period.

C. We, **** with its registered office at **** through our Branch at ***** (the "Bank" or the "Guarantor") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank unconditionally guarantees to pay MMRDA upon first written demand and without any deduction any sum claimed by MMRDA upto a maximum of Rupees _____ (Rupees _____ only) (the "**Guaranteed Sum**") subject to the conditions set out below.
2. The Guarantor unconditionally and irrevocably promises to pay on demand the Guaranteed Sum, without protest or demur whatsoever upon the receipt of a written demand from MMRDA, which shall be final and conclusive as against the Guarantor requiring the Guarantor to make the payment to MMRDA.
3. The Guarantor waives any requirement that MMRDA demand any debt or payment from the Concessionaire before presenting it with a demand under this Guarantee.
4. MMRDA shall notify the Guarantor of its demand for payment of the Guaranteed Sum without any deduction of whatsoever nature and without reference to any claim or counter claim or set off, in accordance with the Concession Agreement.

Such notification by MMRDA, shall be conclusive and binding on the Guarantor.

5. Upon encashment and appropriation of the whole or any portion of the Guaranteed Sum by MMRDA in accordance with the Concession Agreement, the Guarantor shall be obliged to replenish the existing Guarantee or provide fresh guarantee of the Guaranteed Sum.
6. No underlying dispute as between MMRDA and the Concessionaire nor any pending application for interim relief or arbitration proceedings or other legal proceedings shall constitute any ground for prevention, delay or obstruction for making payment to MMRDA by the Guarantor and the existence of any disputes or differences or claims in arbitration or otherwise shall not constitute any ground for non-payment on this Guarantee.
7. This guarantee is valid and effective from its date. This guarantee and the Guarantor's obligations under it will continue until a fresh Performance Security of Rs xxx million has been furnished by the Concessionaire prior to 12 months from the COD. Upon receipt of the fresh Performance Security of Rs xxx million and on completion of 12 months of successful operations post COD, this Performance Security shall be refunded by MMRDA.
8. The Guarantor agrees that its obligation to pay any demand made by MMRDA before the termination of this Guarantee will continue until the amount demanded has been paid in full.
9. This Guarantee shall be valid and effective for enabling MMRDA to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand, if the claim is lodged within the claim validity period and the obligation to pay is subject to normal limitation for payment of claims upon a guarantee. Time is of essence for payment and in the event of failure to make payment, Guarantor shall be obligated to pay compound interest at 2% above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor's failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided is no excuse for delayed payment or non-payment of the Guaranteed Sum.
10. No change in the constitution of the Concessionaire or of the Guarantor shall be a ground for release of the Guarantee and no variation in the Concession Agreement made post selection of the bidder, or post making of the bid, shall constitute a variation, which would, subject to the terms and conditions of this agreement, discharge the Guarantor. The Guarantor shall notwithstanding such change, be bound to make payment upon the Guarantee on demand.
11. The Guarantor agrees that no change, addition to or other modifications to the terms of the Concession Agreement or to any documents which have or may be made between MMRDA and the Concessionaire will in any way release it from any liability under this Guarantee and that it waives any requirement for notice of any such change, addition or modification.
12. The Guarantor agrees that it will not assign its obligations under this Guarantee without the prior written consent of MMRDA. MMRDA will not unreasonably withhold its consent if the proposed assignee is of at least equal financial standing to the Guarantor and the assignee assumes in writing the obligations of the Guarantor under this Guarantee at the same time or before the assignment.
13. This Guarantee binds the Guarantor, its successors and permitted assigns.

SEAL OF [THE BANK/FINANCIAL INSTITUTION]
 NAME OF [THE BANK/FINANCIAL INSTITUTION]

SIGNATURE
 NAME

TITLE
DATE

.....

Note: The language of this format is indicative only and will be finalised by the concessionaire & the issuing bank with the approval of MMRDA.