

**BANK GUARANTEE AS SECURITY ON ADVANCE TOWARDS PAYMENT OF
ARBITRAL AWARD UNDER LITIGATION.**

To,

The Chairman and Managing Director,
North Eastern Electric Power Corporation Ltd. (NEEPCO)
Brook Land Compound, Lower New Colony,
Shillong-793003.

WHEREAS:

- A) M/s the Contractor and the Corporation, NEEPCO have entered into a construction contract dated (the “Agreement”) whereby the Corporation, NEEPCO has agreed to the Contractor, M/sundertaking for the work of (The project) in the state of subject to and in accordance with the provisions of the Agreement.
- B) During the course of implementation of the Project, disputes/claims arise in respect of the Agreement. As dispute could not be resolved amicably, the same were referred to Arbitration and accordingly a three member/Sole Arbitral Tribunal, as per the terms of the Agreement, was constituted to resolve the disputes between the Corporation, NEEPCO and the Contractor, M/sunder the Agreement.

- C) The Arbitration Tribunal onpassed the Award in favour of the contractor, M/s (herein referred to as the Arbitral Award) allowing Claim No.pertaining toof the Contractor, M/samounting to Rs./- (Rupees) only as on(along with the interest @% per annum till the date of Award) and the (total amount along with interest of% per annum as on is Rs./- (Rupees) only.
- D) Corporation, NEEPCO has preferred appeal against the award under Section-34 of the Arbitration and Conciliation Act. 1996 (herein referred to as the “Appeal”) before the Court of ADC (Judicial), Shillong, Meghalaya (herein referred to as the “Court”), challenging the Arbitral Award.
- E) Pursuant to NITI Aayog’s OM No. 14070/14/2016-PPPAU dtd 5th Sept, 2016, Ministry of Power vide its No. 28/3/2016-Co-ord (Pt-III), Govt. of India, Ministry of Power, New Delhi, 29th Sept 2016 and **subsequent amendments vide NITI Aayogs OM No. N-14070/14/2016-PPPAU, dated. 28.11.2019, circulated vide Ministry of Power, Govt. of India, Letter No.5/3/2016-P&P, dtd. 13.12.2019**, NITI Aayog has directed the Corporation, NEEPCO that in case of claims where the Arbitration

Tribunal has passed the Arbitral Award and the Corporation, NEEPCO has challenged the Arbitral Award, the Corporation NEEPCO may pay an amount equal to 75% (Seventy five Percent) of the Arbitral Award as awarded in favour of the Contractor, M/sagainst Bank Guarantee without prejudice to the final order of the Court in the manner under challenge, subjected to the terms as stated herein.

- F) The Contractor, M/sis required to open an account with the Arbitral Award Escrow Bank (the “Arbitral Award Escrow Account”) and entered into an Arbitral Award Escrow Agreement with the Corporation i.e. NEEPCO, Arbitral Award Escrow Bank and the Lenders Representative on or before(“Arbitral Award Escrow Agreement”).
- G) The Arbitral Award Escrow Agreement requires the Contractor, M/s to furnish a Bank Guarantee to the Corporation, NEEPCO in sum of Rs./- (Rupees) (“Guarantee Amount”) as security the amount to be deposited by Corporation, NEEPCO in the Arbitral Award Escrow Account and for due and faithful performance of its obligations under and in accordance with arbitral award Escrow Agreement.
- H) Wethrough our Branch at(the “Bank”) have agreed to furnish this Bank Guarantee (“Guarantee”) of Rs./- (Rupees) only.

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

- 1) The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor's M/sobligations under and in accordance with the Arbitral Award Escrow Agreement and agrees and undertakes to pay to the Corporation, NEEPCO upon its mere first written demand and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor M/s such sum or sums upto an aggregate sum of the Guarantee Amount as the Corporation, NEEPCO shall claim, without the Corporation being required to prove or to show grounds or reasons for its demand and/or for the sum paid therein.
- 2) A letter from the Corporation, NEEPCO under the hand of an officer not below the rank of Chief General Manager in the Corporation, NEEPCO that the Court has decided the appeal in favour of the Corporation, NEEPCO and the Contractor, M/s needs to repay the Guaranteed Amount of that there has been an Arbitral Award Escrow default by the Contractor, M/s as per the provisions of the Arbitral Award Escrow Agreement shall be conclusive, final and binding on the bank and the Bank shall immediately release the Guaranteed Amount to the Corporation, NEEPCO. The Bank further agrees that the Corporation's letter in this regard shall be final and binding on the Bank notwithstanding any differences

between the Corporation, NEEPCO and the Contractor, M/s
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- 3) In order to give effect to this Guarantee, the Corporation shall be entitled to act as if the Bank is the principal Debtor and any change in the constitution of the Contractor, M/s 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 this Guarantee.
- 4) It shall not be necessary, and the bank, hereby waives any necessity, of the Corporation to proceed against the Contractor, M/s before presenting to the bank its demand under this Guarantee.
- 5) The Corporation shall have the liberty, without affecting in any manner the liability of the Bank under this guarantee, to vary at any time, the terms and conditions of the Arbitral Award Escrow Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Contractor, M/scontained in Arbitral Award Escrow Agreement or to postpone for any time, and from time to time any of the rights and powers exercisable by the Corporation, NEEPCO against the Contractor, M/s and either to enforce or forbear from enforcing any of the terms and conditions contained in Arbitral Award Escrow Agreement and/or the securities available to the Corporation, NEEPCO and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Corporation, NEEPCO of the

liberty with reference to the matters aforesaid or by reason of time being given to the Contractor, M/sor any other forbearance, indulgence, act or omission on the part of the Corporation or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

- 6) This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Corporation in respect of or relating to the Arbitral Award Escrow Agreement obligations of the Contractor, M/sunder the Arbitral Award Escrow Agreement.
- 7) Notwithstanding anything contained herein before, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount. This Bank Guarantee shall come in force from the date on which the Corporation, NEEPCO deposits an amount equal to 75% of the Arbitral Award awarded to the Contractor, M/s and shall remain in force until, the earlier of the 1 (one) year from the date of such deposits or 2 (two) months from the date of the Court deciding the appeal in favour of the Contractor, M/s
- 8) Upon request made by the Contractor, M/s for release of this Guarantee along with the particulars required hereunder, the Corporation shall release the Guarantee forthwith.

- 9) The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Corporation, NEEPCO in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- 10) Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment there of forthwith and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Corporation, NEEPCO that the envelope as so posted shall be conclusive.
- 11) Notwithstanding anything contained herein:
- a) Our liability under this Bank Guarantee shall not exceed Rs./- (Rupees) only.
 - b) This Bank Guarantee shall be valid uptoand
 - c) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if the Corporation, NEEPCO serve upon us a written claim or demand on or before

Signed and sealed this.....

Signed, sealed and delivered