

## Appendix 8 - Standard Format of Bank Guarantee

[On Appropriate Stamp Paper]

Bank Guarantee No. [ ]

**THIS-DEED OF GUARANTEE** is executed on this [insert date] day of [insert month and year] at [insert place] by [insert name of bank] with its head/registered office at [insert address], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

**IN FAVOUR OF:**

**BILASPUR SMART CITY LIMITED**, a company incorporated under the (Indian) Companies Act, 2013, with its registered office at [ ] (hereinafter referred to as **BSCL**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors-in-title and permitted assigns);

**WHEREAS:**

- (A) BSCL has entered into a contract for providing consultancy services dated [insert date] (the **Contract**) with [insert name of Consultant], a company/firm [incorporated/registered] under the [insert name of the relevant statute under which the Consultant has been incorporated or registered, as the case may be], [with its [registered/principal] office at [•]] (hereinafter referred to as the **Consultant**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors-in-title and permitted assigns).
- (B) In terms of the Contract, the Consultant has agreed to provide the Services for designing and implementing the application of certain Area Based Development project, which involve the use of technology, information and data to improve infrastructure and services within the city of Bilaspur (the **Area Based Development Project**), to implement the Smart Cities Mission in Bilaspur, pursuant to the Request for Proposal dated [ ] (referred to as the **RFP**) and other related documents including without limitation the draft Contract (collectively referred to as **Bid Documents**).
- (C) In terms of the letter of award (the **LOA**) dated [insert date] issued by Client to the Consultant and Clause 51 of the Contract, the Consultant is required to furnish to BSCL, an unconditional, irrevocable, on demand bank guarantee for an amount equivalent to Rs. [•] [Insert amount equivalent to 10% of the Total Value of Contract] (the **Guaranteed Amount**) as security for the due and punctual

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performance or discharge of the Consultant's obligations and liabilities under the Contract.

- (D) At the request of the Consultant and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee, for the due and punctual performance or discharge by the Consultant of its obligations and liabilities under the Contract.

**NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:**

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Contract.
2. The Guarantor hereby irrevocably and unconditionally guarantees and secures, as primary obligor and not merely as guarantor, to BSCL the payment in full of all amounts at any time that may be due, owing or payable to BSCL from the Consultant for the failure of the Consultant to duly and punctually perform all of its obligations under the Contract during the term (**Guarantee**), without any demur, reservation, protest or recourse, immediately on receipt of a demand from BSCL.

The Guarantee is given on consideration received from the Consultant (the receipt and sufficiency of which is hereby acknowledged).

The Guarantor agrees that the value of the Guarantee shall at all times be maintained at the amount equivalent to the Guaranteed Amount.

The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by BSCL against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future Taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that BSCL receives the full amount due hereunder as if no such withholding had occurred.

3. The Guarantor shall not go into the veracity of any breach or failure on the part of the Consultant or validity of demand so made by BSCL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any

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Dispute whatsoever rose by the Consultant or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provision hereof.

4. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Contract or the insolvency, bankruptcy, re-organisation, dissolution or liquidation of the Consultant or any change in ownership of the Consultant or any purported assignment by the Consultant or any other circumstance whatsoever, which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Guarantee is in no way conditional upon any requirement that BSCL shall first attempt to procure the Guaranteed Amount from the Consultant or any other Person, or resort to any other means of obtaining payment of the Guaranteed Amount.

5. In order to give effect to this Guarantee, BSCL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any part of the Guaranteed Amount or prejudice or diminish the Guaranteed Amount in whole or in part, including, whether or not known to it, or BSCL:

- (a) any time or waiver granted to, or composition with, the Consultant or any other Person;
- (b) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the status of the Consultant or any other Person;
- (c) any variation of the Contract so that references to the Contract in this Guarantee shall include each variation;
- (d) any unenforceability, illegality or invalidity of any obligation of any Person under the Contract or any unenforceability, illegality or invalidity of the obligations of the Guarantor under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or Guarantee, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there was no unenforceability, illegality or invalidity;
- (e) the partial or entire release of any Guarantor or other Person primarily or secondarily liable or responsible for the performance, payment or observance

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of any of the Consultant's obligations during the term of the Contract; or by any extension, waiver, or amendment whatsoever which may release a guarantor or the Guarantor, other than performance or indefeasible payment of the Guaranteed Amount; or

(f) Any part performance of the Contract by the Consultant or by any failure by BSCL to timely pay or perform any of its obligations under the Contract.

6. If, and to the extent that for any reason the Consultant enters or threatens to enter into any proceedings in bankruptcy or re-organisation or otherwise, or if, for any other reason whatsoever, the performance or payment by the Consultant of the Guaranteed Amount becomes or may reasonably be expected to become impossible, then the Guaranteed Amount shall be promptly paid by the Guarantor to BSCL on demand.
7. So long as any amount is due from the Consultant to BSCL, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Consultant, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of the Consultant or any such other Person in competition with BSCL. If the Guarantor receives any payment or benefit in breach of this clause 7, it shall hold the same upon trust for BSCL.
8. This Guarantee shall remain in full force and effect from the date hereof until 60 days beyond issuance of the Completion Certificate.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from BSCL, such notice to be issued promptly upon such occurrence.

9. The Guarantor represents and warrants to BSCL that:
  - (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorise the execution, delivery and performance by it of this Guarantee;
  - (b) the Guarantor has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;

- (c) neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor is a party or by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor's constituent documents;
  - (d) no order, consent, approval, license, authorisation or validation of, or filing, recording or registration with, except as have been obtained or made prior to the date hereof, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorise, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee; and
  - (e) this Guarantee will be enforceable when presented for payment to the Guarantor's branch in Bilaspur at [●].
10. This Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of BSCL in exercising any right, power or privilege hereunder and no course of dealing between BSCL and the Guarantor, or the Consultant, 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.
11. The rights, powers and remedies expressly provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which BSCL would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of BSCL to any other or further action in any circumstances without notice or demand.
12. 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, and the Guarantor shall enter into good faith negotiations with BSCL to replace the invalid, illegal or unenforceable provision.

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13. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.
  14. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and BSCL shall constitute a single binding agreement.
  15. BSCL may assign or transfer all or any part of its interest herein to any other person with prior written notice to the Guarantor. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.
  16. All documents arising out of or in connection with this Guarantee shall be served:
    - (a) upon BSCL, at *[insert address]*; and
    - (b) Upon the Guarantor, at *[insert address]*.
  17. Any demand, notice or communication would have been deemed to have been duly Served:
    - (a) if delivered by hand, when left at the proper address of services; and
    - (b) if given or made by pre-paid registered post or facsimile, when received.
  18. Either party may change the above address by prior written notice to the other party.
  19. This Guarantee shall be governed by, and construed in accordance with, the laws of India. The Guarantor irrevocably agrees that any dispute arising out of or relating to this Guarantee may be brought in the courts in Chhattisgarh.

**IN WITNESS WHEREOF** the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and delivered by *[insert name of Bank]* Bank, by *[insert name of branch]* Branch by hand

Of *[insert name of signatory]*

It's *[insert designation]* and duly authorized representative

Authorized by [Power of Attorney dated *[insert date]*] OR [Board resolution dated *[insert date]*].