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# India: Enhancing Bond Guarantee Structuring Skills in India

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For India Infrastructure Finance Company Ltd.  
Asian Development Bank

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[SPECIMEN AGREEMENT]

[SUBJECT TO CHANGE]

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**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

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**DEBENTURE TRUST DEED**

**BETWEEN**

**[•]**

**AND**

**[•]**

**(as Debenture Trustee)**

**AND**

**[•]**

**(as Security Trustee)**

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## DEBENTURE TRUST DEED

THIS **DEBENTURE TRUST DEED** (this "**Deed**") is executed in [•] on \_\_\_\_\_.

### **BETWEEN**

1. [•], a company incorporated under the provisions of the Companies Act, [•], bearing corporate identity number [•], and having its registered office at [•], (hereinafter referred to as the "**Issuer**" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) of the FIRST PART.

### **AND**

2. [•], a company incorporated under the provisions of the Companies Act, [•] and registered with the Securities Exchange Board of India as a debenture trustee under the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, having its registered office at [•], (hereinafter referred to as the "**Debenture Trustee**" which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors and assigns) of the SECOND PART.

### **AND**

3. [•], a company incorporated a company incorporated under the provisions of the Companies Act, [•], bearing corporate identity number [•] and its registered office at [•], in its capacity as security trustee to the Secured Parties (hereinafter referred to as the "**Security Trustee**" which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors and assigns) of the THIRD PART.

The Issuer, the Debenture Trustee and the Security Trustee are hereinafter collectively referred to as the "**Parties**".

### **WHEREAS:**

- (A) The Issuer is a company incorporated under the provisions of the Companies Act, 1956 and operates a [•] project at [•] in the state of [•] (the "**Project**"). The Project achieved its commercial operation date on [•];
- (B) The Issuer has availed of financial assistance amounting to [•] from certain creditors (defined below) (the "**Existing Lenders**"), for the Project (the "**Existing Debt**"). The details of the Existing Debt are as set out in the Information Memorandum (defined below);
- (C) The Board of the Issuer has, pursuant to its resolution dated [•] authorized and subsequently, the Issuer proposes to issue secured, listed, partially guaranteed, redeemable, non-convertible debentures of a face value of Rs. [•] each, aggregating up to Rs. [•] ("**Debentures**") on a private placement basis in terms of the Offer Letter (defined below) to specific investors (the "**Transaction**");
- (D) The Debentures will be listed on wholesale debt market segment of the National Stock Exchange of India Limited ("**NSE**") pursuant to and in accordance with the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 (as amended) within a period of 20 (twenty) days from the Deemed Date of Allotment;
- (E) The Issuer has appointed [•] to act as the debenture trustee for the benefit of the Debenture

Holders *vide* a debenture trustee agreement dated on or about the date of this Deed (the "**Debenture Trustee Agreement**");

- (F) India Infrastructure Finance Company Limited ("**IIFCL**") has introduced a scheme titled '*Regular Credit Enhancement Scheme of IIFCL*' ("**Credit Enhancement Scheme**") wherein, IIFCL has agreed to provide a "first loss" partial credit guarantee to the holders of bonds issued by companies engaged in viable infrastructure projects. The Issuer has approached IIFCL under the Credit Enhancement Scheme to issue a partial credit guarantee ("**IIFCL Guarantee**") to the extent of the IIFCL Available Residual Guarantee Amount (defined below) in accordance with the terms of the IIFCL Guarantee Agreement (defined below);
- (G) In furtherance thereto, IIFCL has executed an irrevocable and unconditional guarantee dated on or about the date of this Deed in favour of the Debenture Trustee and the Security Trustee ("**IIFCL Guarantee Agreement**"), subject to the terms and conditions stated in such IIFCL Guarantee Agreement. IIFCL also intends to execute back-stop guarantee(s) (the "**Back-Stop Guarantee(s)**") with third party guarantor(s), from time to time (the "**Back-Stop Guarantor**"), in order to support its guarantee obligations under the IIFCL Guarantee Agreement. At or about the time of execution of this Deed, such Back-Stop Guarantor is proposed to be Asian Development Bank, an international financial institution organised and existing under the Agreement Establishing the Asian Development Bank by and among its member countries and accordingly, IIFCL has entered / will enter into a Back-Stop Guarantee with Asian Development Bank on or about the date of this Deed;
- (H) Additionally, the Issuer has agreed that the Secured Obligations (defined below), together with any other amounts, whatsoever stipulated in or payable under the Debenture Documents (defined below) due and payable to the respective Secured Parties (defined below) shall be secured by the Security (defined below). Additionally the Debenture Secured Obligations will also be guaranteed by IIFCL in accordance with the terms of the IIFCL Guarantee Agreement;
- (I) As the Security shall be created for the benefit of the Secured Parties, it has been agreed by and among the Issuer and the Secured Parties that the Security shall be created in favour of a third party security trustee which shall hold the Security in trust for and for the benefit of the Secured Parties;
- (J) Accordingly, [•] has been appointed as the Security Trustee in terms of the security trustee agreement executed on or around the date of this Deed ("**Security Trustee Agreement**") by and among the Issuer, the Debenture Trustee, IIFCL and the Security Trustee; and
- (K) The Issuer now proposes to execute a deed being these presents with a view to record the various terms and conditions and stipulations of the Debentures as well as the Issuer's obligations in respect of the Debentures including Redemption of the Debentures, payment of Interest, terms and conditions of the appointment of the Debenture Trustee, creation of Security, and the Issuer has agreed to do so in the manner agreed by the Debenture Trustee and/or the Security Trustee, as the case may be, as hereinafter provided.

**NOW THIS DEED WITNESSETH AND IT IS HEREBY MUTUALLY AGREED AND DECLARED BY AND AMONG THE PARTIES HERETO AS UNDER:-**

1. DEFINITIONS

In these presents unless there is anything in the subject or context inconsistent therewith, the following expressions used in these presents shall have the following meanings:-

"**Abandonment**" shall mean the voluntary cessation of performance of obligations by the

Issuer in respect of the whole Project or any part of the Project, which has a material adverse effect on the performance/ continuation of the Project or suspension of the operations of the Project for any reason, other than a Force Majeure Event, for a continuous period of 15 (fifteen) days. For this purpose, but without limitation to the generality of the foregoing, the Issuer shall be deemed to have abandoned the Project if it shall make or fail to make a decision, or shall take or fail to take any action clearly indicating the cessation of performance by it of its obligations in respect of the Project for any reason for a continuous period of 15 (fifteen) days. **Abandon** and **Abandoned** shall be construed accordingly.

"**Acceleration**" shall mean a declaration by the Debenture Trustee, in accordance with the provisions of the Inter-creditor Agreement, that all the Debenture Secured Obligations are due and payable forthwith, including pursuant to exercise of the Put Option and Rating Downgrade Put Option. **Accelerate** shall be construed accordingly.

"**Account Bank**" has the meaning assigned to it under the Trust and Retention Account Agreement.

"**Act**" shall mean the (*Indian*) Companies Act, 2013, and includes any statutory modification or re-enactment thereof for the time being in force, or the (*Indian*) Companies Act, 1956, as applicable and to the extent not repealed/replaced by the (*Indian*) Companies Act, 2013.

"**Affiliates**" shall mean in relation to any party, a Person that controls, is controlled by or is under the common control with such party.

"**Applicable Law**" shall mean any relevant statute, law, regulation, sub-ordinate legislation, ordinance, rule, judgement, rule of law, order (interim or final), decree, Approvals, clearances, directive, circular, policy, requirement, code of practice or guidance note, or other governmental, regulatory, statutory, administrative restriction or any similar form of decision, or determination by, or any interpretation or administration of any of the foregoing, by any Governmental Authority whether in effect as of the date of execution of this Deed or thereafter and in each case as amended.

"**Approvals**" shall include any consents, approvals, clearances, licenses, actions, authorisations, rulings, permits, certifications, no-objections, filings, notarisations, lodgements, registrations or exemptions in relation to the Issuer and / or the Project, including environmental clearances issued by the Governmental Authority or any third party required to be obtained, maintained and complied with by the Issuer under the Applicable Law or otherwise in connection with the Project or for undertaking, performing or enforcing the obligations contemplated by the Transaction Documents.

"**Arranger**" shall mean [•], a company within the meaning of the Companies Act, 1956 and having its registered office at [•].

"**Auditors**" shall mean [•] or such other reputed firm of chartered accountants as the Issuer may from time to time appoint as statutory auditors in consultation with the Secured Parties.

"**Back-Stop Guarantee**" has the meaning assigned to it in Recital G.

"**Back-Stop Guarantor**" has the meaning assigned to it in Recital G.

"**Business Day**" shall mean a day of the year, excluding Saturday and Sunday, on which IIFCL is open for business in Delhi and banks are open for business in Mumbai and Delhi. IIFCL shall on or prior to the execution of this Deed and every year thereafter provide to the Debenture Trustee an annual list of holidays on which IIFCL shall be closed for business in Delhi.

**"Call Option"** has the meaning assigned to it under Clause 5.4 of Schedule III.

**"Cash Flow Waterfall"** has the meaning assigned to it under the Trust and Retention Account Agreement.

**"Cash Trap Sub-Account"** has the meaning assigned to it under the Trust and Retention Account Agreement.

**"Charged Accounts"** has the meaning assigned to it under Schedule II.

**"CIBIL"** shall mean Credit Information Bureau (India) Limited.

**"Claims"** has the meaning assigned to it under Clause 40(a).

**"Claims Notice"** has the meaning assigned to it under Clause 40(b).

**"Coercive Practice"** shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party.

**"Collusive Practice"** shall mean an arrangement between 2 (two) or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party so as to obtain a financial or other benefit or to avoid an obligation or loss.

**"Corrupt Practice"** shall mean the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly one's own actions or the actions of another party.

**"Counter-Indemnity"** shall mean the counter-indemnity executed by the Issuer in favour of IIFCL, in a form and substance satisfactory to IIFCL.

**"Credit Enhancement Scheme"** has the meaning assigned to it in Recital F and is set out in Schedule VIII.

**"Credit Rating Agencies"** shall mean India Rating and Research Private Limited and Credit Analysis and Research Limited on the date of execution of this Deed and at any future point in time, CRISIL or ICRA Limited if consented to and approved by the Debenture Trustee (acting on the instructions of the Majority Debenture Holders) and IIFCL.

**"Cure Period"** has the meaning assigned to it under Clause 8.

**"Debenture Documents"** shall mean the following:

- (a) this Deed;
- (b) the Security Documents;
- (c) the IIFCL Guarantee Agreement;
- (d) the Debenture Trustee Agreement;
- (e) the Security Trustee Agreement;
- (f) the Trust and Retention Account Agreement;



- (g) the Offer Letter;
- (h) the Information Memorandum;
- (i) the Counter-Indemnity;
- (j) the Sponsor Support Agreement;
- (k) the Inter-creditor Agreement;
- (l) the Issuer's confirmation letter in respect of the Inter-creditor Agreement; and
- (m) any other document designated as a Debenture Document by the Debenture Trustee and consented to be designated as a Debenture Document by the other Secured Parties.

**"Debenture Holders"** shall mean the persons who are, for the time being and from time to time, the holders of the Debentures and whose names appear in the register of beneficial owners, where such Debentures are held in dematerialized form.

**"Debenture Trustee"** has the meaning assigned to it in the Preamble.

**"Debenture Trustee Agreement"** has the meaning assigned to it in Recital E.

**"Debenture Secured Obligations"** shall mean at any time the sum of the Principal Amount plus Interest accrued (but not received) under this Deed and any other amount due to the Debenture Holders under the other Debenture Documents.

**"Debenture Redemption Reserve"** shall mean the reserve to be maintained by the Issuer in accordance with the Act.

**"Debenture Terms and Conditions"** shall mean terms and conditions of the Debentures as set out in the Schedule III, to be appended to the Debentures, and as may be amended from time to time in accordance with these presents and with the prior approval of all the Secured Parties.

**"Debentures"** has the meaning assigned to it in Recital C.

**"Debt"** shall mean all obligations (including all secured borrowed money including long term and short term advances and Secured Obligations) of the Issuer whether incurred as principal or as surety and whether present or future, actual or contingent but excluding any debt availed from the Sponsor.

**"Debt Equity Ratio"** shall mean the amount of Debt divided by the amount of Equity. Provided that for the purpose of this ratio, **"Debt"** shall include reference only to the amount due to the Debenture Holders under the Debenture Documents.

**"Debt Recovery Act"** shall mean the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 including any statutory modifications, re-enactments or amendments thereof from time to time.

**"Debt Service Coverage Ratio"** shall mean:

- (A) the aggregate of (a) profit after tax computed based on Project 'revenues realized'

(excluding non-cash adjustments, if any) for that period as per audited financials of the Issuer; (b) depreciation for such period; (c) all Interest, IIFCL Guarantee Fee and any other financing costs payable for such period under the Debenture Documents and the Project Documents;

divided by:

- (B) an amount equal to the sum of Principal Amount, Interest, IIFCL Guarantee Fee and any other financing costs payable under the Debenture Documents and the Project Documents for that period.

For the purpose of this definition, "revenues realized" will include monies received in the subsequent Fiscal Year in relation to revenues accrued but not realized in the preceding Fiscal Year.

**"Debt Service Reserve Account"** shall mean the account established/to be established and maintained in accordance with this Deed and the Trust and Retention Account Agreement for the purpose of maintaining reserves in respect of Principal Amount and Interest payable to the Debenture Holders.

**"Deed of Hypothecation"** shall mean the unattested memorandum of hypothecation to be entered into by the Issuer for hypothecation of all its present and future movable and current assets (including bank accounts) in favour of the Security Trustee, in form and substance satisfactory to the Security Trustee.

**"Deemed Date of Allotment"** shall mean the date on which the Issuer issues and allots the Debentures in accordance with the terms and conditions of this Deed.

**"Default Interest"** has the meaning assigned to it under Clause 4.3 of Schedule III.

**"Depository"** shall mean either the Central Depository Services Limited or National Securities Depository Limited.

**"Enforcement Action"** shall mean any action or proceeding taken or proposed to be taken by the Security Trustee (on behalf of any of the other Secured Parties, after obtaining the appropriate consents required pursuant to the provisions the Inter-creditor Agreement), against the Issuer, the Project or in respect of all or any part of the Secured Assets or Security Interests created/ to be created pursuant to any or all of the Security Documents for the purpose of recovery of obligations, enforcing or exercising all or any of the rights or remedies of any or all of the Secured Parties, including: (i) the initiation of any non-judicial action or any action in any court or tribunal or before any Governmental Authority or to enforce such rights, including any action initiated under or pursuant to the SARFAESI Act, the Debt Recovery Act or any other Applicable Law and any action to appoint a receiver or liquidator, (ii) adjudicating or seeking a judgment or order on a claim; (iii) initiating any action under or pursuant to RBI's corporate debt restructuring mechanism as may be amended, modified or supplemented from time to time; (iv) suing for or instituting any creditor's process (including a freezing injunction, garnishment, execution or levy, whether before or after judgment) in respect of (a) any obligation (whether or not for the payment of money) or debt owing to the Secured Parties in respect of the Secured Obligations; or (b) otherwise take any action for the enforcement of such obligation or debt (including any enforcement by way of attachment, execution or otherwise); or (v) enforcement of such other rights and remedies available to the Secured Parties in relation to the Secured Obligations and/or under Applicable Law, including undertaking any action or rights pursuant to an Event of Default.

***Provided that*** upon occurrence of an Event of Default, any notice issued by any of the

Secured Parties (other than the Security Trustee) to the Issuer to discharge its liabilities under Section 13(2) of the SARFAESI Act to preserve or protect the assets, rights or benefits secured under the Security, shall not constitute or be construed as an Enforcement Action, and may be exercised individually by such Secured Parties (other than the Security Trustee).

**"Event of Default"** shall mean any event or circumstance specified in Clause 8.

**"Equity"** shall mean the ordinary share capital (including, advances to equity and share premium amount), instruments compulsorily convertible into equity, quasi-equity (in the form of subordinate debt from the Sponsor or otherwise) of the Issuer but shall exclude all intangible assets, including patents, goodwill, unamortized fees and expenses.

**"Existing Debt"** has the meaning assigned to it in Recital B.

**"Existing Lenders"** has the meaning assigned to it in Recital B.

**"FATCA"** has the meaning assigned to it under Clause 12.19.

**"Final Settlement Date"** shall mean the date on which all Secured Obligations have been irrevocably and unconditionally paid and discharged in full to the satisfaction of the Debenture Trustee and IIFCL, as the case may be.

**"Financing of Terrorism"** shall mean the act of providing or collecting funds with the intention that they be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.

**"Fiscal Year"** shall mean the accounting period commencing from April 1 of each year till March 31 of the next year.

**"Fiscal Quarter"** shall mean each calendar quarter commencing from April 1 to June 30, July 1 to September 30, October 1 to December 31 and January 1 to March 31 for each Fiscal Year.

**"Force Majeure Event"** shall mean without limitation any act of God, fire, flood, earthquake, act of war, terrorism, civil disorders, revolutions or any other cause or events or circumstances of similar nature that are beyond the control of the affected Party and make it impossible for that Party to perform its obligations in accordance with the terms of this Deed. For the avoidance of doubt, Force Majeure Event shall not under any circumstances be deemed to occur from any lack of funds/finances faced by a Party or reasons attributable to the affected Party.

**"Fraudulent Practice"** shall mean an act of commission or omission including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party, so as to obtain a financial or other benefit for oneself or for any other Person or to avoid an obligation or loss.

**"GAAP"** shall mean the generally accepted accounting principles in India.

**"Governmental Authority"** shall mean the Government of India, or the Government of Maharashtra or any other state of India or RBI or SEBI, or any local, national or supranational agency, authority, department, inspectorate, board, statutory, regulatory or administrative authority, ministry, collector, gram panchayat, municipal committee, corporation, official, court, tribunal, stock exchange, judicial body, agency, arbitrators, statutory person (whether autonomous or not), corporation (to the extent acting in a legislative, judicial or

administrative capacity) or stock exchange or commission or any of their subdivisions of India or of any other jurisdiction.

**"Guarantee Fee Reserve"** shall mean the reserve of the scheduled IIFCL Guarantee Fee for the next 30 (thirty) months (taking into account any scheduled increases of the IIFCL Guarantee Fee) maintained by the Issuer in the Guarantee Fee Reserve Sub-Account, in accordance with the terms of this Deed, the IIFCL Guarantee Agreement and the Trust and Retention Account Agreement.

**"Guarantee Fee Reserve Sub-Account"** has the meaning assigned to it under the Trust and Retention Account Agreement.

**"Guidelines"** has the meaning assigned to it under Clause 11.1(g)(i).

**"IIFCL"** has the meaning assigned to it in Recital F.

**"IIFCL Available Residual Guarantee Amount"** has the meaning assigned to it under the IIFCL Guarantee Agreement.

**"IIFCL Event of Default"** has the meaning assigned to it under the IIFCL Guarantee Agreement.

**"IIFCL Guarantee"** has the meaning assigned to it in Recital F.

**"IIFCL Guarantee Agreement"** has the meaning assigned to it in Recital G.

**"IIFCL Guarantee Fee"** has the meaning assigned to it under the IIFCL Guarantee Agreement.

**"IIFCL Net Guarantee Amount Paid"** has the meaning assigned to it under the IIFCL Guarantee Agreement.

**"IIFCL Secured Obligations"** shall mean at any time, the sum of: (a) the IIFCL Net Guarantee Amount Paid; (b) interest accrued (but not received) thereon; and (c) and any other amount, fee, charges and expenses payable to IIFCL in relation to the IIFCL Guarantee under *inter alia* the Counter-Indemnity and any other guarantee or undertaking executed by the Sponsor in favour of IIFCL, in relation to the Transaction. It is clarified that any amount, fee, charges and expenses already paid to IIFCL by the Issuer or the Sponsor under *inter alia* the Counter-Indemnity and any other guarantee or undertaking executed by the Sponsor in favour of IIFCL, in relation to the Transaction, shall be excluded for the purpose of this definition.

**"Indenture of Mortgage"** shall mean the registered mortgage deed to be executed by the Issuer for, *inter alia*, creation of mortgage over the immovable property of the Issuer and assignment of its rights under the Project Documents in favour of the Security Trustee, in form and substance satisfactory to the Security Trustee.

**"Indemnified Persons"** has the meaning assigned to it under Clause 40(a).

**"Information Memorandum"** shall mean the information memorandum issued by the Issuer to potential investors for private placement of the Debentures and prepared in compliance with the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

**"Insurance Contract(s)"** shall mean the material insurance policies obtained by the Issuer in relation to the Project and the Secured Assets as listed in Schedule VII and any substitutes or

supplements thereof.

**"Inter-creditor Agreement"** shall mean the agreement dated on or around the date of this Deed executed by and among the Debenture Trustee, the Security Trustee and IIFCL regarding sharing of the Security Interests created under the Security Documents, amongst the Secured Parties and all other *inter-se* matters.

**"Interest"** shall mean the amount of interest payable on the Debentures at the Interest Rate on each Interest Payment Date together with any Default Interest, and any other interest payable under the Debenture Documents.

**"Interest Payment Date"** has the meaning assigned to it under Clause 4.2(a) of Schedule III.

**"Interest Period"** has the meaning assigned to it under Clause 4.2(a) of Schedule III.

**"Interest Rate"** has the meaning assigned to it under Clause 4.2(a) of Schedule III.

**"Interest Step Up Events"** has the meaning given to it under Clause 4.4(b) of Schedule III.

**"Issue Closing Date"** has the meaning assigned to it under the Information Memorandum.

**"Issue Opening Date"** has the meaning assigned to it under the Information Memorandum.

**"Issuer"** has the meaning assigned to it in the Preamble.

**"Majority Debenture Holders"** shall mean the Debenture Holders whose share in the Principal Amount aggregates to equal to or more than [•] of the value of the nominal amount of the Debentures for the time being outstanding. Provided that for the purpose of this definition, the Debentures held by the Issuer, Sponsor and any Related Party of the Issuer and Sponsor shall be excluded.

**"Material Adverse Effect"** shall mean, as of any date of determination by the Debenture Trustee, a material and adverse effect on:

- (a) the financial condition, business, operations or capabilities of the Issuer, which has an effect on its ability to operate the Project; or
- (b) the ability of the Issuer to fulfil/ satisfy the Secured Obligations.

**"Money Laundering"** shall mean (a) the conversion or transfer of property, knowing that it is derived from a criminal offence, for the purpose of concealing or disguising its illegal origin or of assisting any Person who/ which is involved in the commission of the illegal activity to evade the legal consequences of his/ her/ its actions; (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from an illegal activity; or (c) the acquisition, possession or use of property knowing at the time of its receipt that it is derived from an illegal activity.

**"NSE"** has the meaning assigned to it in Recital D.

**"Offer Letter"** shall mean the private placement offer letter in relation to the Debentures issued by the Issuer to the investors in Form PAS-4, as required under the Act, prior to the effectiveness of this Deed.

**"Parties"** has the meaning assigned to it in the Preamble.

**"Pay-In Date"** shall mean the date on which the subscription amount from the Debenture Holders is credited into the Trust and Retention Account.

**"Payment Date"** shall mean:

- (a) an Interest Payment Date; or
- (b) a Redemption Date; or
- (c) a date when any sum is due and payable in relation to the Debentures under the Debenture Documents; or
- (d) a date when any of the above are jointly payable.

**"Permitted Disposals"** shall mean the sale, lease or any other disposal of the obsolete equipment of the Issuer in the ordinary course of business, provided that the aggregate amount receivable by the Issuer on the sale or disposition of, such equipment does not at any time exceed Rs. [•].

**"Permitted Investments"** has the meaning assigned under the Trust and Retention Account Agreement.

**"Person"** shall mean any individual, corporation, partnership, (including, association), joint stock company, trust, unincorporated organization or Governmental Authority or political subdivision thereof or 2 (two) or more of the foregoing and shall include their respective successors, transferees and assigns and in case of an individual shall include his/ her legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being.

**"Pledge Agreement"** shall mean the pledge agreement creating a pledge on [•]share capital of the Issuer held by the Sponsor in favour of the Security Trustee, in form and substance satisfactory to the Security Trustee.

**"PPAs"** shall mean [•].

**"Principal Amount"** shall mean the aggregate outstanding face value of the Debentures that has not fallen due for repayment or has not been repaid.

**"Proceedings"** has the meaning assigned to it in Clause 37(a).

**"Prohibited Activity"** shall mean any of the activities which constitute a prohibited investment activity under any Applicable Law including the Prevention of Money Laundering Act, 2002 and the rules framed thereunder.

**"Project"** has the meaning assigned to it in Recital A.

**"Project Documents"** shall mean, collectively, the following documents as may be amended and supplemented:

- (a) the PPAs;
- (b) operation and maintenance agreements dated [•] (as amended) between [•] and the Issuer for engaging [•] as the operation and maintenance service provider for the Project;

- (c) all Approvals obtained in relation to the Project; and
- (d) Insurance Contracts.

"**Put Option**" has the meaning assigned to it under Clause 5.3 of Schedule III.

"**Quarterly Budget**" has the meaning assigned to it under Clause 11.4(c).

"**Rating Downgrade Event**" has the meaning assigned to it under Clause 6A(a).

"**Rating Downgrade Put Option**" has the meaning assigned to it under Clause 6A(b).

"**RBI**" shall mean the Reserve Bank of India.

"**Record Date**" shall mean 15 (fifteen) days prior to any relevant Payment Date.

"**Redemption**"/ "**Redeem**" shall mean the repayment of the Principal Amount, Interest and all other amounts due and payable by the Issuer to the Debenture Holders upon maturity of Debentures or on exercise of a Call Option, Rating Downgrade Put Option or Put Option.

"**Redemption Amount**" shall mean the Principal Amount together with the Interest, including Default Interest, if any, costs (including legal costs on full indemnity basis), expenses, commissions, fees (including the remuneration of the Debenture Trustee and all fees, costs, charges and expenses payable to the Debenture Trustee and any receiver), all taxes, dues, duties, levies, cess including stamp duty, registration and all other charges and amounts repayable/payable on Debentures at any point of time, as per the Debenture Terms and Conditions.

"**Redemption Date**" shall mean the dates indicated in the amortisation schedule in Schedule VI and the final Redemption Date shall mean March 31, 2033 or the preceding Business Day if that day is not a Business Day.

"**Refinance Reserve Sub-Account**" has the meaning assigned to it under the Trust and Retention Account Agreement.

"**Reimbursement Date**" has the meaning assigned to it under Clause 7.1(a).

"**Related Party**" has the meaning ascribed to such term under the Act.

"**Restricted Payment Conditions**" shall mean the fulfilment/compliance of the following conditions to the satisfaction of the Debenture Trustee:

- (a) all reserves and Sub-Accounts required to be maintained by the Issuer in accordance with Applicable Law and the Trust and Retention Account Agreement are adequately funded;
- (b) the Debt Service Coverage Ratio (as per the audited financials of the Issuer) for the immediately preceding Fiscal Year is equal to or more than [•] and the Debt Equity Ratio for the immediately preceding Fiscal Year does not exceed [•];
- (c) no Event of Default has occurred and is continuing;
- (d) rating of the Debentures from the Credit Rating Agencies is at least [•];
- (e) the payment is permitted in terms of the Debenture Documents and Applicable Law;

and

- (f) no other Restricted Payment has been made during the existing Fiscal Year.

**"Restricted Payments"** shall mean: (a) all dividends, distributions (whether in cash, property or obligations) on, other payments on account of, the setting apart of money for, whether by a sinking or other fund or otherwise for, the purchase, redemption, retirement or other acquisition of any portion of, the Issuer's share capital, compulsorily convertible debentures, or any options, warrants, commitments, pre-emptive rights or agreements of any kind for the issuance, sale, registration or voting of, or subscriptions for or securities convertible into, any share capital in respect of the Issuer; or (b) any payment on, purchase, retirement or other acquisition of, any subordinated loans (excluding payments made towards the principal amount of subordinate debt advanced by the Sponsor (other than as part of the Existing Debt) or any payments towards the IIFCL Guarantee in accordance with the terms of the IIFCL Guarantee Agreement) or compulsorily convertible debentures (including any infusion of subordinate debt), or (c) any other payment to an Affiliate of the Issuer or Sponsor; or (d) making any investment/payments (other than a Permitted Investment) in any form in/to another Person.

**"Sanctions"** has the meaning assigned to it under Clause 12.18(a).

**"SARFAESI Act"** shall mean the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No. 54 of 2002) including any statutory modifications, re-enactments or amendments thereof from time to time.

**"SEBI"** shall mean the Securities and Exchange Board of India.

**"Secured Assets"** shall mean the assets of the Issuer and the Sponsor over which Security Interest will be created pursuant to the terms of this Deed and the respective Security Documents.

**"Secured Obligations"** shall mean collectively, the Debenture Secured Obligations and the IIFCL Secured Obligations.

**"Secured Parties"** shall mean the Debenture Holders, Debenture Trustee, IIFCL, the Back-Stop Guarantor (if elected in accordance with the terms of the Security Trustee Agreement and the Inter-creditor Agreement), the Security Trustee (acting on behalf of the Debenture Holders, IIFCL and the Back-Stop Guarantor, if applicable) and any other party who accedes to the Security Trustee Agreement.

**"Security"** has the meaning assigned to it under Clause 6.1.

**"Security Documents"** shall mean all documents entered into or executed by the Issuer, or the Sponsor for creating and perfecting the Security, in form and substance acceptable to the Security Trustee, including:

- (a) Deed of Hypothecation;
- (b) Indenture of Mortgage;
- (c) Pledge Agreement;
- (d) all documents, deeds and power(s) of attorney required by the Secured Parties or entered into or executed by the Issuer or any other Person for creating and perfecting the Security; and



- (e) any other document including any deeds of assignment, guarantee or powers of attorney, designated as such by the Security Trustee.

**"Security Interest"** shall mean any mortgage, pledge, hypothecation, assignment, encumbrance, lien (statutory or other), trust, preference, priority or other security agreement of any kind or nature whatsoever, other encumbrance of any kind, and any other type of preferential arrangement (including without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof), including, (i) any financing or similar statement or notice filed under any recording or notice statute, and (ii) any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy/ contract.

**"Security Trustee"** has the meaning assigned to it in the Preamble.

**"Security Trustee Agreement"** has the meaning assigned to it under Recital J.

**"Shortfall Amount"** has the meaning assigned to it under the IIFCL Guarantee Agreement.

**"Sponsor"** shall mean [•], a company registered under the Companies Act, [•] , bearing corporate identity number [•], and having its registered office at [•].

**"Sponsor Support Agreement"** shall mean the agreement executed/ to be executed by the Sponsor on or about the date of this Deed in favour of the Debenture Trustee in relation to, *inter alia*, providing funds to reduce the Debt of the Issuer in certain circumstances.

**"Sub-Accounts"** shall mean the sub-accounts to the Trust and Retention Account operated and maintained in accordance with the Trust and Retention Account Agreement.

**"Surplus Sub-Account"** has the meaning assigned to it under the Trust and Retention Account Agreement.

**"Taxes"** shall mean any present or future tax, levy, impost, duty, stamp duty, charge, fee, deduction or withholding in the nature of tax wherever imposed, levied, collected, withheld or assessed by any Governmental Authority pursuant to Applicable Law.

**"Transaction"** has the meaning assigned to it in Recital C.

**"Transaction Documents"** shall mean collectively the Debenture Documents and the Project Documents.

**"Trust and Retention Account"** shall mean the account established and maintained in accordance with the Trust and Retention Account Agreement.

**"Trust and Retention Account Agreement"** shall mean the agreement executed on or about the date of this Deed between the Issuer, IIFCL, the Account Bank, the Debenture Trustee and the Security Trustee in relation to deposit and withdrawal of monies related to the Project and all other revenues of the Issuer.

## 2. INTERPRETATION, INCONSISTENCY AND ACCOUNTING TERMS

### 2.1 Interpretation

- (a) words denoting singular number only shall include plural number and vice-versa;
- (b) words denoting one gender only shall include the other gender;

- (c) all references in these presents to the Debenture Trustee shall be deemed to refer to the Debenture Trustee acting on behalf of the Debenture Holders, unless indicated otherwise;
- (d) all references in these presents to any provision of any statute shall be deemed also to refer to the statute, modification or re-enactment thereof or any statutory rule, order or regulation made thereunder or under such re-enactment;
- (e) an "**amendment**" includes a supplement, novation or re-enactment and "**amended**" is to be construed accordingly;
- (f) "**assets**" includes properties, revenues, rights, benefits, interests and titles of every description;
- (g) "**control**" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise;
- (h) "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last day in that calendar month;
- (i) "**regulation**" includes any applicable regulation, rule, official directive, request or guideline (whether or not having the force of law but if not, being of a kind with which it is customary for companies within the relevant industry to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (j) law or a provision of law is a reference to that law or provision as amended or re-enacted;
- (k) all reference to "**days**" means reference to calendar days;
- (l) all references in these presents to Schedules, Clauses, Sub-Clauses, Paragraphs or Sub-paragraphs shall be construed as reference respectively to the Schedules, Clauses, Sub-Clauses, Paragraphs and Sub-paragraphs of these presents;
- (m) "**Debenture Secured Obligations**" and "**IIFCL Secured Obligations**" shall be construed independently as the context requires, provided that there shall be no double counting between the "**Debenture Secured Obligations**" and "**IIFCL Secured Obligations**";
- (n) any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply;
- (o) the rule of construction, if any, that a contract should be interpreted against the Parties responsible for the drafting and preparation thereof (*rule of contra perforantum*), shall not apply;
- (p) any consent, approval, determination, waiver or finding to be given or made by or on behalf of the Debenture Holders by the Debenture Trustee shall be made or given by the Debenture Holders or the Debenture Trustee in their sole discretion except as specifically provided for in this Deed;

- (q) notwithstanding anything to the contrary contained under this Deed, wherever the consent or approval of the Debenture Trustee (on its own behalf or on behalf of the Debenture Holders) is to be provided to the Issuer, such consent/ approval shall be provided within 30 (thirty) days of the request for such approval/ consent being received by the Debenture Trustee from the Issuer. If after the lapse of such 30 (thirty) day period, no response (either providing or refusing consent/ approval) is received by the Issuer from the Debenture Trustee, it shall be deemed that the Debenture Trustee has consented to/ approved the request of the Issuer. Provided that the provisions of deemed consent under this Clause 2.1(q) shall not apply to any consents/ approvals required in relation to an Enforcement Action or Acceleration;
- (r) notwithstanding anything to the contrary contained under this Deed and/or other Debenture Documents, the Debenture Trustee/Majority Debenture Holders shall have the undisputable sole and exclusive right to ascertain, assess, analyze and conclude on the existence of a Material Adverse Effect and such decision/conclusion by the Debenture Trustee/Majority Debenture Holders shall be conclusive and binding; and
- (s) the provisions contained in the Schedules hereunder written shall have effect in the manner as if they were specifically herein set forth.

## 2.2 Inconsistency

Notwithstanding anything to the contrary contained in any of the Debenture Documents, the provisions of the Trust and Retention Account Agreement shall have an overriding effect over the provisions of the other Debenture Documents (except the Inter-creditor Agreement) and in the event of any conflict/inconsistency between the provisions of the Trust and Retention Account Agreement and the provisions of the other Debenture Documents (except the Inter-creditor Agreement), the provisions contained in the Trust and Retention Account Agreement shall prevail only to the extent of conflict/inconsistency. Notwithstanding anything to the contrary contained in the Trust and Retention Account Agreement or the Inter-creditor Agreement, the provisions of the Inter-creditor Agreement shall have an overriding effect over the provisions of the Trust and Retention Account Agreement and in the event of any conflict/inconsistency between the provisions of the Trust and Retention Account Agreement and the provisions of the Inter-creditor Agreement in relation to the *inter-se* rights of the Secured Parties, the provisions of the Inter-creditor Agreement shall prevail only to the extent of conflict/inconsistency.

## 2.3 Accounting Terms

- (a) **General:** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Deed shall be prepared in conformity with, GAAP as in effect from time to time, except as otherwise specifically prescribed herein.
- (b) **Changes in Indian Accounting Standards:** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Debenture Documents, and either the Issuer or the Debenture Trustee (acting on the instructions of the Majority Debenture Holders) shall so request, the Debenture Trustee (acting on the instructions of the Majority Debenture Holders) and the Issuer shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Debenture Holders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such

change therein and (ii) the Issuer shall provide to the Debenture Trustee financial statements and other documents required under this Deed or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

- (c) **Rounding:** Any financial ratios required to be maintained by the Issuer pursuant to this Deed shall be calculated by dividing the appropriate component by the relevant other component and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).
- (d) **Times of Day:** Unless otherwise specified, all references herein to times of day shall be references to Indian Standard Time (IST).

### 3. SETTLEMENT OF TRUST AND APPOINTMENT OF THE DEBENTURE TRUSTEE

3.1 At the request of the Issuer, [•] has, pursuant to the Debenture Trustee Agreement, agreed to act as the Debenture Trustee for the Debenture Holders in respect of the Debentures.

3.2 The Issuer hereby settles in trust the sum of Rs. [•] with the Debenture Trustee and the Debenture Trustee hereby confirms receipt of and accepts the said amount of Rs. [•] in trust hereby declared and, hereby agrees to act as Debenture Trustee for the benefit of the Debenture Holders and their successors, transferees, novatees and assigns subject to the terms and conditions of these presents. The Debenture Trustee acknowledges that the Debenture Holders have agreed to subscribe to the Debentures *inter alia* on this basis. The Debenture Trustee in its capacity as a trustee agrees:

- (a) to execute and deliver all documents, agreements, instruments and certificates contemplated by the Debenture Documents executed/ to be executed and delivered by the Debenture Trustee or as the Debenture Trustee shall deem advisable and in the best interest of the Debenture Holders;
- (b) to take whatever action shall be required to be taken by the Debenture Trustee by the terms and provisions of the Debenture Documents and to exercise its rights and perform its duties and obligations under such Debenture Documents;
- (c) subject to the terms and provisions of the Debenture Documents, to take such other action in connection with the foregoing as the Debenture Holders may from time to time direct; and
- (d) to perform such other duties as required under Applicable Law.

**Provided** that before initiating any action or exercising any right under this Deed or any of the other Debenture Documents, the Debenture Trustee shall, unless otherwise provided for in the Debenture Documents, seek written instructions from the Majority Debenture Holder(s) and only upon receipt of relevant instructions from the Majority Debenture Holder(s) shall the Debenture Trustee exercise its rights and perform its obligations under each of the documents, agreements, instruments and certificates referred to herein. Notwithstanding such requirement for instructions in writing the Debenture Trustee shall never take any action inconsistent with the best interests of the Debenture Holder(s).

3.3 The Issuer hereby expressly permits the Debenture Trustee to appoint [•] as the Security Trustee who shall hold the Security on behalf of and for the benefit of the Secured Parties in accordance with the terms of this Deed, the Security Documents and the Inter-creditor Agreement.

- 3.4 The Parties acknowledge that the Debenture Trustee shall, in addition to the powers provided in this Deed, have all rights and benefits accorded to it under the Applicable Law and all powers and responsibilities as have been provided in any other Debenture Documents.
- 3.5 The Debenture Trustee shall be answerable to and accountable to the Debenture Holders for any loss in relation to the Debenture Documents or any part thereof or any rights in respect thereto only under circumstances arising out of its wilful misconduct, default, gross negligence, fraud, breach of and/ or a failure to comply with the terms and conditions of the Debenture Documents or any other agreement by which the Debenture Trustee may be bound or express instructions of the Majority Debenture Holders or as the case may be, any of their representatives, agents, nominees or officers.
- 3.6 The Debenture Trustee agrees to act as a prudent and responsible trustee in respect of the Debentures and shall act promptly and diligently in accordance with its obligations under the Debenture Documents.
4. AMOUNT OF DEBENTURES AND COVENANT TO PAY PRINCIPAL AND INTEREST
- 4.1 The Debentures constituted and issued hereunder comprise of [●] Debentures, bearing interest at the Interest Rate specified in the Debenture Terms and Conditions and, issued subject to fulfilment of conditions precedent set out under Schedule IV Part A. The Issuer shall also, to the satisfaction of the Debenture Trustee, fulfil the conditions subsequent as set out in Schedule IV Part B.
- 4.2 The Debentures constituted and issued hereunder are on a private placement basis in terms of the Offer Letter.
- 4.3 The proceeds from the Transaction shall be utilized exclusively for repayment of the Existing Debt.
- 4.4 The aforesaid use of the proceeds from the Transaction shall be subject to the compliance of directives issued by the Government of India, the RBI and any other Governmental Authority, from time to time.
- 4.5 The Issuer covenants with the Debenture Trustee that it shall pay to the relevant Debenture Holders, Interest (at the Interest Rate specified in the Debenture Terms and Conditions) on the Interest Payment Date and pay all the other Debenture payments on the relevant Payment Date.
- 4.6 The Issuer covenants with the Debenture Trustee that it shall Redeem the Debentures or any part thereof as and when the same fall due for Redemption and pay all the Redemption Amounts on all scheduled Redemption Dates.
- 4.7 The Issuer covenants with the Debenture Trustee that it shall comply with all its obligations under this Deed and pay and repay all the monies payable by the Issuer (including any applicable Default Interest, fees and costs and expenses) to the Debenture Trustee and the Debenture Holders pursuant to the terms of this Deed.
- 4.8 All payments of the Redemption Amount shall be routed through the Trust and Retention Account.
5. ISSUE AND FORM OF DEBENTURES
- 5.1 The Issuer shall:

- (a) on the Deemed Date of Allotment, allot the Debentures and issue a duly stamped global certificate/ letter of allotment in respect of such Debentures and deliver such global certificate/ letter of allotment to the Debenture Trustee to hold the same for the benefit of the Debenture Holders; and
  - (b) as soon as practicable thereafter but in any event within 2 (two) days from the Deemed Date of Allotment, credit the relevant Debentures in dematerialized form to the demat account of the Debenture Holder.
- 5.2 The Issuer shall credit the Debentures in dematerialized form in accordance with the provisions of the Depositories Act, 1996 and the rules and regulations made thereunder. For credit of the Debentures in dematerialized form, the Issuer has made necessary arrangements with the Depository. The Issuer hereby undertakes to comply with all relevant procedures and requirements as per the bye laws and rules and regulations of its depository participant and those of the Depository for entering the Debentures in a depository system.
- 5.3 The Debenture Holder will own the Debentures in dematerialised form and deal with the same as per the provisions of Depositories Act, 1996 and rules as notified by the relevant Depository from time to time.
- 5.4 The Debentures shall be issued in accordance with the terms and conditions stipulated under this Deed with the benefits of the Debenture Terms and Conditions. The Debenture Terms and Conditions shall be binding on the Issuer, the Debenture Trustee, the Debenture Holders and all Persons claiming by, through, under or in trust for any of them and that the Debenture Trustee shall, subject to the terms of the Inter-creditor Agreement, be entitled to enforce the rights of the Debenture Holders pursuant to the Debenture Terms and Conditions as if the same were set out and contained in these presents.
- 6. SECURITY AND CONTRACTUAL COMFORT
- 6.1 The Secured Obligations shall be secured by the following Security Interest till the Final Settlement Date in favour of the Security Trustee, acting for the benefit of and on behalf of the Secured Parties:
  - (a) a [•] charge by way of mortgage on the Issuer's immoveable properties (including mortgage of leasehold rights for leasehold land, if any), both present and future, as described under Schedule I;
  - (b) a [•] charge by way of hypothecation on the Issuer's entire moveable assets both present and future, including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable properties of whatsoever nature, as described under Schedule II;
  - (c) a [•] charge by way of hypothecation on entire cash flows, receivables, book debts and revenues of the Issuer of whatsoever nature and wherever arising, both present and future, as described under Schedule II;
  - (d) a [•] charge by way of hypothecation on entire intangible assets of the Issuer, including but not limited to, goodwill, intellectual property rights and uncalled capital, both present and future, as described under Schedule II;
  - (e) a [•] charge on all reserves and bank accounts of the Issuer wherever maintained including the Sub-Accounts established under the Trust and Retention Account Agreement and the amounts lying to the credit thereof;

- (f) a [•] charge by way of pledge of shares held by the Sponsor in dematerialized form in the share capital of the Issuer representing at least [•] of the total paid up equity share capital of the Issuer till the Final Settlement Date. The shares to be so pledged shall be free from any restrictive covenants/lien or other encumbrance under any contract/arrangement, including shareholder agreement/joint venture agreement/financing arrangement, with regard to pledge/transfer of the shares including transfer upon enforcement of the pledge; and
- (g) a [•] charge by way of mortgage/ hypothecation/ assignment:
  - (i) of all the rights, title, interests, benefits, claims and demands of the Issuer in, to and under the Project Documents, subject to due acknowledgment and consent of the relevant counter-parties to such Project Document(s), **if applicable**, all as amended, varied or supplemented from time to time;
  - (ii) subject to Applicable Law, of the rights, title, interests, benefits, claims and demands whatsoever of the Issuer in, to and under all the Approvals in relation to the Project; and
  - (iii) of the right, title, interests, benefits, claims and demands of the Issuer in, to and under any letter of credit, guarantee, corporate guarantee, bank guarantee provided by any party to the Project;

to be maintained at all times till the Final Settlement Date. The Security Interests mentioned under Clause 6.1(a) to (g) above shall be collectively referred to as "**Security**".

6.1A. The Debenture Secured Obligations shall also be guaranteed by IIFCL in accordance with the terms of the IIFCL Guarantee Agreement.

## 6.2 **Creation and Perfection**

- (a) The Security shall be created and perfected, in form and manner acceptable to the Security Trustee, no later than 60 (sixty) days from the Deemed Date of Allotment. It is clarified that all necessary Approvals for creation and perfection of Security, if applicable, will also be obtained within 60 (sixty) days from the Deemed Date of Allotment [•].
- (b) If the Security is not created and perfected within 60 (sixty) days from the Deemed Date of Allotment in accordance with Clause 6.2(a) above, the Issuer shall, at the option of the Debenture Holders, either refund the Debenture subscription amount at an agreed rate of Interest or pay Default Interest of [•] per annum, over the Interest Rate from the expiry of [•] days from the Deemed Date of Allotment till the Security is created and perfected to the satisfaction of the Debenture Trustee.

## 6.3 **Continuing Security**

- (a) The Security to be created pursuant to the terms of this Deed, the Security Documents and the Inter-creditor Agreement is a continuing security and shall remain in full force and effect, till the Final Settlement Date.
- (b) Notwithstanding any irregularity, invalidity, frustration or other unenforceability of any obligations of the Issuer, the insolvency or liquidation or any incapacity or change in the constitution or status of the Issuer, any intermediate settlement of account or any other document or security or any present or future law or order of any Governmental Authority (whether of right or in fact) purporting to reduce or

otherwise affect any of such obligations in each case, with the effect that the Issuer's obligations under this Deed shall remain in full force and this Deed shall be construed accordingly as if there were no such irregularity, unenforceability, invalidity, law or order.

- (c) No failure to make, obtain or maintain in full force and effect any required or necessary authorization from any Governmental Authority shall release the Issuer or constitute a defence to the performance by the Issuer of its obligations under or pursuant to this Deed.

#### 6.4 **Application to Court**

Without prejudice to any power of sale, the Security Trustee may, at any time after the Security becomes enforceable, apply to the court for an order that the powers and trusts hereof be exercised and carried into execution under the directions of the court and for the appointment of a receiver and manager of the Secured Assets or any of them and for any other order in relation to the execution and administration of the powers and trusts hereof as the Security Trustee shall deem expedient and the Secured Parties may assent to or approve of in accordance with the terms of the Inter-creditor Agreement and shall be indemnified by the Issuer against all costs, charges and expenses incurred for or in relation to any such application or proceeding.

#### 6.5 **No Disposal or Withdrawal**

The Issuer hereby covenants and undertakes that till the Final Settlement Date, the Issuer shall not deal with or dispose off any interest in the Secured Assets (except for any Permitted Disposals) or any part thereof in a manner prejudicial to the interests of the Secured Parties or withdraw any of the Secured Assets from the Security Interest created thereon in accordance with the provisions of this Deed, the Security Documents and the Inter-creditor Agreement, except with the prior permission in writing of the Debenture Trustee (acting on behalf of the Majority Debenture Holders) and IIFCL, and shall hold the same unto and to the use absolutely for the benefit of the Secured Parties in accordance with the terms of this Deed, the Security Documents and the Inter-creditor Agreement.

#### 6.6 Receipt of Security Trustee to be Effectual Discharge

Upon any sale, calling in or collection and upon any other dealing or transaction of the Secured Assets, the receipt by the Security Trustee of the purchase money for any of the Secured Assets sold and for any other monies paid otherwise howsoever to it shall effectually discharge the purchaser or Person paying the same and from being concerned to see to the application thereof or being answerable for the loss or misapplication or non-application thereof.

#### 6.7 **Covenant related to Future Property**

The Issuer hereby covenants that no later than 5 (five) Business Days prior to the acquisition of any interest in any immovable property, the Issuer shall notify the Debenture Trustee in writing of the proposed acquisition and do all acts including the execution of any deeds, writings, agreements or any other form of instrument that is/may be required to create a [•] ranking mortgage over such immovable in favour of the Security Trustee.

#### 6.8 **Release of Security**

After the Final Settlement Date, the Debenture Trustee shall:



- (a) after obtaining the prior written consent of the Majority Debenture Holders; and
- (b) upon proof being given to the reasonable satisfaction of the Debenture Trustee that the Secured Obligations have been paid in full; and
- (c) upon payment of all fees, costs, charges and expenses incurred by the Debenture Trustee, the Security Trustee or by any receiver in relation to these presents,

at any time thereafter, at the request and cost of the Issuer instruct the Security Trustee to release, recover, re-assign, re-assure and re-transfer to the Issuer and the Sponsor, as the case may be, or as the Issuer may direct or to such other Person entitled thereto, the Secured Assets or such part thereof freed and discharged from the trusts and Security created in accordance with the provisions of this Deed and the Security Documents. The Security Trustee shall give effect to such instructions and release the Security created and perfected for the benefit of the Secured Parties. It is hereby clarified that the Security Trustee shall not release, re-assign or transfer the Secured Assets to the Issuer, the Sponsor or such Person as may be entitled thereto, as long as all payments have not been made by/ on behalf of the Issuer to satisfy and fully discharge the IIFCL Secured Obligations.

#### 6A. RATING DOWNGRADE EVENT

- (a) At anytime after [•] and before the Final Settlement Date, if the rating of the Debentures downgrades by [•] or more notches from [•] ("**Rating Downgrade Event**"), as certified by any of the Credit Rating Agencies, the Issuer shall have the option to ensure the reinstatement of the rating(s) of the Debentures to at least [•] by the Credit Rating Agencies within 60 (sixty) days from the occurrence of the Rating Downgrade Event.
- (b) In the event that the ratings of the Debentures are not reinstated at the end of the 60 (sixty) day period in accordance with Clause 6A(a) above, then the Debenture Trustee (based on the consent of the Majority Debenture Holders) will have the right to exercise its option to cause the Issuer to Redeem the Debentures in full within 15 (fifteen) days from the expiry of the 60 (sixty) day period mentioned in Clause 6A(a) ("**Rating Downgrade Put Option**"). Pursuant to such exercise of the Rating Downgrade Put Option, the Issuer must Redeem all the outstanding Debentures within 90 (ninety) days from the date of exercise of the Rating Downgrade Put Option.
- (c) Provided however, if the Debenture Holders are permitted under Applicable Law to hold Debentures with a rating of 3 (three) or more notches below [•]', then the Debenture Holders and IIFCL will discuss and negotiate in good faith the possibility of a revised rating trigger for exercise of a Rating Downgrade Put Option.
- (d) The Rating Downgrade Put Option would be available to the Debenture Trustee under this Clause 6A only once during the tenor of the Debentures.

#### 6B. AVOIDANCE OF PAYMENTS

Notwithstanding that the Issuer may have paid all amounts in respect of the Debentures and/or any discharge, release or settlement from time to time, if any security, disposition or payment granted or made to the Debenture Holder in respect of the Debenture payments is avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any Applicable Law relating to bankruptcy, insolvency, liquidation, winding-up, industrial sickness, composition or arrangement for the time being or from time to time in force or for any other reason and consequently the Debenture payments owing to the Debenture Holder

are still owing then for the purpose of these presents, the amount so avoided, set aside, ordered to be surrendered, paid away, refunded, reduced or shared shall not be considered to have been paid and the Debenture Trustee, on behalf of the Debenture Holder, shall be entitled thereafter to enforce these presents as if no such discharge, release or settlement had occurred.

## 7. TAXES AND STANDARD TERMS OF PAYMENTS

### 7.1 **Tax Deduction**

- (a) Subject to Sub-Clause (c) of this Clause 7.1, the Issuer shall bear all Taxes (including, without limitation, stamp duty and relevant registration and filing charges) as may be levied from time to time in respect of or in connection with the Debentures, this Deed and / or the other Debenture Documents. For the avoidance of any doubt it is clarified that, the Issuer shall not be required to reimburse and/or pay any income taxes of the Debenture Holders. In the event of the Issuer failing to pay the monies referred to above, the Debenture Trustee may (acting on the instructions of the Majority Debenture Holders), decide to make the necessary payments as applicable but shall not have any obligation to make such payments. The Issuer shall forthwith and no later than 2 (two) Business Days from the date of receipt of a notice of demand from the Debenture Trustee in respect thereof or such other date as may be agreed by the Parties ("**Reimbursement Date**"), reimburse all sums paid by the Debenture Trustee in accordance with the provisions contained herein. In the event the Issuer fails to reimburse the Debenture Trustee on or before the Reimbursement Date as provided in this Clause 7.1(a), then all such unpaid sums shall be payable along with Default Interest thereon for the period commencing from the Reimbursement Date till such sums are duly reimbursed by the Issuer to the Debenture Trustee.
- (b) All monies payable by the Issuer to the Debenture Holders under the Debenture Documents shall be calculated and be made without and free and clear of any deduction, set-off or counter-claim, other than in respect of any withholding tax in respect of income of the Debenture Holders, which as mandated by Applicable Law has to be deducted at source.
- (c) All Taxes in respect of the income of the Debenture Holders, which are required by Applicable Law to be paid/ deducted by the Issuer from any amounts of Interest, any other interest or fees paid or payable under this Deed shall be so deducted and paid by the Issuer to the appropriate authorities when due and within the statutory limits prescribed under Applicable Law. The Issuer shall deliver to the Debenture Holders within 60 (sixty) days from the end of the Fiscal Quarter in which such payment is made to the appropriate authority, a certificate of tax deduction at source or any other evidence prescribed under Applicable Law satisfactory to the Debenture Holders that the payment has been duly remitted to the appropriate authority. It is clarified that upon failure to deliver such certificate or evidence of payment within the said period, the Issuer shall be deemed not to have made such payment.
- (d) The Issuer shall promptly upon becoming aware that it has had or will have to make a tax deduction (or that there has been or will be any change in the rate at which or the basis on which any tax deduction has to be made) notify the Debenture Trustee accordingly. Similarly, any of the Debenture Holder(s) shall notify the Debenture Trustee on becoming so aware in respect of a payment payable to that Debenture Holder(s). If the Debenture Trustee receives such a notification from a Debenture Holder(s) it shall notify the Issuer.
- (e) If the Issuer is required to make a tax deduction, the Issuer shall make the tax

deduction, and any payment required in connection with the tax deduction within the time allowed and in the minimum amount required under Applicable Law.

## 8. EVENTS OF DEFAULT

An Event of Default occurs upon the occurrence of any of the following specified events and where applicable, lapse of the applicable Cure Period provided therein (each an "**Event of Default**"):

### 8.1 **Payment**

- (a) Failure by the Issuer in the payment, when due, of any Principal Amount, Interest or fee or any other amount owed by it under any Debenture Document, provided that the IIFCL Guarantee has been fully utilized at such time in accordance with the terms of the IIFCL Guarantee Agreement; or
- (b) Failure or default by the Sponsor to perform its payment obligations under the Sponsor Support Agreement; or
- (c) Failure of IIFCL to perform its payment obligations under the IIFCL Guarantee Agreement.

### 8.2 **Project and Project Documents**

- (a) The Issuer Abandons the Project;
- (b) The Issuer, for any reason whatsoever, is unable to continue with the Project;
- (c) The Issuer ceases to own/ retain rights over the Project land;
- (d) Any of the PPAs are terminated prior to the date of expiry of such PPAs;
- (e) Any Project Document (other than the PPAs) is terminated and such termination results in a Material Adverse Effect;
- (f) Any counter-party to a Project Document does not perform its obligations under the Project Documents which materially and adversely affects the Project and if the Issuer terminates such Project Document and fails to replace such counter-party to the Project Document within a period of 90 (ninety) days;
- (g) The Issuer fails to maintain in full force and effect any of the Insurance Contracts; and
- (h) In the case of a default or failure by the Issuer of a material covenant or obligation under any Project Document which failure or default, if capable of remedy, is not remedied within the applicable grace period under such Project Document and which has a Material Adverse Effect.

### 8.3 **Non Performance**

- (a) Failure or default by the Issuer to perform any of its obligations in a material respect under any Debenture Document (other than those which already constitute an Event of Default under this Clause 8), including the negative covenants in Clause 11.4 hereof; or

- (b) Failure or default by the Sponsor to perform any of its obligations (other than payment obligations as specified above) under the Sponsor Support Agreement.

#### 8.4 **Cross Default**

Any indebtedness of the Issuer for borrowed monies i.e. indebtedness for and in respect of monies borrowed or raised (whether or not for cash consideration) by whatever means (including acceptances, credits, deposits and leasing) becomes due prior to its stated maturity by reason of default of the terms thereof or any such indebtedness is not paid at its stated maturity or there is a default in making payments due under any guarantee or indemnity given by the Issuer in respect of the indebtedness of borrowed monies of any person.

#### 8.5 **Failure to Perform, Breach and Non Compliance**

- (a) The Issuer fails to obtain, renew, maintain or comply in all respects with any Approvals for the execution, delivery, performance and enforcement of the Transaction Documents (other than the Security Documents); or
- (b) If any Approval (other than in relation to the Security) is rescinded, terminated, suspended, modified or withheld or is determined to be invalid or has ceased to be in full force and effect, or any proceedings shall be commenced by or before any Governmental Authority for the purpose of rescinding, terminating, suspending, modifying or withholding any such Approval and such proceedings are not vacated or disposed off within 90 (ninety) days.

#### 8.6 **Court Order, Government Actions**

- (a) Any Governmental Authority shall have by way of an order or direction condemned, nationalised, seized, or otherwise expropriated all or any part of the property or other assets of the Issuer or the shares of the Sponsor in the Issuer, or shall have assumed custody or control of the shares of the Sponsor in the Issuer and its property or other assets or of the business or operations of the Issuer or shall have taken any other action or passed any other order for the dissolution of the Issuer or any action or order that has a Material Adverse Effect;
- (b) An attachment, restraint, execution or distress has been levied on or enforced against the assets of the Issuer resulting in, the judgment of the Debenture Trustee, a Material Adverse Effect; or
- (c) Failure by the Issuer to pay one or more amounts due under any:
  - (i) judgments or decrees which shall have been entered against the Issuer; or
  - (ii) any legal proceeding under or relating to any Applicable Law shall have been instituted against the Issuer which has a Material Adverse Effect.

#### 8.7 **Security**

- (a) Any of the Security Documents are not executed within the time period specified in this Deed and / or the Security is not duly created and perfected in accordance with the provisions of this Deed and the Security Documents and/ or any of the Security Documents once executed and delivered shall fail to provide the Security Interests, material rights and title intended to be created thereby (including the priority intended to be created thereby) or such Security Interest shall fail to have the priority contemplated in such Security Document or the Inter-creditor Agreement or any such

Security Document shall cease to be in full force and effect, or the validity thereof or the applicability thereof or the Security Interest purported to be created thereby is jeopardised or endangered in any manner whatsoever or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of the Issuer and/ or the Sponsor; or

- (b) If, without the prior written approval of the Secured Parties, and except as otherwise provided in this Deed, any of the Secured Assets or any part thereof is sold, disposed off, charged, encumbered or alienated or any of the buildings, structures, plant and machinery is removed, pulled down or demolished by the Issuer.

#### 8.8 **Misrepresentation**

Any representation or warranty confirmed or made or deemed to be made (other than in relation to any matter for which a specific Event of Default is provided in this Clause 8), by the Issuer or Sponsor under any Debenture Document and any other information given to the Secured Parties by the Issuer or the Sponsor, whether before or after the date of this Deed, is incorrect, misleading when made or deemed made and such event has a Material Adverse Effect.

#### 8.9 **Winding Up, Bankruptcy and Dissolution**

- (a) If the Issuer, the Sponsor or the Issuer's shareholders commences a voluntary proceeding under any applicable bankruptcy, insolvency, winding up or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary proceeding under any such law, or consents to the appointment or taking possession by a receiver, liquidator, assignee (or similar official) for any or a substantial part of its property; or
- (b) The Issuer has taken or consented to any action towards its reorganisation; or
- (c) The Issuer:
  - (i) has been declared as a sick industry or a relief undertaking or proceedings have been filed in relation to the same; or
  - (ii) has approached the relevant authorities to be declared as a sick industry or a relief undertaking under the Sick Industrial Companies (Special Provisions) Act, 1985 or any other statutory provisions applicable with respect to sick industries or relief undertakings.

#### 8.10 **Invalidity/ Unenforceability of Transaction Documents**

This Deed or any of the other Transaction Documents or any provision hereof or thereof:

- (a) is or becomes invalid or unenforceable or any party thereto shall have repudiated or disavowed or taken any action to challenge the validity or enforceability of such Transaction Document, which results in a Material Adverse Effect; or
- (b) except as otherwise expressly permitted hereunder, ceases to be in full force and effect except at the stated termination date thereof, or shall be assigned or otherwise transferred or prematurely terminated by any party thereto (other than with the prior written consent of the Security Trustee), which has a Material Adverse Effect.

- 8.11 Any administrative, regulatory or judicial action, suit or proceeding under or relating to any

environmental law or asserting any environmental claim is instituted against the Issuer and which has not been discharged or stayed.

8.12 If any Person (other than the Sponsor) acting singularly or with any other Person (either directly or indirectly) acquires control of the Issuer, without the approval of all the Secured Parties.

8.13 **Illegality**

(a) It is or becomes unlawful for the Issuer and / or Sponsor to perform any of their respective obligations under the Debenture Documents; or

(b) Any Debenture Document or any provision thereof becomes illegal or is required by any law to be amended, waived or repudiated; or

(c) Any obligation under any Debenture Document is not or ceases to be a valid and binding obligation of the Issuer and/or the Sponsor or becomes void, illegal, and unenforceable or is repudiated by the Issuer and/or the Sponsor.

8.14 The names of the Issuer and/ or any of its directors figure in any list of defaulters circulated by the RBI and the names of the Issuer's promoters figure in any list of willful defaulters circulated by the RBI.

8.15 If the Issuer fails to maintain the Debenture Redemption Reserve or keep it adequately funded in accordance with the Act.

8.16 One or more events, conditions or circumstances (including, Force Majeure Events), excluding events which are specifically provided for in this Clause 8, shall exist or shall have occurred which have had and continue to have a Material Adverse Effect.

8.17 The Issuer has admitted in writing its inability to pay its debts as they mature;

8.18 A general moratorium in respect of any debt of the Issuer has been imposed by any competent Governmental Authority;

8.19 The Issuer ceases or closes or threatens to cease to carry on or close its business or gives notice of its intention to do so;

8.20 The Debentures are de-listed from the NSE;

8.21 Initiation of any litigation which is not stayed / quashed within 90 (ninety) days of its commencement;

8.22 Any material audit qualification is made by the Auditors;

8.23 Delay in conversion of the Issuer to a public limited company beyond 180 (one hundred and eighty) days from the Deemed Date of Allotment.

8.24 The Issuer operating and maintaining the Project (or permitting the Project to be operated and maintained) in any manner that would pose a hazard to the environment, health or safety or which may result in violation of Applicable Law.

8.25 Occurrence of an IIFCL Event of Default under the IIFCL Guarantee Agreement.

The Debenture Trustee agrees that in respect of an Event of Default (except an Event of

Default under Clause 8.1, 8.9, and 8.23 above), the Issuer shall be entitled to remedy such Event of Default within 45 (forty five) Business Days from the date that such Event of Default has been brought to the notice of the Issuer ("**Cure Period**") and thereafter the Debenture Trustee and/or the Security Trustee shall have the right to enforce the rights available to it immediately as prescribed under the Debenture Documents. During the Cure Period, the Debenture Trustee and/ or the Security Trustee shall not take any action under Clause 10. Provided however, if such Event of Default continues to be un-remedied upon the expiry of the Cure Period, the Debenture Trustee and/ or the Security Trustee may, at its discretion, take one or more of the actions specified in Clause 10, in accordance with the provisions of the Inter-creditor Agreement.

9. NOTICE OF AN EVENT OF DEFAULT & CURE PERIOD

- (a) If any Event of Default or an event specified under Clause 8 above has occurred, the Issuer shall forthwith give notice thereof to the Debenture Trustee in writing, specifying the nature of such event/Event of Default and the steps, if any, being taken to remedy it.
- (b) On the occurrence of an event which with the expiry of Cure Period (if applicable) could become an Event of Default, the Issuer shall make all reasonable efforts to remedy such default within the respective Cure Periods, if any, provided in respect of such Events of Default.
- (c) On the occurrence of an Event of Default and if so determined by the Debenture Trustee in accordance with Clause 8 above and Schedule V, the Debenture Trustee shall promptly, issue a notice of Event of Default to the Issuer.

10. CONSEQUENCES OF EVENT OF DEFAULT

- 10.1 (a) Subject to Clause 10.1(b), if a notice declaring an Event of Default (other than an IIFCL Event of Default) has been issued in accordance with Clause 9 or in case of an IIFCL Event of Default a notice has been issued by IIFCL intimating the Debenture Trustee of the occurrence of such IIFCL Event of Default, in accordance with the provisions of the IIFCL Guarantee Agreement, the Debenture Trustee and/ or the Security Trustee, acting strictly in accordance with the provisions of the Inter-creditor Agreement may, take one or more of the following actions:
- (i) initiate Acceleration and give notice of such Acceleration to the Issuer;
  - (ii) levy Default Interest on overdue amounts, over and above the Interest Rate;
  - (iii) utilise any amounts in the Sub-Accounts under the Trust and Retention Account in accordance with the Cash Flow Waterfall, to service and repay the Secured Obligations;
  - (iv) initiate any Enforcement Action;
  - (v) sue for creditors' process in accordance with the Debenture Documents;
  - (vi) call for creation and perfection of Security over the Secured Assets in favour of the Security Trustee, if creation and perfection of Security has not been completed;
  - (vii) appoint a nominee director on the Board of Directors of the Issuer;

- (viii) transfer the Secured Assets in favour of the Secured Parties or such other Person as determined by the Security Trustee by way of lease, leave and license, sale or otherwise;
  - (ix) require the Issuer to reconstitute its Board with sufficiently qualified or experienced Persons;
  - (x) exercise such other rights as may be available to Debenture Trustee and/ or the Security Trustee under Applicable Law; and/or
  - (xi) notwithstanding the aforesaid, the Debenture Holders shall be entitled to pursue any other legal remedy for any other relief as may be available to them under Applicable Law, in accordance with the terms of the Inter-creditor Agreement.
- (b) Notwithstanding anything contained in Clause 10.1(a) or any other Debenture Document, the Debenture Trustee and/or the Security Trustee shall be entitled to exercise any of the rights referred to in Clauses 10.1(a) in accordance with the applicable provisions of the IIFCL Guarantee Agreement, the Inter-creditor Agreement and subject to the following additional conditions:
- (i) the Debenture Trustee (acting on the instructions of the Majority Debenture Holders) may, as a first option, decide to exercise its right of Acceleration and upon failure of the Issuer to satisfy the Debenture Secured Obligations upon such Acceleration, IIFCL shall pay the Shortfall Amount in accordance with the terms of the IIFCL Guarantee Agreement.
  - (ii) if the Debenture Trustee or the Security Trustee (acting on the instructions of the Majority Debenture Holders), without the prior written consent of IIFCL, exercise any of the rights under Clause 10.1(a)(iv) to (xi), prior to exercising the right of Acceleration, then the IIFCL Guarantee will no longer be available for the benefit of the Debenture Holders and will terminate without the need for any further action to effect such termination.
  - (iii) on issuance of a notice by IIFCL to the Debenture Trustee intimating it of the occurrence of an IIFCL Event of Default in accordance with the provisions of the IIFCL Guarantee Agreement, the Debenture Trustee may call an Event of Default and issue a consequent notice to the Issuer for Acceleration within 45 (forty five) days of issue of such notice by IIFCL, failing which the IIFCL Guarantee will no longer be available for the benefit of the Debenture Holders and will terminate without the need for any further action to effect such termination. If within the above-mentioned 45 (forty five) day period, Acceleration is initiated by the Debenture Trustee and the Issuer fails to satisfy the Debenture Secured Obligations, IIFCL shall pay the Shortfall Amount in accordance with the terms of the IIFCL Guarantee Agreement.

## 10.2 **Reimbursement of Expenses**

All expenses incurred by the Debenture Trustee and/or the Security Trustee after an Event of Default has occurred in connection with:

- (a) preservation of the Secured Assets (whether then or thereafter existing); and
- (b) enforcement of Security and collection of amounts due under this Deed and/or other Debenture Documents,



shall be payable by the Issuer promptly on demand by the Debenture Trustee and/or the Security Trustee.

10.3 **Default Interest**

After the occurrence of an Event of Default, without prejudice to the rights of the Debenture Holders under this Deed and the other Debenture Documents, Default Interest shall be payable by the Issuer with respect to any outstanding Debenture payments from the occurrence of the date of Event of Default till the date the Event of Default is actually remedied. Any such Default Interest shall be immediately payable by the Issuer.

10.4 **Right to Disclose/Publish information and data relating to the Issuer and the Debentures:**

(a) The Issuer hereby accepts and confirms that as a pre-condition to the subscription of the Debentures by the Debenture Holders, the consent of the Issuer is required to make certain disclosures in relation to the Issuer including information and data relating to the Issuer and the Debentures, obligations assumed or to be assumed by the Issuer in relation thereto and default, if any, committed by the Issuer in discharge thereof. Accordingly, the Issuer hereby authorizes, agrees and gives consent to the disclosure by the Debenture Trustee and the Debenture Holders of all or any such:

- (i) information and data relating to the Issuer;
- (ii) the information or data relating to the Debentures to the Debenture Holders and the Issuer's obligations in relation to the Debentures; and
- (iii) default, if any, committed by the Issuer in discharge of such obligation,

as the Debenture Trustee/Debenture Holders may deem appropriate and necessary, to disclose and furnish to CIBIL and any other agency authorized in this behalf by RBI or any other regulatory authority.

(b) The Issuer further declares that the information and data furnished by the Issuer to the Debenture Trustee, based on which the Debenture Trustee has made disclosures under this Clause 10.4, is/shall be true and correct and further undertakes and declares that:

- (i) CIBIL and any other agency so authorized may use, process the said information and data disclosed by the Debenture Trustee or the Debenture Holders in the manner as deemed fit by them; and
- (ii) CIBIL and any other agency so authorized may furnish for consideration, the processed information and data or products thereof prepared by them to banks/financial institutions and other credit grantors or registered users, as may be specified by the RBI in this behalf.

11. COVENANTS

The Issuer hereby covenants with the Debenture Trustee that it shall at all times until the Final Settlement Date be in compliance with the following covenants:

11.1 Affirmative Covenants

(a) **Corporate covenants**

- (i) The Issuer shall carry out and conduct its business with due diligence and efficiency and in accordance with good industry practice and in compliance with Applicable Law and its constitutional documents.
- (ii) The Issuer will not do or permit to be done any act or thing whereby its right to transact its business might or could be terminated or whereby payment of the Interest (including Default Interest, where applicable), Principal Amount or any other amounts under the Debentures might or would be hindered or delayed;

(b) **Approvals:** The Issuer shall:

- (i) obtain, comply with and do all that is necessary to maintain the Approvals in full force and effect; and
- (ii) supply certified copies to the Debenture Trustee of all necessary Approvals:
  - (A) required to enable it to perform its obligations under the Debenture Documents;
  - (B) to ensure the legality, validity, enforceability or admissibility of the Debenture Documents as evidence in India; and
  - (C) to enable it to carry on its business as it is being conducted from time to time if failure to obtain, comply with or maintain any such Approval has a Material Adverse Effect.

(c) **Debenture Documents**

- (i) The Issuer shall comply in all respects with the provisions of the Debenture Documents.
- (ii) The Issuer shall ensure that the Security created pursuant to each Security Document shall have the ranking it is expressed to have under such Security Document and the Inter-creditor Agreement and that each of the Security Documents is maintained in full force and effect.
- (iii) The Issuer covenants that there are no agreements or instruments, which have been executed by the Issuer/or the Sponsor which have the effect of amending or modifying the Debenture Documents.
- (iv) The Issuer shall ensure that the validity and enforceability of the Security is maintained and shall take all steps necessary, including executing further documents, for this purpose.

(d) **Use of Proceeds**

The Issuer shall use the proceeds of the issue of the Debentures only towards repayment of Existing Debt.

(e) **Maintenance of Books, Secured Assets:**

The Issuer shall:

- (i) maintain and keep in proper order, repair and in good condition the Secured Assets and its other assets (including Project assets);
- (ii) keep all its properties, monies received by the Issuer thereof and all documents subject to the Security Interest created under the respective Security Documents distinguishable, and shall hold them as and shall deal with them only as provided under the Debenture Documents and the Issuer shall not create any Security Interest upon or over the same nor suffer any such Security Interest or any attachment or distress to affect the same nor do or allow anything that may prejudice the Security and the Debenture Trustee and/or the Security Trustee shall be at liberty to incur all costs and expenses as may be necessary to preserve the Security and to maintain the same undiminished and claim the reimbursement thereof, and secure such reimbursement under this Deed;
- (iii) take or cause to be taken all action required to maintain and preserve the Security under the Security Documents and shall ensure at all times that the claims of the Secured Parties rank in accordance with the terms of the Inter-creditor Agreement. The Issuer shall from time to time execute or cause to be executed any and all further instruments and register and record such instruments in all public and other offices in order to create and maintain valid, perfected and enforceable Security of first priority and ranking over the Secured Assets pursuant to the respective Security Documents and the Inter-creditor Agreement;
- (iv) take, or cause to be taken, all action necessary to cause the Project Documents and the renewal or replacement agreements to be or become part of the Security under the Security Documents (whether by amendment to the Security Documents or otherwise). The Issuer shall use its reasonable endeavors to cause each Person (other than itself) party to each additional Project document entered into by the Issuer to execute and deliver to the Debenture Trustee a consent to such Security Interest in writing, which consent shall be in form reasonably acceptable to the Debenture Trustee;
- (v) keep registers and books of account as required by the Act and in accordance with GAAP and applicable accounting practices, and therein make true and proper entries of all dealings and transactions of and in relation to the properties and the business of the Issuer;
- (vi) permit representatives of the Debenture Trustee, IIFCL and the Back-Stop Guarantor (at the expense of the Issuer, including travel costs and expenses) to visit with prior notice and inspect its offices, properties (including the Secured Assets) and the Project to carry out technical, financial and legal inspections; to examine the Issuer's books of records, account and documents; to make copies therefrom; and to discuss the Issuer's affairs, finances and accounts with the Issuer's principal officers, engineers and auditors (and by this provision the Issuer authorises such auditors to discuss its affairs, finances and accounts), at all times during the term of the Debentures as such representative may desire. The Issuer shall at all times cause a complete set of the original Project plans and Project specifications and drawings (and all

supplements thereto) to be maintained and available for inspection by such representatives;

- (vii) provide the Debenture Trustee a copy of each additional Project document promptly after the execution thereof certified by an authorised officer of the Issuer as being true, correct and complete and in full force and effect;
- (viii) keep all properties and all equipment and fittings thereon or therein in a good state of repair and condition; and
- (ix) unless contested in good faith, pay all rents, royalties, taxes, rates, levies, cesses, assessments, impositions and outgoings, governmental, municipal or otherwise imposed upon or payable by the Issuer as and when the same shall become payable and, when required by the Debenture Trustee produce the receipts of such payment and make regular tax filings.

(f) **Insurance**

- (i) The Issuer shall at its cost and expense, purchase and maintain by reinstatement or otherwise the Insurance Contracts.
- (ii) Upon failure of the Issuer to obtain or maintain such Insurance Contracts, the Issuer agrees that the Security Trustee will have the right (but not an obligation) to obtain or maintain such Insurance Contracts at the expense of the Issuer. The Issuer shall provide copies of all Insurance Contracts notifying the maintenance of adequate insurance in relation to the Project and the Secured Assets to the Security Trustee.
- (iii) The Issuer hereby irrevocably agrees and confirms that it shall cause the Security Trustee to be named as the sole loss payee under each Insurance Contract obtained by the Issuer and to provide a copy of each such Insurance Contract to the Security Trustee on a date no later than 60 (sixty) days from the Deemed Date of Allotment reflecting the Security Trustee as the loss payee and in respect of each Insurance Contract effected or coming into existence after the date of this Deed, within 15 (fifteen) Business Days after the effect or coming into existence of such Insurance Contract. Further, each such Insurance Contract shall contain a clause that such Insurance Contract shall not be vitiated or avoided against a loss payee or assignee as a result of any misrepresentation, act or omission or any event beyond the control of the Issuer.
- (iv) Upon obtaining the Insurance Contracts, the Issuer shall not do anything or permit anything to be done or not done which could adversely affect the insurance cover provided by the Insurance Contract and shall promptly pay premiums and do all things necessary (including without limitation renewing the Insurance Contract from time to time) to maintain the Insurance Contracts till the Final Settlement Date.
- (v) The Issuer and/or the Security Trustee (in its capacity as the sole loss payee under the Insurance Contracts) shall cause any and all proceeds from each Insurance Contract to be directly credited to or deposited into the Trust and Retention Account. Provided however that unless otherwise agreed by the Security Trustee in writing, the insurance proceeds so received shall be promptly applied by the Issuer towards repair, renovation, restoration or reinstatement of the Project assets or any part thereof which may have been

damaged or destroyed. The Issuer shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project assets after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

- (vi) Within 7 (seven) Business Days after the effective date of any new or renewed Insurance Contract, the Issuer shall submit to the Security Trustee (a) a certificate, from the Issuer's authorised officer indicating the properties insured, the type of insurance, amounts and risks covered, names of the beneficiaries, expiration dates, names of the insurers and special features of the Insurance Contracts in effect on the date of such certificate, such Insurance Contracts to be in form and substance, and issued by companies, satisfactory to the Security Trustee, and (b) copies of such Insurance Contract.
  - (vii) Within 7 (seven) Business Days after the close of each Fiscal Year, the Issuer shall furnish to the Secured Parties, a report describing: (a) any changes to the coverage offered by the Insurance Contracts since the last such report; (b) any claims made thereunder; (c) the status of any such claims; and (d) whether insurance premiums then due and payable by the Issuer have been paid.
  - (viii) The provisions of this Clause 11.1(f) shall be deemed to be supplemental to, but not duplicative of, the provisions of any of the Security Documents that require the maintenance of insurance. In the event that any Insurance Contract whatsoever is purchased, taken or otherwise obtained by the Issuer with respect to the Project other than as required hereunder or if not properly assigned or endorsed to the Security Trustee as the loss payee or beneficiary as required, such insurance shall be considered assigned hereunder to the Security Trustee with the right of the Security Trustee to make, settle, compromise and liquidate any and all claims thereunder, without prejudice to the exercise of any other rights and remedies that the Security Trustee may have under any of the other Debenture Documents, or under any Applicable Law now or hereafter in force.
- (g) **Other:** The Issuer shall:
- (i) comply with all the provisions as mentioned in the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, the Act, the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, the Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2012, the Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2014, the Companies (Share Capital and Debentures) Rules, 2014, the Companies (Prospectus and Allotment of Securities) Rules, 2014, the simplified listing agreement issued in terms of notification bearing number SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009, issued by the SEBI, as amended from time to time, the guidelines issued by RBI dated June 23, 2010 and bearing number IDMD.DOD.10 /11.01.01(A)/2009-10 (Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010) (as amended from time to time) and/or any other notification, circular, press release issued by the SEBI from time to time in relation to and as applicable to the transactions proposed in terms of the Debenture Documents and/or other applicable statutory and/or regulatory

requirements, in each case to the extent applicable to the Issuer (hereinafter collectively referred to as the "**Guidelines**").

Notwithstanding anything to the contrary contained in this Deed and the other Debenture Documents, the Parties hereby agree, confirm and undertake that in case there is any repugnancy, inconsistency or conflict between the terms and conditions mentioned in the Debenture Documents and the provisions of the Guidelines, the provisions as contained in the Guidelines shall prevail and override the provisions of the Debenture Documents.

- (ii) promptly and expeditiously attend to and redress the grievances, if any, of the Debenture Holders.
- (iii) procure that the Debentures are listed on NSE and shall take all necessary steps for completion of the same within 20 (twenty) days from the Deemed Date of Allotment.
- (iv) at its own cost, get the Debentures rated by at least 2 (two) of the Credit Rating Agencies before the Deemed Date of Allotment and thereafter the credit rating should be maintained till the final Redemption Date in accordance with clause 8 of Schedule III and furnished to the Debenture Trustee at least at annual intervals or such other time period as may be specified by the Debenture Trustee. Every rating of the Debentures obtained by the Issuer shall be periodically reviewed by the Credit Rating Agencies and any revision in the rating shall be promptly disclosed by the Issuer to the stock exchange(s) where the Debentures are listed.
- (v) in accordance with the provisions of the Offer Letter, allot the Debentures and continue to observe and act in accordance with the terms of Debentures as set out in the Offer Letter and in the other Debenture Documents.
- (vi) ensure that, at all times, long term PPAs are in place for supply of power from the Project which are adequate to provide sufficient cash flows for the Issuer to service all its financial indebtedness, and the same are in full force and effect.
- (vii) at all times, comply with all material covenants agreed to be complied with in respect of Project Documents.
- (viii) reimburse all reasonable sums paid or reasonable expenses incurred by the Debenture Trustee, attorney, manager, agent or other Person appointed by the Debenture Trustee for all or any of the purposes mentioned in these presents within 15 (fifteen) days of receipt of a notice of demand from them in this behalf and all such sums shall carry Default Interest as prevailing from time to time, from the expiry of 15 (fifteen) days of receipt of such notice of demand and as regards liabilities, the Issuer will, on demand, pay and satisfy or obtain the releases of such Persons from such liabilities and if any sum payable under these presents shall be paid by the Debenture Trustee, the Issuer shall, no later than 15 (fifteen) days of demand, reimburse the same to the Debenture Trustee and until payment or reimbursement of all such sums, the same shall be a charge upon the properties in priority to the charge securing the Debentures.

## 11.2 Information Covenants

The Issuer shall, as soon as possible but not later than 5 (five) Business Days (unless otherwise specified) from the occurrence of any of the events set out below:

- (a) inform the Debenture Trustee if it has notice of any event which constitutes an Event of Default or a Material Adverse Effect, specifying the nature of such Event of Default or Material Adverse Effect and any steps the Issuer has taken or proposes to take to remedy the same;
- (b) inform the Debenture Trustee if the Sponsor has taken or consented to take any action towards its reorganisation;
- (c) promptly inform the Debenture Trustee if it has notice of any application for winding up having been made or any statutory notice of winding up is given to the Issuer under the Act or otherwise of any suit or other legal process intended to be filed or initiated against the Issuer and affecting title of the Issuer to its properties or if a receiver is appointed of any of its properties or business or undertaking;
- (d) promptly inform the Debenture Trustee of the happening of any labour strikes, lockouts, shut-downs, fires or any event likely to have a substantial effect on the Issuer's profits or business and the reasons thereof;
- (e) promptly inform the Debenture Trustee of any loss or damage, which the Issuer may suffer due to Force Majeure Events against which the Issuer may not have insured its properties;
- (f) promptly inform the Debenture Trustee of any change in its name, any change in the composition of its Board of Directors or change in the conduct of its business prior to such change being effected;
- (g) submit to the Debenture Trustee:
  - (i) within 60 (sixty) days from the end of each Fiscal Quarter, its unaudited quarterly management information reports, including profit and loss, balance sheet and cash flow statements and a comparison with the previous year's performance for that Fiscal Quarter; and
  - (ii) within 180 (one hundred and eighty) days from the end of each Fiscal Year, its duly audited annual accounts (including profit and loss statement, balance sheet and cash flow statement) for that Fiscal Year;

Provided that:

- (A) each set of financial statements delivered by the Issuer pursuant to this Clause 11.2(e) shall be certified by a director of the Issuer as fairly representing its financial condition as at the date on which those financial statements were drawn up;
- (B) the Issuer shall procure that each set of its financial statements delivered pursuant to this Clause 11.2(e) is prepared using GAAP; and
- (C) the Issuer shall not change its Fiscal Year or or methodology for preparing financial statements without the written consent of the Debenture Trustee, unless required by Applicable Law;

- (iii) within 15 (fifteen) days from the date of issue or receipt, a copy of all notices/certificate/reports issued to or received from the Auditors; and
- (iv) copies of all communication/reports/information submitted to the Existing Lenders;
- (h) provide to the Debenture Trustee such further information regarding the financial condition, business and operations of the Issuer as the Debenture Trustee may reasonably request;
- (i) provide to the Debenture Trustee notice of any change in authorised signatories of the Issuer signed by a director or company secretary of the Issuer accompanied by specimen signatures of any new authorised signatories;
- (j) forward the details of utilisation of funds raised through the issue of Debentures duly certified by an independent practicing chartered accountant, to the Debenture Trustee within 60 (sixty) Business Days from the Deemed Date of Allotment;
- (k) furnish reports to the Debenture Trustee within 30 (thirty) Business Days from the end of each Fiscal Quarter containing the following particulars:
  - (i) updated list of the names and addresses of the Debenture Holders;
  - (ii) details of any payment due, but unpaid and reasons thereof;
  - (iii) the details and nature of grievances received from the Debenture Holders and resolved (if at all) by the Issuer;
  - (iv) confirmation that it is in compliance with any directions given by the Debenture Trustee; and
  - (v) details of the shareholding pattern of the Issuer and the names of directors; and
- (l) upon the request of the Debenture Trustee such documentation and other evidence as is reasonably requested by the Debenture Trustee (including on behalf of any prospective new Debenture Holders) in order for such Debenture Holders or any prospective new Debenture Holders to conduct any "know your customer" or other similar procedures under Applicable Law;

### 11.3 Information to Debenture Holders

The Debenture Trustee shall, immediately but in any event within 5 (five) Business Days upon receipt of all information and documents submitted by the Issuer under Clause 11.2 and otherwise pursuant to the terms of this Deed, forward all such information and documents to each of the Debenture Holders.

### 11.4 Negative Covenants

The Issuer hereby covenants with the Debenture Trustee that till the Final Settlement Date, it shall comply with the following covenants, except with the prior written approval of the Debenture Trustee:

- (a) The Issuer shall not contract, create, incur, assume or suffer to exist any Debt



(including providing any guarantees to or for the benefit of any entity) except (a) in accordance with the Debenture Documents; and (b) loans being provided by the Sponsor, provided such loans are subordinated to the Secured Obligations and that both principal and interest amount payable in relation to such loans are due for repayment/payment after the Final Settlement Date. Provided however that the principal amount of the loans provided by the Sponsor can be re-paid by the Issuer at any time at the option of the Issuer, in accordance with the terms of the Trust and Retention Account Agreement and subject to the prior written approval of the Debenture Trustee (acting on behalf of the Majority Debenture Holders) and IIFCL.

- (b) The Issuer shall not make any Restricted Payments except upon satisfaction of Restricted Payment Conditions.
- (c) During any Fiscal Quarter, the Issuer shall not incur expenditures or commitments for expenditures for fixed or other non-current assets, or undertake any expenditure except as contemplated in a quarterly budget for such upcoming Fiscal Quarter (including budgeted statements of income and sources and uses of cash including capital expenditure plan and balance sheets, collectively, the "**Quarterly Budget**") prepared by the Issuer and as duly approved by the relevant Secured Parties and accompanied by a statement of the director of the Issuer to the effect that, the Quarterly Budget is a reasonable estimate for the period covered thereby.
- (d) The Issuer shall not, (a) carry on any business or activity other than in connection with the completion or operation of the Project or as permitted under the Debenture Documents; or (b) undertake any new project, expansion or acquisition or make any investment, take assets on lease, incur capital expenditure except for replacement/other capital expenditure, in relation to the Project.
- (e) The Issuer shall not:
  - (i) wind up, liquidate or dissolve its affairs;
  - (ii) alter its the shareholding pattern or capital structure, unless otherwise permitted under this Deed or the other Debenture Documents;
  - (iii) convey, sell, lease let or otherwise dispose of (or agree to do any of the foregoing at any future time) all or any part of its property or assets other than Permitted Disposals;
  - (iv) purchase or otherwise acquire (in one or a series of related transactions) any part of the property or assets of any Person, (excluding purchases or other acquisitions of inventory or materials or capital expenditures, which are permitted under the Debenture Documents or provided for in the applicable Quarterly Budget); or
  - (v) undertake or permit any merger, consolidation, reorganization scheme of arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstruction.
- (f) Other than the Security on the Project Documents contemplated under this Deed, the Issuer will not enter into or permit the assignment of its rights or obligations under any Project Document.
- (g) The Issuer shall not otherwise than in the ordinary course of business, enter into any additional contracts or enter into any guarantee, partnership, profit-sharing or other similar arrangement whereby the Issuer's income or profits are, or might be, shared

with any other Person, or enter into any management contract or similar arrangement whereby its business or operations are managed by any other Person other than any process licensing or other licensing agreements or arrangements. Provided that, excluding the shares pledged by the Sponsor under the Pledge Agreement, the Sponsor and or any other shareholder of the Issuer shall at all times have the right to pledge the remaining shares in the Issuer to any third party.

- (h) The Issuer will not: (i) amend or modify its constitutional documents except as may be required by Applicable Law or which does not have a Material Adverse Effect or adversely impact or reasonably be expected to adversely impact the priority or validity of the Security Interests created for the benefit of the Secured Parties or the payment obligations of the Issuer towards the Debenture Holders or the Debenture Trustee; (ii) change its Fiscal Year or materially change its accounting practices and systems, unless required by Applicable Law; (iii) change the nature or scope of the Project; (iv) modify, replace or consent to replace or terminate any Project Document; (v) assign or otherwise dispose of any of its interests, or exercise any option which could affect the implementation and operation of the Project; or (vi) terminate, amend or assign any Debenture Document.
- (i) The Issuer shall not take any action/ commit any omission and/ or allow any action to be taken/ any omission to be committed which would be result terminating or revoking or cancelling or making void, invalid or ineffective of any of the Project Documents or Approvals.
- (j) The Issuer shall not, and shall not agree to, create, incur, assume or suffer to exist any Security Interest upon or with respect to any property, revenues or assets (real, personal or mixed, tangible or intangible) of the Issuer, whether now owned or hereafter acquired other than the Security Interest created pursuant to the provisions of this Deed and the Security Documents.
- (k) The Issuer shall not lend money or credit or make deposits with or advances (other than deposits or advances to its employees or in relation to the payment for goods and equipment as required or permitted by the Project Documents in the ordinary course of business or in accordance with the Debenture Documents) to any Person, or purchase or acquire any stock, shares obligations or securities of, or any other interest in, or make any capital contribution to, or acquire all or substantially all of the assets of any other Person, or make any investments or acquisitions except that the Issuer may invest in Permitted Investments in accordance with this Deed or as may agreed to in the Trust and Retention Account Agreement. The Issuer shall not open any bank account other than those agreed to in the Trust and Retention Account Agreement.
- (l) Save as provided in the Debenture Documents, the Issuer shall not enter into any transactions with any Person other than as contemplated therein and other than on an arm's length basis in the ordinary course of business.
- (m) The Issuer shall not Abandon or agree to Abandon the Project.
- (n) The Issuer shall not use, maintain, operate, occupy or grant any rights in respect of the use, maintenance, operation or occupancy of any portion of the Project for any purpose which:
  - (i) is dangerous or would pose a hazard to the environment, health or safety, unless safeguarded as required by Applicable Law;
  - (ii) violates any Applicable Law which may constitute a nuisance or which has a

Material Adverse Effect; or

- (iii) is other than for the intended purpose thereof in the operation and maintenance of the Project in accordance with the Project Documents.
- (o) The Issuer shall not commit any act which has a Material Adverse Effect.
- (p) The Issuer shall not agree, authorise or otherwise consent to any proposed settlement, resolution or compromise of any litigation, arbitration or other dispute with any Person if such proposed settlement, resolution or compromise constitutes a Material Adverse Effect.
- (q) Other than as required under Applicable Law, the Issuer shall not make any change to its practice with regard to remuneration, sitting fees, other fees and expenses of directors of the Issuer and that the directors of the Issuer shall not, be paid any commission for any reason whatsoever on the occurrence and continuance of an Event of Default.
- (r) The Issuer shall not make any material change in its managerial/management structure.

#### **11A. CLEAR MARKET RESTRICTION**

The Issuer undertakes that it shall not announce, raise or enter into discussions to raise or attempt to raise any other finance from the market, whether by way of bilateral or syndicated facilities or other debentures from the date of this Deed till the Deemed Date of Allotment. The Issuer further undertakes that it will not announce or issue and allot debentures of a tenor similar to the tenor of the Debentures on terms superior to than the terms of the Debentures offered pursuant to the Debenture Documents for period of 4 (four) weeks from the Deemed Date of Allotment.

#### **12. REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

In order to induce the Debenture Holders and the Debenture Trustee to enter into this Deed and the other Debenture Documents, the Issuer makes the following representations and warranties as on the date of execution of this Deed, on the Final Settlement Date and on each Payment Date unless such representations and warranties are expressed to be made as of a particular date, which representations and warranties shall survive the execution and delivery of this Deed until the Final Settlement Date.

##### **12.1 Corporate Organisation and Authorisations**

The Issuer (a) is a duly organised and validly existing company under the laws of India and (b) has the power and authority to: (i) execute and deliver the Debenture Documents to which it is a party and to consummate the transactions and perform its obligations contemplated by this Deed and the other Debenture Documents to which it is a party, (ii) own its property and assets, (iii) transact the business in which it is engaged or proposes to be engaged, and (iv) do all things necessary or appropriate in respect of the Project.

##### **12.2 No Contravention**

- (a) The Debenture Documents to which it is a party are/ will be upon execution in proper legal form and are/ will be upon execution valid, binding and enforceable without any further action on the part of the Debenture Holders and neither the execution, delivery and performance by the Issuer of this Deed and the other Debenture Documents to

which it is/ will be a party, nor the Issuer's compliance with or performance of the terms and provisions of this Deed or such Debenture Documents nor the use of the proceeds of the Debentures in accordance with the terms of this Deed:

- (a) contravenes any provision of any Applicable Law or any order, writ, injunction or decree of any court or Governmental Authority binding on the Issuer;
  - (b) conflicts with or results in any breach of any of the terms, covenants, conditions or provisions of, or constitutes an Event of Default under, or result in Material Adverse Effect or the creation or imposition of (or the obligation to create or impose) any Security Interest (other than any Security Interest created pursuant to the provisions of this Deed and the Security Documents) upon any of the property or assets of the Issuer pursuant to the terms of any indenture, deed of trust, credit loan agreement, or any other agreement, contract or instrument to which the Issuer is a party or by which it or any of its property or assets is bound or to which it may be subject;
  - (c) violates any provision of the constitutional documents of the Issuer; or
  - (d) violates any Approvals or any provision thereof or any provision of the Project Documents.
- (b) The due process of Applicable Law and all necessary administrative rules/procedures have been followed in relation to the Project, entry into the Debenture Documents and in obtaining the Approvals.
  - (c) No undue influence, unethical or Corrupt Practice has been employed or exercised to enable any Governmental Authority to facilitate the award of the Project to the Issuer or the grant of any Approvals in relation to the Project or to facilitate the entry into and/or performance thereunder of any of the Project Documents.
  - (d) Neither the Issuer, nor any Person acting on its behalf, has been engaged in (a) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices in connection with the Issuer's business and operations, (b) Money Laundering or acted in breach of any Applicable Law relating to Money Laundering; or (c) the Financing of Terrorism.

### 12.3 **Filings and Payments**

- (a) The Issuer certifies that all registrations, recordings, filings and notarisations of any Debenture Documents that have been executed and all payments of any Tax or duty, including without limitation, stamp duty, registration charges or fees or similar amounts which are required to be effected or made by the Issuer which are necessary to ensure the legality, validity, enforceability or admissibility in evidence of such Debenture Documents have been made as required under Applicable Law.
- (b) The Issuer has filed all tax returns and paid, unless contested in good faith, all Taxes and fees.

### 12.4 **Amendments to Debenture Documents, Events of Default, Legal Proceedings**

- (a) The Debenture Trustee and/or the Security Trustee has received or will receive within the time period provided for in this Deed a true, complete and correct copy of each of the Debenture Documents to which the Issuer and/or the Sponsor is a party which

have been executed as on the date of this representation and each of such Debenture Document (including the choice of governing law and jurisdiction therein) constitutes as on the date of its execution or, when executed and delivered, will constitute, its legal, valid and binding obligations enforceable without any further action being required with respect to such Debenture Document.

- (b) The services to be performed, the materials to be supplied and the easements, licenses and other rights granted or to be granted to the Issuer pursuant to the Project Documents which have been executed or to be executed, provide or will provide, the Issuer with all material rights and property interests required to enable the Issuer to obtain all material services, materials or rights (including access) required for the Project, including the Issuer's full and prompt performance of its obligations, other than those services, materials or rights that can reasonably be expected to be obtained in the ordinary course of business without material additional expenses or material delay.
- (c) There has not occurred any amendment or modification of any Debenture Document in a manner which is not permitted under the Debenture Documents.
- (d) The Issuer confirms that there has not been initiated nor is there pending nor has the Issuer received any knowledge/notice of any threatened legal proceedings, relating to the Project, the Issuer or its assets having a Material Adverse Effect.
- (e) No Event of Default has occurred and is continuing under any Debenture Document.

#### 12.5 **Compliance with Approvals and Applicable Law**

- (a) The Issuer has obtained or will obtain and is validly maintaining or will maintain all material Approvals required to be obtained at such date with respect to the development, ownership, construction and operation of the Project and such Approvals obtained are valid and subsisting. It is in compliance with all Applicable Law, authorizations and Approvals from Governmental Authorities for the implementation of the Project including the development, construction, ownership and operation thereof and there has been no default in complying with such Approvals.
- (b) The Project land (nor any other property with respect to which the Issuer has retained or assumed liability under the Security Documents) has not been affected by any hazardous material in a manner which gives rise to any liability of the Issuer under Applicable Law.

#### 12.6 **Good Title**

The Issuer and/or Sponsor has good and marketable freehold title to the respective Secured Assets, free and clear of any encumbrance and/or any obligation to create any encumbrance (other than those which are created in favour of the Existing Lenders and those that are permitted under the Debenture Documents) and further confirms that the Security Interests created or expressed to be created by the Security Documents are, or when the Security Documents are executed shall be, valid and enforceable subject to any time periods specifically granted under the Security Documents, when executed.

#### 12.7 **Security**

- (a) The provisions the Security Documents when executed are effective to create, in favour of the Security Trustee for the benefit of the Secured Parties, legal, valid,

binding and enforceable Security Interests expressed to be created thereunder on all of the Secured Assets, in accordance with the Security Documents and the Inter-creditor Agreement and upon all necessary and appropriate recordings and filings being made in all appropriate public offices such Security Documents shall create effective Security Interests on all right, title, estate and interest of the Issuer and/or Sponsor in the Secured Assets. Further, all necessary and appropriate consents to the creation, effectiveness, and enforcement of such Security have been or will be obtained from each of the parties to the Project Documents and the relevant Governmental Authorities, in accordance with the provisions of this Deed and the Security Documents.

- (b) The claims of the Secured Parties shall rank in the order of priority stipulated in the Inter-creditor Agreement.
- (c) The Issuer has not created any Security Interest (other than pursuant to the Existing Debt) upon any of its present or future assets, revenues or other assets in favour of any Person other than the Secured Parties (as and when the Security Documents are executed) nor does it have any obligation to create any such Security Interest.

#### 12.8 **No Immunity**

- (a) The execution and entering into by the Issuer of the Debenture Documents and exercise of rights and performance of obligations under the Debenture Documents will constitute, private and commercial acts of the Issuer, done and performed for private and commercial purposes.
- (b) The Issuer shall not be entitled to and shall not claim immunity for itself or any of its properties, assets, revenues or rights to receive income from any contract, suit, or from the jurisdiction of any court, from execution of a judgment suit, execution, attachment or any other legal process in any proceedings in relation to the Debenture Documents.

#### 12.9 Insurance

- (a) The Issuer certifies that on and from a date which is 60 (sixty) days from the Deemed Date of Allotment the Secured Assets have been insured and the Insurance Contracts have been duly endorsed to the Security Trustee as the loss payee.
- (b) The Issuer confirms that it has complied with all its obligations under the Insurance Contracts and no event or circumstances has occurred to the best of the Issuer's knowledge, nor has there been any omission to disclose a fact which in any such case would entitle any insurer to avoid or otherwise reduce its liability thereunder to less than the amount provided in the relevant policy and insurance coverage provided by such Insurance Contract.

#### 12.10 **Capitalisation**

- (a) On the date of this Deed: (i) the authorized capital of the Issuer is Rs. [•] divided into [•] equity shares of Rs. [•] each; (ii) the issued and subscribed capital of the Issuer is Rs. [•] divided into [•] equity shares of Rs. [•] each; and (iii) 100% (one hundred per cent) of the total share capital of the Issuer is owned by the Sponsor and its nominee. All of the share capital of the Issuer, including the shareholding of the Sponsor in the Issuer, is duly and validly issued and fully paid.
- (b) The Issuer does not have outstanding: (a) as of the date hereof and as on the Deemed

Date of Allotment any subordinated indebtedness, except any loans from the Sponsor as permitted under the Debenture Documents; (b) any securities convertible into or exchangeable for its shares; or (c) other than as set forth in the Debenture Documents, any rights to subscribe for or to purchase, or any options for the purchase of, or any agreements, arrangements or understandings providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its shares.

12.11 **True and Complete Disclosure**

- (a) The consolidated financial statements and unaudited management accounts of the Issuer delivered to the Secured Parties are true and fair in all material respects as of the date of such statements.
- (b) All information or documents furnished to the Secured Parties or any representatives of the Secured Parties in connection with the Transaction, by or on behalf of the Issuer is true, correct and complete in all material respects on the date of execution of this Deed, and is not false or misleading in any respect nor incomplete by omitting to state any fact necessary to make such information not misleading in any respect. No fact is known to the Issuer which the Issuer has not disclosed to the Secured Parties prior to the date of execution of this Deed which has a Material Adverse Effect.
- (c) All projections and budgets (including the Quarterly Budget) furnished or to be furnished to the Secured Parties by or on behalf of the Issuer and the summaries of significant assumptions related thereto (i) have been and will be prepared with due care, (ii) fairly present, and will fairly present, the Issuer's expectation as to the matters covered thereby as of such date, (iii) are based on, and will be based on, reasonable assumptions (in the light of prudent operating practices) as to all factual and legal matters material to the estimates therein (including interest rates and costs) and (iv) are and will be in all material respects consistent with the provisions of the Project Documents.

12.12 **Transactions with Affiliates**

The Issuer is not a party to any contracts or agreements entered into between the Issuer and any of its Affiliates other than on arm's length terms and there are no outstanding obligations or liabilities except those incurred in ordinary course of business or as may be permitted under the Debenture Documents.

12.13 **No Additional Fees**

As on the date of this Deed, other than payment to the Secured Parties, the Issuer has not paid nor become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of arranging the financing or any of the transactions contemplated by the Debenture Documents.

12.14 **No Other Powers of Attorney**

The Issuer has not executed and delivered any powers of attorney or similar documents, instruments or agreements, except for:

- (a) any issued under the Security Documents or the Project Documents; or
- (b) in the ordinary course of business;

#### 12.15 **Advances, Investments and Loans**

Other than Permitted Investments or other investments permitted in accordance with the Debenture Documents, the Issuer has not acquired an equity interest in, loaned money, extended credit or made deposits with or advances (other than deposits or advances to its employees in ordinary course of business or any deposit or advance required to be made in the ordinary course of business or in relation to the payment for goods and equipment, the making of which is expressly contemplated pursuant to the Project Documents) to any Person or purchased or acquired any stock, obligations or securities of, or any other interest in, or made any capital contribution to, or acquired all or substantially all of the assets of, any other Person, or purchased or otherwise acquired (in one or a series or related transactions) any part of the property or assets of any Person (other than purchases or other acquisitions of inventory of materials or capital expenditures, each in accordance with the Quarterly Budget or as otherwise permitted under the Debenture Documents, as the case may be).

#### 12.16 **Accounts**

The most recent audited consolidated accounts of the Issuer delivered to the Secured Parties:

- (a) have been prepared in accordance with GAAP, consistently applied; and
- (b) have been duly audited by the Auditors.

#### 12.17 Directors/Sponsor

- (a) No director of the Debenture Holders/Debenture Trustee is a director, manager, managing agent, employee or guarantor of the Issuer, or of a subsidiary of the Issuer, or of the holding company of the Issuer, or holds substantial interest in the Issuer or a subsidiary or the holding company of the Issuer and no directors of any other bank holds substantial interest or is interested as director or as a guarantor of the Issuer.
- (b) benefiting in any capacity in connection with or from this Deed and/or any instruments and/or payments No relative (as specified by RBI) of a chairman / managing director or director of banking company (including the Debenture Holders/Debenture Trustee) or a relative of senior officer (as specified by RBI) of the Debenture Holders/Debenture Trustee, holds substantial interest or is interested as a director or as guarantor of the Issuer.
- (c) The Issuer or its directors are not on RBI's defaulters/caution list and the Issuer's promoters are not on RBI's wilful defaulters list or defaulter list of any bank and financial institution nor do their names appear in caution list issued by Export Credit and Guarantee Corporation of India Limited (ECGC)/ Director General of Foreign Trade etc. or the defaulters list under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). Further, the Issuer or its directors or its promoters is not a defaulter of any of the Debenture Holders/Debenture Trustee/ Existing Lenders and no director of the Issuer is disqualified under Section 164 of the Act.

#### 12.18 Compliance of Sanctions

- (a) The Issuer hereby, represents and confirms that neither the Issuer nor any other Person thereunder is a Specially Designated National (SDN) and/or otherwise sanctioned, under the sanctions promulgated/issued by the United States of America including its Office of Foreign Assets Control's (OFAC), India (by RBI or any other regulatory authority), United States,



United Nations, European Union, the jurisdiction of the Lending Office and/or any other country from time to time (collectively, the "Sanctions").

- (b) The Issuer hereby acknowledges, covenants and agrees that it will ensure that the transactions entered into pursuant to the Transaction Documents do not violate any Sanctions, directly or through persons or entities subject to any Sanctions, which may pertain *inter alia*, to the purpose and/or end use of the issuance of Debentures, goods manufactured in or originated from/through certain countries, shipment from/to/using certain countries, ports, vessels, liners and/or due to involvement of certain persons and entities.

#### 12.19 Foreign Account Tax Compliance Act

The Issuer hereby declares that the Issuer and the Sponsor are in compliance with the provisions of the Foreign Account Tax Compliance Act ("**FATCA**"), if applicable and the Issuer hereby undertakes on its behalf, and on behalf of the Sponsor, to ensure the compliance of the provisions of the FATCA at all time, if applicable during the currency of this Deed and the Transaction. The Issuer agrees to provide the respective authorities with any documentation or information requested relating to self or beneficiary or related tax entity to the extent required by the Debenture Trustee for meeting its compliances. Further, the Issuer indemnifies the Debenture Trustee for any penal consequence arising due to non-compliance of the aforesaid provision by the Issuer. The Issuer agrees that it will provide a copy of the documents provided to the tax authorities to the Debenture Trustee for its records.

#### 13. DEBENTURE REDEMPTION RESERVE

The Issuer hereby agrees and undertakes that it shall create a Debenture Redemption Reserve as per the provisions of the Act or any guidelines issued by the SEBI, as applicable, and if during the currency of these presents, any guidelines are formulated (or modified or revised) by any Governmental Authority having authority under law in respect of creation of Debenture Redemption Reserve applicable to the Debentures, the Issuer shall duly abide by such guidelines and execute all such supplemental letters, agreements and deeds of modifications as may be required by the Debenture Holders or the Debenture Trustee and the Issuer shall submit to the Debenture Trustee a certificate duly certified by a practicing chartered accountant certifying that the Issuer has transferred a suitable sum to the Debenture Redemption Reserve at the end of each Fiscal Year.

#### 14. DEBT SERVICE RESERVE ACCOUNT

The Issuer hereby agrees and undertakes that until the Final Settlement Date, an amount equivalent to Rs. [•] shall be maintained in the Debt Service Reserve Account. The Issuer shall have the option to replace the Debt Service Reserve Account with a bank guarantee with the approval of Debenture Trustee and IIFCL, in accordance with the terms of the Trust and Retention Account Agreement.

#### 15. GUARANTEE FEE RESERVE SUB-ACCOUNT

The Issuer hereby agrees and undertakes that till the IIFCL Guarantee is in effect, the Issuer will maintain the Guarantee Fee Reserve in the Guarantee Fee Reserve Sub-Account. The Issuer shall have the option to furnish an unconditional and irrevocable bank guarantee if and as acceptable to the Debenture Trustee and IIFCL in lieu of the Guarantee Fee Reserve, in accordance with the terms of the Trust and Retention Account Agreement.

#### 16. MAINTENANCE OF TRUST AND RETENTION ACCOUNT, RESERVES AND OTHER SUB-ACCOUNTS

The Issuer shall open the Trust and Retention Account in accordance with the Trust and Retention Account Agreement prior to the Pay-in Date. The Issuer shall have established each of the Sub-Accounts contemplated under the Trust and Retention Account Agreement, including the Debt Service Reserve Account and the Guarantee Fee Reserve Sub-Account, prior to the Pay-in Date and all such Sub-Accounts shall be fully funded at all times to the amount required pursuant to this Deed and the Trust and Retention Account Agreement. The amount accumulated in the Sub-Accounts shall only be used in accordance with the provisions of the Trust and Retention Account Agreement and surplus the monies standing to the credit of the Sub-Accounts shall be invested only in Permitted Investments and as permitted in accordance with the Trust and Retention Account Agreement.

17. RECEIPT OF DEBENTURE HOLDERS

The receipt signed by a Debenture Holder, or if there be more than one Debenture Holder, then the receipt of the first named Debenture Holder or the survivor or survivors of them, as the case may be, for the principal amount and interest payable in respect of each such Debenture shall be a good discharge to the Debenture Trustee and the Issuer.

18. TRUSTS OF DEBENTURES NOT RECOGNISED

The Debenture Trustee shall not be affected by any notice express or implied of the right, title or claim of any person to such monies other than the Debenture Holders.

19. SURRENDER OF DEBENTURES ON PAYMENT

On or promptly after the discharge in full of the Debenture Secured Obligations to the satisfaction of the Debenture Trustee, the Debentures shall be surrendered and delivered to the Issuer by the Debenture Holders with receipts in full discharge endorsed thereon and signed by the respective Debenture Holders. Provided however, that if a Debenture Holder has not surrendered its Debentures within 15 (fifteen) days after the date on which the Debenture Secured Obligations have been discharged in full to the satisfaction of the Debenture Trustee, the Debentures shall be deemed to have been paid off or satisfied in accordance with the provisions hereof.

20. INVESTMENT OF TRUST FUNDS

Any monies which under the trust or powers herein contained ought to be invested by the Debenture Trustee, may be invested in the name of the Debenture Trustee or under the legal control of the Debenture Trustee in any of the investments authorised by Applicable Law for the investment of trust moneys for the time being in force in India with power to vary and transpose such investments and in so far as the same shall not be invested shall be placed in a deposit in the name of the Debenture Trustee in a scheduled commercial bank or banks. Section 20 of the Indian Trusts Act, 1882 shall not apply to such investments.

21. WHEN DEBENTURE TRUSTEE MAY INTERFERE

Until the occurrence of any Event of Default set out in Clause 8 above, the Debenture Trustee shall not in any manner be required, bound or concerned to interfere with the management or the affairs of the Issuer or its business or the custody, care, preservation or repair of the Secured Assets on which Security has been/ shall be created.

22. REGISTER OF DEBENTURE HOLDERS

The Issuer shall, as required by Section 88 of the Act, keep at its registered office a register of the Debenture Holders and enter therein the particulars prescribed under the said Section. The

Debenture Trustee and/or the Debenture Holders or any of them or any other person shall, as provided in Section 94 of the Act, be entitled to inspect the said Register and to take copies of or extracts from the same or any part thereof during usual business hours. The Register may be closed by the Issuer at such time and for such periods as it may think fit in accordance with the provisions of the Act after giving not less than 7 (seven) days' previous notice by advertisement in some newspaper circulating in the district in which the Issuer's registered office is situate.

23. PURCHASERS AND PERSONS DEALING WITH DEBENTURE TRUSTEE/ SECURITY TRUSTEE NOT PUT ON ENQUIRY

No purchaser, mortgagor, mortgagee or other Person dealing with the Debenture Trustee or Security Trustee or their attorneys or agents shall be concerned to inquire whether the power exercised or purported to be exercised has become exercisable or whether any money remains due on the security of these presents or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall have been made or otherwise as to the propriety or regularity of any sale, calling in, collection or conversion or to see to the application of any money paid to the Debenture Trustee or the Security Trustee and in the absence of *mala fides* on the part of such purchaser, mortgagor, mortgagee or other Person such dealing shall be deemed, so far as regards the safety and protection of such Person, to be within the powers hereby conferred and be valid and effectual accordingly and the remedy of the Issuer or its permitted assigns in respect of any impropriety or irregularity whatsoever in the exercise of such power shall be in damages only.

24. POWER OF DEBENTURE TRUSTEE TO BORROW

Upon the occurrence of an Event of Default, the Debenture Trustee shall only with the consent in writing of the Secured Parties, raise or borrow or require the Issuer to raise or borrow moneys on the security of the Secured Assets or any part thereof ranking *pari passu* with or subservient to these presents as the Debenture Trustee with such consent or sanction shall decide, for the purpose of making any payment under or by virtue of these presents or in relation to the exercise or any powers, duties or obligations of the Debenture Trustee or a receiver or otherwise in relation to the Secured Assets or these presents or for the purpose of paying off or discharging any costs, charges and expenses which shall be incurred by the Debenture Trustee under or by virtue of these presents and the Debenture Trustee may raise and borrow or cause the Issuer to raise and borrow such moneys as aforesaid at such prevailing reasonable rate or rates of interest and generally on such terms and conditions as the Debenture Trustee shall think fit.

25. BREACH OF COVENANT BY THE ISSUER MAY BE WAIVED

The Debenture Trustee (acting on the instructions of the Majority Debenture Holders) may, subject to the provisions of the Inter-creditor Agreement, waive on such terms and conditions as it may deem fit any breach by the Issuer of any of the covenants and provisions in these presents contained without prejudice to the rights of the Debenture Trustee in respect of any subsequent breach thereof.

26. POWERS, DUTIES, OBLIGATIONS AND ROLE OF DEBENTURE TRUSTEE

26.1 **Relationship between the Debenture Trustee and the Issuer**

- (a) The Debenture Trustee shall not, in any respect be an agent of, or trustee for, the Issuer by virtue of this Deed or the other Debenture Documents.
- (b) The Debenture Trustee shall not be liable to the Issuer for any breach by any of the

other parties to any of the Debenture Documents.

- (c) The Debenture Trustee, "*ipso facto*" does not have the obligations of a borrower or a principal debtor or a guarantor as to the monies paid/ invested by Debenture Holders for the Debentures.

## 26.2 **Not Acting in Individual Capacity**

In accepting the trust hereby created, the Debenture Trustee acts solely as trustee for the Debenture Holders, and all Persons having any claim against the Debenture Trustee by reason of the transactions contemplated by this Deed and the other Debenture Documents shall look only to the Security (or a part thereof, as the case may be) for payment or satisfaction thereof, except where any claim of the Debenture Holder against the Debenture Trustee arises on account of the Debenture Trustee's misconduct, gross negligence, willful default, fraud or breach of trust.

## 26.3 **Role and Power of the Debenture Trustee**

- (a) The Debenture Trustee has been appointed for the purposes set out herein below and the Debenture Trustee is authorised to and hereby agrees, that it shall, for the benefit of the Debenture Holders:
  - (i) execute and deliver such Debenture Documents as are required to be executed by the Debenture Trustee, to keep in its custody documents, deeds and writings in relation to the properties / Secured Assets, and do any other act necessary for creation and perfection of the Security in accordance with the provisions of this Deed, the Security Documents and the Inter-creditor Agreement;
  - (ii) take whatever action or exercise any rights or remedies that shall be required to be taken or executed by the Debenture Trustee by the terms and provisions of this Deed and/ or the other Debenture Documents and exercise its rights and perform its duties and obligations under each of the said documents;
  - (iii) subject to the terms and provisions of this Deed and the other Debenture Documents, take such other action in connection with the foregoing as the Debenture Holders may, from time to time, direct;
  - (iv) keep in its custody and hold all the original Debenture Documents for the benefit of the Debenture Holders; and
  - (v) to ensure that any certificates and reports that are to be issued by the Issuer, as required herein, are issued on a timely manner, and the circulated to the Debenture Holders from time to time, as well as forthwith upon demand by the Debenture Holders.
- (b) Subject to the terms of the Inter-creditor Agreement, the Debenture Trustee may do all or any of the following acts and things, upon the occurrence of an Event of Default, as the context may require, namely to:
  - (i) employ or remove such experts, officers, agents, managers, clerks, accountants, servants, workmen and others and upon such terms with such salaries, wages or remuneration as the Debenture Trustee shall think proper;
  - (ii) acquire and provide all such goods, materials and things as the Debenture

Trustee may consider necessary;

- (iii) obtain all Approvals necessary or appropriate to carry out any of the matters referred to in this Deed or otherwise as the Debenture Trustee shall consider fit;
  - (iv) allow time for payment of any Debt with or without security;
  - (v) in the exercise of any of the above powers, to expend such sums as the Debenture Trustee may think fit and the Issuer shall forthwith on demand repay to the Debenture Trustee all sums so expended from time to time and, until such repayment, such sums, together with interest, shall be secured by this Deed.
- (c) It is clarified that the Debenture Trustee shall have only those duties, obligations and responsibilities expressly specified in this Deed or the Debenture Trustee Agreement, as the case may be and the other Debenture Documents, and shall not have any implied duties, obligations or responsibilities except to the extent provided by Applicable Law.

#### 26.4 **Duties of the Debenture Trustee**

In performing its obligations in relation to the Debentures:

- (a) the Debenture Trustee shall, subject to these presents, perform its duties and obligations, and exercise its rights and discretions, in keeping with the trust reposed in the Debenture Trustee by the Debenture Holders, and shall further conduct itself, and comply with the provisions of the Indian Trusts Act, 1882 and all other Applicable Law.
- (b) the Debenture Trustee shall carry out all its obligations, duties and functions as the debenture trustee in accordance with the terms set out in the Debenture Documents and where the same is silent or contrary to any other provision of the Debenture Documents, on the instructions of the Debenture Holders. It is hereby clarified that the Debenture Trustee shall, unless otherwise provided for in the Debenture Documents, seek written instructions from the Majority Debenture Holders and only upon receipt of the relevant instructions from the Majority Debenture Holders, shall the Debenture Trustee exercise such rights and perform such duties and obligations referred to in the Debenture Documents. Notwithstanding such requirement for instructions in writing, the Debenture Trustee shall never take any action inconsistent with the best interests of the Debenture Holders.
- (c) the Debenture Trustee shall provide to the Debenture Holders the details of all information (as well all documents / certificates / reports) provided by the Issuer to the Debenture Trustee in relation to the Transaction, Issuer or pursuant to the terms of the Debenture Documents.
- (d) the Debenture Trustee shall provide the Debenture Holders with information relating to Cure Periods (if any) being availed by the Issuer under the Debenture Documents and any steps the Issuer is taking / proposes to take to remedy the default.
- (e) in the event the Debenture Trustee shall have knowledge of the occurrence or continuance of any Event of Default, the Debenture Trustee shall give prompt e-mail notice followed by prompt written notice by facsimile or by courier thereof to the Debenture Holders.

- (f) the Debenture Trustee shall not do any act, deed or thing which is prejudicial or detrimental to the interest of the Debenture Holders.
- (g) the Debenture Trustee shall do any act, deed or thing or refrain from doing any act, deed or thing, which may be reasonably expected of the Debenture Trustee under the given circumstances at that point in time, in exercise of its rights and to perform its duties and obligations under this Deed and the other Debenture Documents, including, for the management, administration, preservation or maintenance of the Security.
- (h) the Debenture Trustee shall forward notice of any tax or Security Interest received by it in respect of any of the Secured Assets, to the Debenture Holders.
- (i) upon receipt of written instructions from the Majority Debenture Holders, the Debenture Trustee at the Issuer's cost, shall:
  - (i) file, record, register, inspect or deposit any Debenture Document, or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document; and
  - (ii) pay or discharge any Tax or any Security Interests as may be required with respect to or assessed or levied against any part of the Secured Assets.
- (j) the Debenture Trustee shall ensure that except as otherwise provided herein, or in the other Debenture Documents and under written instructions from the Majority Debenture Holders, monies received by the Debenture Trustee hereunder (or pursuant to the other Debenture Documents) for the benefit of the Debenture Holders shall be kept segregated from the other assets of the Debenture Holders; provided however the Debenture Trustee shall not be liable to make payment of any interest thereon.
- (k) the Debenture Trustee shall be responsible for and covenants to keep all customary books and records relating to the receipt and distribution of all moneys which it may receive or be entitled to hereunder or under any agreement, document or instrument contemplated hereby. The Debenture Trustee, upon written request of the Debenture Holders, will furnish the Debenture Holders with all such information as may be required from the Debenture Trustee in connection with the preparation of tax reports and tax returns with respect to Taxes due and payable by the trust created hereby in connection with the Transaction, the Debenture Documents or any other agreement, document or instrument referred to herein.

#### 26.5 Power of Debenture Trustee to Delegate/ Appoint Agents

The Debenture Trustee may, in carrying out the trust business employ and pay any Person or concur in transacting any business and do or concur in doing all acts required to be done by the Debenture Trustee including the receipt and payment of moneys and shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by it in connection with the trusts hereof and also their reasonable charges in addition to the expenses incurred by it in connection with matters arising out of or in connection with the Debenture Documents. However, if any payments to be made to such Person are to be borne by the Issuer, then the Debenture Trustee shall, unless an Event of Default has occurred and is continuing, seek the prior written approval of the Issuer before employing such person or concurring in transacting any business with such Person.

#### 26.6 **Liability of Debenture Trustee**

Nothing contained in this Deed or the other Debenture Documents shall exempt the Debenture Trustee from or indemnify the Debenture Trustee against any liability for breach of trust or any liability whether by virtue of any rule or Applicable Law or otherwise would attach to the Debenture Trustee in respect of any fraud, gross negligence, willful default, misconduct or breach of trust which it may be guilty of in relation to its duties and obligations hereunder.

26.7 **Debenture Trustee: Protective Provisions**

In addition to the other powers conferred on the Debenture Trustee and provisions for their protection and not by way of limitation or derogation of anything in these presents contained or of any statute limiting the liability of the Debenture Trustee, IT IS EXPRESSLY DECLARED as follows:

- (a) The Debenture Trustee may in good faith and with due care, in relation to these presents, act on the opinion or advice of or any information obtained from any solicitor, counsel, advocate, valuer, surveyor, broker, auctioneer, qualified accountant or other expert (appointed in consultation with the Debenture Holders).
- (b) The Debenture Trustee shall be at liberty to accept a certificate signed by any one of the directors of the Issuer as to any act or matter prima facie within the knowledge of the Issuer as sufficient evidence thereof and a like certificate that any property or assets are in the opinion of the director so certifying worth a particular sum or suitable for the Issuer's purpose or business as sufficient evidence that it is worth that sum or so suitable and a like certificate to the effect that any particular dealing or transaction or step or thing is in the opinion of the director so certifying expedient as sufficient evidence that it is expedient.
- (c) The Debenture Trustee shall be at liberty to keep these presents at its registered office or elsewhere or if the Debenture Trustee so decided with any banker or company whose business includes undertaking the safe custody of documents or with any advocates or firm of solicitors provided however that the Debenture Trustee shall be responsible for any loss incurred in connection with any such deposit and the Debenture Trustee may pay all sums required to be paid on account of or in respect of any such deposit.
- (d) Save as herein otherwise expressly provided, the Debenture Trustee shall, as regards all trusts, powers, authorities and discretions hereby vested in them, have absolute and uncontrolled discretion as to the exercise thereof and to the mode and time of exercise thereof.
- (e) The Debenture Trustee shall in consultation with the Issuer, have full power to determine all questions and doubts arising in relation to any of the provisions hereof and every such determination bona fide made (whether or not the same shall relate wholly or partially to the acts or proceedings of the Debenture Trustee) in good faith and with due care shall be conclusive and binding upon all Persons interested hereunder.
- (f) The Debenture Trustee shall be entitled to exercise all its powers and rights available to it under the Debenture Documents.
- (g) The Debenture Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate Person as conclusive evidence that such body has duly adopted such resolutions and the same is in full force and effect.

- (h) The Debenture Trustee may accept, without inspection, inquiry or requisition, such title as the Issuer may have to the Secured Assets in respect of which Security has been/ will be created.
- (i) The Debenture Trustee shall be responsible for acts and omissions of its employees performed during the normal course of its business.
- (j) With a view to facilitating any dealing under any provisions of these presents, which does not affect the interests of the Debenture Holders, the Debenture Trustee shall have full power to consent (where such consent is required) to a specified transaction or class of transactions conditionally.
- (k) The Issuer or Debenture Holders may not take any proceedings against the Debenture Trustee in respect of any act or omission of any kind of/ by the Debenture Trustee in relation to the Debenture Documents, excluding misconduct, fraud, willful default or gross negligence of the Debenture Trustee resulting in a breach of and/ or a failure to comply with the terms of the Debenture Documents or failure to comply with the express instructions of the Debenture Holders or any of their representatives, agents, nominees or officers.
- (l) Notwithstanding the provisions of this Deed, the Debenture Trustee may refrain from doing anything which might, in its opinion, constitute a breach of any Applicable Law and may do anything which, in its opinion, is necessary or desirable, to comply with any Applicable Law.

PROVIDED NEVERTHELESS that nothing contained in this Clause 26.7 shall exempt the Debenture Trustee from or indemnify it against any liability for any liability which by virtue of any rule or Applicable Law would otherwise attach to it.

27. DEBENTURE TRUSTEE MAY CONTRACT WITH THE ISSUER

Neither the Debenture Trustee nor any agent of the Debenture Trustee shall be precluded from making any contract or entering into any arrangement or transaction with the Issuer or with itself in the ordinary course of business of the Debenture Trustee or from undertaking any banking, financial or agency services for the Issuer or for itself or from underwriting or guaranteeing the subscription of or placing or subscribing for or otherwise acquiring, holding or dealing with any of the stocks or shares or debentures or debenture stocks or any other securities whatsoever of the Issuer or in which the Issuer may be interested either with or without a commission or other remuneration or otherwise at any time entering into any contract of loan or deposit or any other contract or arrangement or transaction with the Issuer or being concerned or interested in any such contract or arrangement or transaction which any other company or person not being a debenture trustee of these presents would be entitled to enter into with the Issuer and they shall not be in anyway liable to account either to the Issuer or to the Debenture Holders for any profits made by them thereby or in connection therewith and the Debenture Trustee or any agent of the Debenture Trustee shall also be allowed to retain for their or his own benefit any customary share of brokerage, fee, commission, interest, discount or other compensation or remuneration allowed to them or him.

28. RETIREMENT, RESIGNATION & REMOVAL OF DEBENTURE TRUSTEE

- (a) The Debenture Trustee may resign at any time provided that it shall have given at least 1 (one) month's previous notice in writing to the Issuer in that behalf. Provided that any resignation by the Debenture Trustee shall become effective after a successor Debenture Trustee has been appointed in accordance with this Deed.



- (b) The Debenture Trustee may be removed by the Debenture Holders by a special resolution duly passed at the meeting of the Debenture Holders convened in accordance with the provisions set out in Schedule V. The Issuer shall appoint such person or persons as may be nominated by the Debenture Holders by such resolution as new Debenture Trustee for the purpose hereof.
- (c) For the purposes aforesaid, forthwith upon receipt of the notice of resignation from the Debenture Trustee for the time being hereof or on the occurrence of the vacancy in the office of the Debenture Trustee, the Issuer shall convene a meeting of the Debenture Holders or arrange to obtain the consent of the Debenture Holders. A body corporate or a company which is registered under the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, as applicable from time to time, may be appointed to be a Debenture Trustee hereof.

## 29. DEBENTURE TRUSTEE'S REMUNERATION

- (a) The Debenture Trustee's remuneration shall be set out in the letter of appointment of the Debenture Trustee or other fee letter entered into between the Issuer and the Debenture Trustee for this purpose.
- (b) The Issuer shall pay to the Debenture Trustee all legal, travelling and other costs, charges and expenses incurred by them, their officers, employees, agents in connection with execution of these presents including costs, charges and expenses of and incidental to the approval and execution of the Debenture Documents provided the Debenture Trustee gives valid supporting reasons for such costs, charges and expenses incurred and will indemnify them against all actions, proceedings, costs, charges, expenses, claims and demands whatsoever which may be brought or made against or incurred by them in respect of any matter or thing done or omitted to be done without their willful default in respect of or in relation to the Debentures.

## 30. MODIFICATIONS AND AMENDMENTS

This Deed may not be amended, modified, supplemented, changed, waived or discharged unless such amendment, modification, supplement, change, waiver or discharge has been consented to by all the Secured Parties in accordance with the terms of the Inter-creditor Agreement, is in writing and has been signed by the Parties.

## 31. APPOINTMENT OF DEBENTURE TRUSTEE AS ATTORNEY OF THE ISSUER

### 31.1 **Appointment**

The Issuer hereby irrevocably appoints the Debenture Trustee to be the attorney of the Issuer in the name and on behalf of the Issuer to, in the event that the Issuer fails to make any payment due to the Debenture Holders, execute, sign and do any deeds, documents, assurances, acts and things which shall in the opinion of the Debenture Trustee be necessary or expedient that the Issuer should execute sign and do for the purpose of carrying out any of the trusts or obligations declared or imposed upon the Issuer by these presents or given to the Debenture Holders or to the Debenture Trustee on their behalf the full benefit of any of the provisions of these presents and generally to use the name of the Issuer in the exercise of all or any of the powers hereby conferred upon the Debenture Trustee or any Person appointed by it. Without prejudice to the generality of the foregoing the Issuer has appointed the Debenture Trustee, *inter alia* to:

- (a) execute and do all acts, deeds and things which the Issuer is authorised to execute and

do under the covenants and provisions herein contained, upon default or failure by the Issuer to do so when required by this Deed or by the Debenture Trustee;

- (b) generally use the name of the Issuer in the exercise of all or any of the powers conferred by these presents or by Applicable Law on the Debenture Trustee, upon default or failure by the Issuer to do so when required by this Deed or by the Debenture Trustee;
- (c) on and from the occurrence or existence of an Event of Default, operate the accounts forming part of the Secured Assets (subject to the terms of the Inter-creditor Agreement) and transfer such monies to discharge the Secured Obligations; and
- (d) on and from the occurrence or existence of an Event of Default, execute on behalf of the Issuer such documents and deeds and take such actions as may be necessary to give effect to the provisions of this Deed, including perfection of Security created or required to be created hereunder and for the preservation, enforcement, and realisation of the Security created under this Deed.

31.2 **Ratification**

The Issuer covenants with the Debenture Trustee to ratify and confirm all acts or things made, done or executed by any attorney or substitute as contemplated herein.

32. NOTICES

32.1 **Communications in writing**

Any communication to be made under or in connection with this Deed shall be made mandatorily in writing and by e-mail and may also additionally be made by fax or letter.

32.2 Addresses

The address, e-mail address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below.

The address for service of notice to the **Issuer** will be:

[•]

**Address:** [•]  
**Fax No.:** [•]  
**E-mail:** [•]  
**Attention:** [•]

The address for service of notice to the **Debenture Trustee** shall be:

[•]

**Address:** [•]  
**Fax No.:** [•]  
**Email:** [•]  
**Attention:** [•]

The address for service of notice to the **Security Trustee** shall be:

[•]

**Address:** [•]  
**Fax No.:** [•]  
**Email:** [•]  
**Attention:** [•]

### 32.3 Delivery

- (a) Any communication or document made or delivered by the Debenture Trustee to the Issuer under or in connection with this Deed will only be effective:
  - (i) if by way of fax, when received in legible form on a Business Day during business hours;
  - (ii) if by way of electronic mail, only when actually received in readable form and in the case of any electronic communication made by the Issuer to the Debenture Trustee only if it is addressed in such a manner as the Debenture Trustee shall specify for this purpose;
  - (iii) if by way of letter, when it has been left at the relevant address or 2 (two) days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and
  - (iv) if a particular department or officer is specified as part of its address details provided under this Clause 32 if addressed to that department or officer.

### 32.4 Notification of address, fax number and email address

Promptly upon changing its address, fax number or email address as provided under this Clause 32, either Party shall notify the other Parties.

### 32.5 Reliance

- (a) Any notice sent under this Clause 32 can be relied on by the recipient if the recipient reasonably believes the notice to be genuine and if it bears what appears to be the signature (original or facsimile) of an authorised signatory of the sender (in each case without the need for further enquiry or confirmation).
- (b) Each Party must take reasonable care to ensure that no forged, false or unauthorised notices are sent to the other Parties.

### 32.6 English language

- (b) Any notice given under or in connection with this Deed must be in English.
- (c) All other documents provided under or in connection with this Deed must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Debenture Trustee, accompanied by a certified English translation and, in this case, the English translation will

prevail unless the document is a constitutional, statutory or other official document.

### 33. CONFIDENTIALITY

- (a) The Parties recognize that they will be given and have access to confidential and proprietary information of the other Parties pursuant to this Deed except in accordance with the terms of this Deed. The Parties undertake not to use any of such confidential information for purposes other than for the purposes of the Transaction without obtaining the consent of the other Parties owning such information and shall use their best efforts to keep confidential and not to disclose to any third party (other than the Secured Parties), the other Parties' confidential and proprietary information. The Parties shall also cause their respective directors, employees, officers, agents, advisers and any other persons to whom the above mentioned information is disclosed to execute a letter of confidentiality or make such arrangements as required to the effect provided in this Clause 33.
- (b) The obligations of confidentiality shall not apply to any information that:
  - (i) was developed independently by any Party;
  - (ii) was known to the other Parties prior to its disclosure by the disclosing Party;
  - (iii) has become generally available to the public (other than by virtue of its disclosure by the receiving Party);
  - (iv) may be required in response to any summons or subpoena or in connection with any litigation; or
  - (v) may be required to comply with any law, order, regulation or ruling applicable to any Party hereto.

Provided that prior to any disclosure in respect of a request to disclose confidential information under this Clause 33, to the extent practicable a Party must first notify the other Party owning such confidential information, who shall then have the opportunity to respond to and/or dispute such request. The provisions of this Clause 33 shall survive the termination of this Deed.

- (c) Subject to compliance with applicable orders, regulation, or law, neither Party may make or send a public announcement, press release or communication concerning any aspect of this Deed including its existence, unless it has first obtained the other Parties' written consent.
- (d) Provided that nothing in this Clause 33 shall restrict any Party from providing or making available any information (including any confidential and proprietary information) to IIFCL, the Back-Stop Guarantor or any proposed/ future Debenture Holders.

### 34. FURTHER ASSURANCES

The Issuer will, promptly upon receiving a request from the Debenture Trustee execute all transfers, conveyances, assignments, assurances and other instruments of security whatsoever and give all notices, orders, instructions and directions whatsoever which the Debenture Trustee may reasonably or by normal practice or by Applicable Law require, in relation to the Secured Assets or in relation to the creation, perfection or enforcement of Security expressed

to be created hereunder in accordance with the terms of this Deed, the Security Documents and the Inter-creditor Agreement.

35. COSTS AND EXPENSES

- (a) The Issuer shall pay all fees, penalties or other charges payable on or in connection with the valuation, rating, listing of Debentures, due diligence exercise in connection with the Transaction contemplated herein (including without limitation, all charges relating to the auditor, agent, trustee), the execution, issue, delivery, of this Deed and the Debenture Documents as well as stamp duty and incidental charges for the Debentures (other than for the avoidance of doubt, costs associated with transfer/assignment of Debentures by the Debenture Holders) or certificates issued to the Debenture Holders and any document, act and registration performed pursuant hereto, if and when required to pay the same according to this Deed or Applicable Law. If the Issuer fails to pay the taxes, fees, penalties or other charges payable, then the Debenture Trustee may (but is not obligated to) pay such amounts, on behalf of the Issuer. Any money paid by the Debenture Trustee as aforesaid, shall constitute a part of the Debenture payments. The Issuer undertakes to deliver to the Debenture Trustee originals of the receipts evidencing payment of stamp duty and other charges in connection with the stamping and registration of this Deed.
- (b) The Issuer hereby undertakes and agrees that if due to any circumstances whatsoever it fails to comply with Clause 35(a) above and the payments are made by the Debenture Trustee, the Issuer shall indemnify the Debenture Trustee (on behalf of itself and each of its officers, directors, employees, agents and advisors) against such payments made by the Debenture Trustee (including, without limitation, payment of any such stamp duty and any penalties) and against any and all losses, liabilities, damages, costs and expenses which the Debenture Trustee may suffer and/or incur or which may arise as a consequence of the non-performance by the Issuer of the undertaking contained in this Clause 35(b), within 15 (fifteen) days from the date of demand. If the Issuer fails to make the payment within 15 (fifteen) days of demand, all such amounts payable by the Issuer under this Clause 35(b) shall be paid together with interest thereon at the Default Rate payable from the date the Debenture Trustee makes demand therefore until reimbursed by the Issuer.
- (c) It is further clarified that it shall be the obligation of the Issuer to pay for all expenses associated with the Transaction, including legal fees, printing fees, auditors' fees, agency fees, Debenture Trustee and Security Trustee fees. In addition, the Issuer will pay for all expenses incurred by the Arranger, including legal fees and all out-of-pocket expenses in relation to the Transaction, irrespective of whether the Debentures are subsequently issued by the Issuer.
- (d) All charges, expenses etc., as are payable in respect of the Debentures by the Issuer shall accrue from day to day, and shall be computed on the basis of the actual number of days elapsed.

36. GOVERNING LAW

This Deed shall be governed by and construed in accordance with Indian law.

37. JURISDICTION

- (a) The Parties agrees that the courts and tribunals in [•] shall have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed and that accordingly any suit, action or proceedings (together referred to as

"Proceedings") arising out of or in connection with this Deed may be brought in such courts or tribunals and the Issuer irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.

- (b) The Issuer irrevocably waives any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals at [•] and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts and tribunals at [•] shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by Applicable Law.
- (c) The Issuer hereby consents generally in respect of any Proceedings arising out of or in connection with this Deed to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.
- (d) To the extent that the Issuer may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Issuer hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

38. **EFFECTIVENESS**

This Deed and all provisions hereof shall be effective on and from the Pay-In Date and shall be in force till the Final Settlement Date.

39. **MISCELLANEOUS**

39.1 **Entire Agreement**

Except as otherwise agreed to in writing, this Deed along with the other Debenture Documents represents the entire understanding between the Parties and shall supersede any previous agreement or understanding between the Parties in relation to all or any such matter contained herein.

39.2 **Severability**

Each provision of these presents shall be considered severable and if for any reason any provision of these presents is determined by a court of competent jurisdiction to be invalid or unenforceable and contrary to Indian laws or existing or future Applicable Law, such invalidity shall not impair the operation of or affect those provisions of these presents which are valid. In that case, these presents shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of any Applicable Law, and in the event such term or provision cannot be so limited, these presents shall be construed to omit such invalid or unenforceable provisions. Following the determination that any provision of these presents is unenforceable, the Parties shall negotiate in good faith a new provision that, as far as legally possible, most nearly reflects the intent of the Parties and that restores these presents as nearly as possible to its original intent and effect.

39.3 **No Waiver, Cumulative Remedies**

No delay or omission of the Debenture Trustee in exercising any right, power or remedy accruing of the Debenture Trustee upon any default hereunder shall impair any such right power or remedy or be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Debenture Trustee in respect of any default or any acquiescence by it in any default affect or impair any right, power or remedy of the Debenture Trustee in respect of any other defaults nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. The rights and remedies of the Debenture Trustee herein provided are cumulative and not exclusive of any rights or remedies provided by Applicable Law or under equity or under any of the other Debenture Documents.

39.4 **Authority to sign these presents**

Each signatory to these presents represents and warrants that he/she is duly authorised by the respective Party for and on whose behalf he/ she is signing this Deed to execute the same in a manner binding upon the respective Party and that all corporate approvals and procedures necessary for vesting such authority in him/ her have been duly obtained and complied with.

39.5 **Relationship**

None of the provisions of this Deed shall be deemed to constitute a partnership between the Parties hereto and neither Party shall have any authority to bind or shall be deemed to be the agent of the other in any way except as set out herein.

39.6 **Counterparts**

This Deed may be executed in duplicate, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Deed by signing any one or more such documents or counterparts.

39.7 **Benefit of this Deed**

Nothing in this Deed, whether express or implied, shall be construed to give to any Person, other than the Debenture Trustee, the Security Trustee, the Debenture Holders and the other Secured Parties (to the extent of their rights under the Inter-creditor Agreement), any legal, beneficial or equitable right, remedy or claim under or in respect of this Deed, any covenants, conditions or provisions contained herein or in the other Debenture Documents, the trust created hereunder or under any other Debenture Document or any Security.

39.8 **Assignment**

The Issuer shall not assign or transfer any of its rights, benefits and obligations under this Deed without the prior consent of the Secured Parties. The Debenture Holders may freely assign or transfer any of their rights, benefits and obligations under this Deed, subject to the terms of the Information Memorandum.

39.9 **Stamp Duty**

Each Party agrees that this Deed is subject to a stamp duty as applicable and as has been paid on this Deed and each Party hereby irrevocably waives any defence to its admission in evidence that this Deed is inadequately stamped.

40. INDEMNITY

- (a) Without prejudice to the other rights of the Debenture Holders and the Debenture Trustee under this Deed or Applicable Law, the Issuer agrees to indemnify, defend and hold harmless each of the Debenture Holders and the Debenture Trustee and their respective directors, officers, representatives and employees (collectively, the "**Indemnified Persons**") from and against any and all losses, liabilities, claims, damages, proceedings, penalties, investigations, judgments, Taxes, costs and expenses (including reasonable fees, disbursements and other charges which may be incurred by the Indemnified Person(s) in investigating or defending itself in any action between the Issuer and the Indemnified Person(s) or between the Indemnified Person(s) and Governmental Authority or between the Indemnified Person(s) and any Person) whether suffered or incurred by any of the Indemnified Persons and which arise out of, or result from, or are connected with any:
- (i) misrepresentation in, inaccuracy in or breach by the Issuer of any representation, warranty or undertaking contained in this Deed and any other Debenture Documents; or
  - (ii) breach by the Issuer of its covenants, agreements or obligations contained in this Deed and any other Debenture Document or its constitutional documents;
- (all claims under Clause 40(a) (i) and (ii) shall be collectively referred to as "**Claims**").
- (b) Any Claim for indemnity pursuant to this Deed shall be made by the Indemnified Persons by notice in writing to Issuer (the "**Claims Notice**"). The failure to provide Claims Notice shall not impair an Indemnified Person's rights hereunder. The Claims Notice shall be accompanied by a reasonably complete description of the Claim in respect of which indemnification is being sought. The Issuer shall, without any protest or demur, on demand pay the losses in the amount specified in the Claims Notice to the Indemnified Person, as mandated in the Claims Notice.
- (c) Notwithstanding anything to the contrary herein, the Issuer acknowledges and agrees that: (i) the Debenture Trustee is relying upon the truth, accuracy and completeness of representations and warranties made by the Issuer to the Debenture Trustee in this Deed and under the Debenture Documents, (ii) the Debenture Trustee is under no duty or obligation to investigate or otherwise seek to independently verify the truth, accuracy or completeness of any such representations and warranties, and (iii) failure by the Debenture Trustee to investigate or otherwise seek to independently verify the truth, accuracy or completeness of any representation or warranty shall not constitute grounds for a determination that the Debenture Trustee was grossly negligent.
- (d) Notwithstanding any investigation conducted before or after the execution of this Deed, and notwithstanding any actual or implied knowledge or notice of any facts or circumstances which the Debenture Holders or the Debenture Trustee may have as a result of such investigation or otherwise, save knowledge of any facts or circumstances disclosed to herein, each of the Indemnified Persons may bring a claim for indemnification under this Clause 40.
- (e) The indemnification rights of the Debenture Trustee under this Deed are independent of, and in addition to, such other rights and remedies as the Debenture Trustee may have under Applicable Law or in equity or otherwise, including the right to seek specific performance, rescission, restitution or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.



**SCHEDULE I**

**DESCRIPTION OF IMMOVABLE PROPERTY**

[•]

## SCHEDULE II

The following is the description of the Issuer's moveable (tangible and intangible) and current assets:

1. all rights, title, interest and benefit in all and singular, of the Issuer's moveable plant and machinery, whether affixed to the earth or not, as also all tangible moveable assets (both present and future) and in particular including, without limitation, all current assets of the Issuer, including the Issuer's cash in hand whether presently in existence or acquired hereafter, all moveable plant and machinery (whether attached or otherwise), turbines, machinery spares, furniture, fixtures, tools, meters, motor vehicles, accessories and all other equipment, whether installed or not and whether lying loose or in cases or which are lying or are stored in or to be stored in or to be brought into or upon the Project site or any of the Issuer's premises, warehouses, stockyards and godowns or at various work sites or at any place or places wherever else situated or wherever else the same may be and all the intangible assets including but not limited to intellectual property rights, goodwill of the Issuer and uncalled capital, both present and future, whether now belonging to or that may at any time during the continuance of this Deed belong to the Issuer and/or that may at present or hereafter be held by any party anywhere to the order and disposition of the Issuer of in the course of transit or delivery and all replacements thereof and additions thereof whether by way of substitution, replacement, conversion, nationalization or otherwise howsoever together with all benefits, rights and incidentals attached thereto which are now or shall at any time hereafter be owned by the Issuer and all estate, right, title, interest property, claims and demands whatsoever of the Issuer unto and upon the same which description shall include all properties of the above description whether presently in existence, or acquired hereafter;
2. all rights, title, interest, benefit, claims and demands whatsoever of the Issuer, in, to under and in respect of all reserves and bank accounts wherever maintained, including the Trust and Retention Account, any Sub-Accounts thereof, including the Debt Service Reserve Sub-Account or any replacement of any of the accounts or any sub-accounts thereof, together with permitted investments including all operating cash flows and receivables from the Project and all other assets and securities which represent all amounts on such accounts and all the moneys, securities, instruments, investments, and other properties deposited in, credited to or required to be deposited in or credited to or lying to the credit of such accounts or liable to be credited to such accounts (all these accounts are collectively referred to as the "**Charged Accounts**") and all the moneys lying to the credit of such Charged Accounts or liable to be credited to such Charged Accounts, which description shall include all properties of the above description whether presently in existence or acquired; and
3. all amounts owing to or received by or receivable by, in each case from time to time, the Issuer, whether now, or at any time during the continuance of this Deed, whether in relation to the Project or otherwise, including book debts and revenues of whatsoever nature and wherever arising and all amounts and monies received or to be received by the Issuer at any time during the continuance of this Deed and all rights, title, interest, benefits, claims and demands whatsoever of the Issuer in, to or in respect of all amounts owing to the Issuer, and/or received by or receivable by, the Issuer, whether now, or at any time during the continuance of this Deed, which description shall include all properties of the above description whether presently in existence or acquired hereafter, including Issuer's uncalled capital.

## SCHEDULE III

### Debenture Terms and Conditions

#### 1. DEBENTURES TO RANK PARI PASSU

The Principal Amount, the Interest, including Default Interest (as applicable) and all other monies hereby secured shall, as between the Debenture Holders inter se, rank *pari passu* without any preference or priority whatsoever. Any payments received by the Debenture Trustee from the Issuer or the Security Trustee upon enforcement of the Security that is available for the Redemption of the Debentures, shall be distributed to each Debenture Holder in equal proportions without any preference or priority whatsoever, subject to the terms of the Inter-creditor Agreement.

#### 2. ALLOTMENT AND TENOR

The allotment of the Debentures to the Debenture Holders shall be on the Deemed Date of Allotment and each of the Debentures will be credited in dematerialised form no later than 2 (two) Business Days from the Deemed Date of Allotment. The tenor of each of the Debentures shall commence from the Deemed Date of Allotment until [•].

#### 3. DISCOUNT

The Debentures are being issued at face value and no discount is being offered.

#### 4. INTEREST

##### 4.1 Interest on Application Money

The Issuer hereby covenants to pay the subscribers of the Debentures, interest on the application money at the Interest Rate from the date of realization of the subscription money up to one day prior to the Deemed Date of Allotment. Such interest shall be paid by the Issuer on the immediately succeeding Interest Payment Date after the Deemed Date of Allotment.

##### 4.2 Interest Rate and Manner of Payment

- (a) The Debentures shall carry interest at the fixed rate specified in the Information Memorandum ("**Interest Rate**") payable in respect of each month ("**Interest Period**") and payable on the last Business Day of each Interest Period ("**Interest Payment Date**"). Provided that in respect of the first Interest payment, the Interest Period will be such period that will commence on the Pay-In Date and end on the last Business Day of the month in which the Pay-In Date falls. Save and except upon the occurrence of the Interest Step Up Events, the Interest payable on the Debentures shall be at a fixed rate till the Final Settlement Date.
- (b) The Issuer shall, until the Debentures are fully redeemed or paid off, pay to the Debenture Holders, Interest on the Principal Amount, on the Interest Payment Date.
- (c) Interest and all other charges shall accrue from day to day and shall be computed on the basis of actual/actual day count convention.
- (d) No Interest shall accrue after the final Redemption Date, unless there has been an Event of Default, in which case, Default Interest shall be payable by the Issuer with respect to any outstanding Debenture payments from the occurrence of the date of Event of Default till the date of actual payment.

#### 4.3 **Default Interest**

The Issuer shall be liable to pay default interest as follows ("**Default Interest**"):

- (a) So long as there shall be an Event of Default, the Default Interest shall be a rate of [•] per annum, over and above the applicable Interest Rate, to be compounded yearly, payable for the defaulting period of an Event of Default, for the period commencing from such due dates and expiring on the date on which such Event of Default is cured;
- (b) In case of delay in creation and perfection of the Security within 60 (sixty) days from the Deemed Date of Allotment, the Issuer shall, at the option of the Debenture Holders, pay Default Interest of [•] per annum, over the Interest Rate from the expiry of 60 (sixty) days from the Deemed Date of Allotment till the Security is created and perfected to the satisfaction of the Debenture Trustee.
- (c) In the event that the Debentures are not listed on the wholesale debt market segment of the NSE within a period of 20 (twenty) days from the Deemed Date of Allotment, then notwithstanding anything to contrary contained in the Debenture Documents, for the period commencing from the expiry of 20 (twenty) days from the Deemed Date of Allotment and expiring on the date on which the Debentures are listed, the Issuer will be required to pay Default Interest at the rate of 1% (one percent) per annum, over and above the Interest Rate.
- (d) In case of delay in conversion of the Issuer into a public limited company beyond 60 (sixty) days from the Deemed Date of Allotment, the Issuer will pay interest of [•] per annum, over and above the Interest Rate from the expiry of 60 (sixty) days from the Deemed Date of Allotment till 120 (one hundred and twenty) days from the Deemed Date of Allotment or till conversion of the Issuer into a public limited company, whichever is earlier. Further, the Issuer would pay the penal interest of [•] per annum, over and above the Interest Rate from the expiry of 120 (one hundred and twenty) days from the Deemed Date of Allotment till 180 (one hundred and eighty) days from the Deemed Date of Allotment or till conversion of the Issuer into a public limited company, whichever is earlier.
- (e) The Issuer acknowledges that any sums, interest, default amounts including but not limited to the Default Interest, are reasonable and that they represent genuine pre-estimates of the loss incurred by the Debenture Holders on occurrence of any of the events mentioned under clause 4.3(a)-(d) above.
- (f) The Issuer acknowledges that the Debentures provided under this Deed are for a commercial transaction and waives any defences available under usury, money lending or other laws relating to the charging of Interest.

#### 4.4 **Interest Step Up Events**

- (a) Upon the rating of the Debentures being downgraded by a Credit Rating Agency, the Interest Rate will be increased by [•] per annum for the first notch of downgrade of the credit rating of the Debentures below [•] and for every subsequent downgrade of the rating of the Debentures, the Interest Rate will be increased by [•] per annum for each such notch of downgrade of the credit rating of the Debentures. However, if after such downgrade the rating of the Debentures is upgraded the Interest Rate shall be reduced by [•] per annum for every notch of upgrade of the rating of the Debentures up to [•] and [•] per annum for upgrade of

the rating of the Debentures from [•] to [•]; and

- (b) The Interest Rate will be increased by [•] per annum from [•] unless waived off by the Majority Debenture Holders. The events mentioned in Clause 4.4(a) and (b), leading to an increase in the Interest Rate are collectively referred to as the "**Interest Step Up Events**".

#### 4.5 **Day Count Basis**

The Interest Rate and the Default Interest will be computed on an 'actual / actual' basis, on the Principal Amount of the Debentures.

### 5. **REDEMPTION**

#### 5.1 **Scheduled Redemption**

- (a) The Debentures shall be redeemed by the Issuer by payment of the Redemption Amount in accordance with the amortisation schedule set out in Schedule VI.
- (b) Where an early Redemption has occurred in accordance with the terms of the Deed so that the amounts paid by the Issuer has resulted in partial Redemption of the outstanding Debentures, the amount redeemed by the Issuer shall be reduced *pro rata* from the outstanding Redemption instalments across the Debentures and Schedule VI shall be deemed to be updated to reflect the reduction.
- (c) Redemption of the Debentures will be in accordance with (i) Applicable Law; and (ii) the provisions of this Deed.
- (d) Debentures redeemed shall be cancelled forthwith and will not be re-issued by the Issuer.

#### 5.2 **Redemption upon occurrence of Rating Downgrade Event**

The Debenture Trustee (based on the consent of the Majority Debenture Holders) shall, upon occurrence of a Rating Downgrade Event and in accordance with Clause 6A, have the right to exercise its option to cause the Issuer to Redeem the Debentures in full.

#### 5.3 **Put Option**

All the Debenture Holders (basis the decision of Majority Debenture Holders), will have an option to cause the Issuer to Redeem all the outstanding Debentures in full (the "**Put Option**") on [•]. It is clarified that the Debenture Holders can exercise their Put Option within 45 (forty five) days from [•], after which time period the Put Option would expire. On exercise of the Put Option, the Issuer must Redeem all the outstanding Debentures within 60 (sixty) days from the date of exercise of the Put Option.

It is clarified that any refinancing/ Debt availed by the Issuer to arrange for funds to meet its obligations pursuant to exercise of a Put Option shall be subordinated to the Secured Obligations, including under the Trust and Retention Account.

#### 5.4 **Call Option**

The Issuer will have the option to call for and Redeem the outstanding Debentures in full and also settle the Secured Obligations in full (the "**Call Option**"), on [•] and every 6 (six) months thereafter. It is clarified that the Issuer can exercise its Call Option within 45 (forty five) days

from [•] or within 45 (forty five) days from each 6 (six) months after [•], as the case may be. On exercise of the Call Option, the Issuer must Redeem all the outstanding Debentures in full and also mandatorily satisfy the Secured Obligations in full within 60 (sixty) days from the date of exercise of the Call Option.

It is clarified that any refinancing/ Debt availed by the Issuer to arrange for funds to meet its obligations pursuant to exercise of a Call Option shall be subordinated to the Secured Obligations, including under the Trust and Retention Account.

#### **5.5 Unscheduled Redemption**

Unless waived by the Majority Debenture Holders, in case the Put Option is not exercised by the Debenture Holders within 45 (forty five) days from [•] and / or the Call Option is not exercised by the Issuer within 45 (forty five) days from [•] or from each 6 (six) month period after [•], as the case may be, the Issuer shall at the end of every 6 (six) month period after [•] utilize the surplus amounts accumulated in the Refinance Reserve Sub-Account, Cash Trap Sub-Account and the Surplus Sub-Account as per the Cash Flow Waterfall for the purposes of Redemption of the Debentures on a pro rata basis.

#### **5.6 Redemption upon Illegality**

Notwithstanding anything contained in this Deed, in the event pursuant to a change in Applicable Law it becomes unlawful for any of the Debenture Holders to subscribe to / hold the Debentures, then those Debenture Holders shall promptly notify the Debenture Trustee upon becoming aware of such event, who shall upon notification from the Debenture Holder, promptly notify the Issuer. Thereafter, such Debenture Holders and the Issuer shall agree on a date, no later than 90 (ninety) days from the date of intimation by the Debenture Trustee to the Issuer of such event, for: (a) sale/transfer of their Debentures to a third party for whom it is not unlawful to hold such Debentures; or (b) redemption in full of such Debentures by the Issuer, subject to Applicable Law. It is clarified that payment to be made pursuant to such redemption shall also include any accrued but unpaid Interest. Provided that in the event of any redemption under this clause 5.6, the IIFCL Guarantee will not be available for the benefit of the Debenture Holders for making good any shortfall in the funds of the Issuer for such redemption.

#### **5.7 Payments**

- (a) Payment of the Redemption Amount will be made to the registered Debenture Holders and in case of joint holders to the one whose name stands first in the Register or similar record as on the Record Date using RTGS (Real Time Gross Settlement).
- (b) If a Payment Date is not a Business Day, then the payment shall (a) in case of payment of Redemption Amount, be made on the Business Day preceding such date; and (b) in case of any other payments, be made on the Business Day after such date.

### **6. DEBT SERVICE COVERAGE RATIO AND DEBT EQUITY RATIO**

- (a) The Issuer shall, during the currency of the Debentures maintain: (a) a Debt Service Coverage Ratio not less than [•]; and (b) Debt Equity Ratio not exceeding [•].
- (b) The Issuer shall, on an annual basis, provide a certificate confirming compliance with the above mentioned Debt Service Coverage Ratio and Debt Equity Ratio, certified by an independent practicing chartered accountant, along with its audited financial statements to the Debenture Trustee.

**7. LISTING OF THE DEBENTURES**

The Issuer shall get the Debentures listed on wholesale debt market segment of the NSE within 20 (twenty) days from the Deemed Date of Allotment. In case there is any delay in listing of the Debentures beyond a period of 20 (twenty) days from the Deemed Date of Allotment, the Issuer will pay to the Debenture Holders, Default Interest in accordance with Clause 4.3(c) above. All expenses, costs, charges, including all Taxes, incurred for the purpose of listing of the Debentures, and for making the offer for sale of the Debentures shall be paid by the Issuer.

**8. RATING OF THE DEBENTURES**

The rating of Debentures is "[•]" and either "[•]" or "[•]" or "[•]". The Issuer shall ensure that the Debentures continue to be thus rated by the Credit Rating Agencies till the final Redemption Date.

**9. TRANSFER OF DEBENTURES**

Subject to the terms of the Information Memorandum, the Debentures shall be freely transferable in accordance with the procedure for transfer of dematerialized securities under the Depositories Act, 1996, Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, rules notified by the Depositories/depository participant from time to time and other Applicable Laws and rules notified in respect thereof. Subject to the terms of the Information Memorandum, the Debenture Holders shall also have the right to novate, transfer or assign their rights and/or the benefits under the Debenture Documents upon such transfer/transmission of the Debentures without prior notice to the Issuer and at the Debenture Holders' own cost and expense. It is clarified that the Issuer shall not assign any of the rights, duties or obligations under the Transaction Documents or in relation to the Debentures without the prior written consent of the Secured Parties.

**10. BUY-BACK OF DEBENTURES**

At anytime after listing of the Debentures, the Issuer shall have the right to buy-back the Debentures, subject to and in accordance with Applicable Law. Provided however that pursuant to any such buy-back of the Debentures, the Issuer will not be entitled to any of the rights available to the Debenture Holders under the Debenture Documents, including without limitation, providing any consent/ exercising voting rights under the Inter-creditor Agreement.

**11. DEBENTURES FREE FROM EQUITIES**

The Debenture Holders will be entitled to their Debentures free from equities or cross claims by the Issuer against the original or any intermediate holders thereof.

**12. DEBENTURE HOLDERS NOT ENTITLED TO SHAREHOLDERS' RIGHTS**

- (a) The Debenture Holders will not be entitled to any of the rights and privileges available to the shareholders of the Issuer other than those available to them under the Act.
- (b) The Debentures shall not confer upon the holders the right to receive notice(s) or to attend and to vote at any general meeting(s) of the shareholders of the Issuer.
- (c) If, however, any resolution affecting the rights attached to the Debentures is placed before the Issuer, such resolution will first be placed before the Debenture Holders

for their approval in accordance with the provisions of Applicable Law.

**13. VARIATION OF DEBENTURE HOLDERS' RIGHTS**

Subject always to the provisions of the Inter-creditor Agreement, the rights, privileges and conditions attached to the Debentures shall not be varied, modified or abrogated without the prior approval of the Majority Debenture Holders or by a special resolution duly passed at a meeting of the Debenture Holders, convened in accordance with the provisions set out in the Schedule V and communication of such approval by the Debenture Trustee to the Issuer.



## SCHEDULE IV

### Part A

The Issuer shall comply with the below mentioned conditions precedent to the satisfaction of the Debenture Trustee prior to the Issue Opening Date:

1. certified true copies of the written consent of the Debenture Trustee as per the Act, and the Debenture Trustee Agreement;
2. certified true copies of certificate of incorporation, Memorandum of Association and Articles of Association of the Issuer and Sponsor. Further, the Issuer and Sponsor shall have amended their respective constitutional documents (if required) to the satisfaction of the Debenture Trustee to incorporate the provisions of the Debenture Documents (to which they are a party);
3. certified true copies of board resolution of the Issuer:
  - (a) approving the terms of, and the transactions contemplated by, the Debenture Documents (including authorising creation of Security) to which it is a party and resolving that it can execute the Debenture Documents to which it is a party; and
  - (b) authorising a specified Person or Persons, on its behalf, to negotiate and sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Debenture Documents to which it is a party;
4. certified true copies of board resolution of the Sponsor:
  - (a) approving the terms of, and the transactions contemplated by, the Debenture Documents (including authorising creation of Security) to which it is a party and resolving that it can execute the Debenture Documents to which it is a party; and
  - (b) authorising a specified Person or Persons, on its behalf, to negotiate and sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Debenture Documents to which it is a party;
5. certified true copies of the resolution of the shareholders of the Issuer under Section 42 of the Act wherein the proposed offer of Debentures or invitation to subscribe to the Debentures has been approved;
6. duly authorized specimen signatures of the Persons authorized by the resolutions referred to above;
7. certificate from the chartered accountant/director of the Issuer, confirming that the issuance of the Debentures and the provision of Security does not breach any limits applicable to the Issuer;
8. certificate from the chartered accountant/director/authorized officer of the Issuer confirming that Issuer and its directors/members have the necessary powers under its constitutional documents to issue the Debentures and enter into the Debenture Documents;
9. certificate from the chartered accountant/director/authorized officer of the Sponsor confirming that the Sponsor and its directors/ members have the necessary powers under its constitutional documents to enter into the Debenture Documents, to which it is a party;
10. receipt of in-principle approval from NSE for listing of the Debentures;

11. certified true copy of the rating letters (issued as of a date no earlier than 1 (one) month prior to the Deemed Date of Allotment) from at least 2 (two) of the Credit Rating Agencies in relation to the rating of the Debentures;
12. the Issuer has made necessary applications to the Depository for issue of ISIN in respect of the Debentures;
13. the Issuer shall have issued the Offer Letter;
14. certificate from an authorized officer of the Issuer, certifying *inter alia* that:
  - (a) the proceeds from the issuance of the Debentures shall be applied only towards repayment of the Existing Debt;
  - (b) all representations and warranties made by the Issuer under the executed Debenture Documents are true and correct in all respects on the date of the certificate;
  - (c) the insurance coverage under the Insurance Contracts is adequate and in full force;
  - (d) it is in compliance with all Applicable Laws, including without limitation, applicable Tax laws, the Act and the Guidelines;
  - (e) no Event of Default exists as of the date no earlier than the date of the certificate;
  - (f) that there are no legal proceedings in India or any other jurisdiction affecting the obligations of the Issuer under the Debenture Documents and also that there are no legal proceedings regarding any of the Approvals which have been obtained for the Project or any of the other Project Documents of which the Issuer is aware;
  - (g) that no event has occurred which has resulted in a Material Adverse Effect;
  - (h) that the Issuer has no indebtedness other than the Existing Debt;
  - (i) that all registration, notices and filings which are necessary or desirable in relation to the Transaction Documents have been completed;
  - (j) that none of the Issuer, its directors or its promoters appear in the list of defaulters circulated by CIBIL or the RBI;
  - (k) that none of the Issuer, its directors or its promoters appears in any caution list of any nature published by the RBI or any other Governmental Authority; and
  - (l) that none of the Issuer, its directors or its promoters is director in any company which has been identified as a wilful defaulter by the RBI or any other Governmental Authority;
15. except the Security Documents, each of the Debenture Documents (including the IIFCL Guarantee Agreement) shall have been executed by the respective parties thereto and shall have become (or, as the case may be, shall remain) effective and enforceable in accordance with their respective terms and certified copies thereof shall have been delivered to the Debenture Trustee;
16. the respective Secured Parties have received all documentation required to be provided as 'Conditions Precedent' to the effectiveness of the Debenture Documents, except the Security

Documents;

17. the Issuer shall confirm that all Approvals in relation to the Project remain in full force and effect and no event has occurred which has rendered any such Approval void;
18. title search report obtained by the Issuer from an independent legal counsel in respect of the Project land, reflecting clear and marketable title of the Issuer in the Project land;
19. the Issuer shall have established each of the Sub-Accounts contemplated under the Trust and Retention Account Agreement and all Sub-Accounts shall be adequately funded in accordance with the terms of this Deed and the Trust and Retention Account Agreement;
20. certificate from the Existing Lenders stating that no prepayment penalty is being charged on prepayment of the Existing Debt;
21. letter confirmation from the Security Trustee stating that the Security created over the Secured Assets to secure the Existing Debt (excluding debt availed from the Sponsor) has been created and perfected;
22. application made by the Issuer to the Registrar of Companies for conversion of the Issuer to a public limited company;
23. acknowledged application for no-objection certificate made by the Issuer and the Sponsor (in respect of the pledge of shares) to the Income Tax authorities pursuant to Section 281 of the Income Tax Act, 1961 for creation of Security;
24. certified true copy of a certificate from a director of the Sponsor (in respect of the pledge of shares) confirming that there are no income tax dues or tax proceedings pending against the Sponsor, in a form and manner satisfactory to the Debenture Trustee;
25. legal counsel shall have been appointed to, inter alia, assist the Secured Parties in reviewing and finalizing the Debenture Documents and issuing their opinion thereon and the Issuer shall have undertaken to pay or arrange the payment of all agreed fees, expenses and other charges payable to the legal counsel;
26. the Issuer shall have paid or made suitable arrangements for payment of all fees, expenses and any other charges payable: (i) as stipulated in any fee letters and due payable in accordance with the terms thereof; (ii) to the legal counsel and legal advisors of the Secured Parties; (iii) under the Debenture Documents; and
27. execution of appropriate documentation, to the satisfaction of the Debenture Trustee, for fixing the minimum payment to the Sponsor on account of administrative or shared services charges or any other charges till [•].

### **Part B**

The Issuer shall comply with the below mentioned conditions subsequent, to the satisfaction of the Debenture Trustee, after the Deemed Date of Allotment:

1. on the Deemed Date of Allotment, issuance of the letter of allotment of Debentures;
2. no later than 2 (two) days from the Deemed Date of Allotment, provide evidence of necessary agreements with the Depositories and ensure full compliance with the guidelines issued by the

Depositories;

3. within 20 (twenty) days of the Deemed Date of Allotment, provide confirmation of listing of the Debentures on NSE;
4. submission of the limited audited financials (*inter alia*, certifying the end-use of the Transaction proceeds) within 15 (fifteen) days from the last day of the month in which Debentures are allotted;
5. evidence of conversion of the Issuer to a public limited company within 60 (sixty) days from Deemed Date of Allotment;
6. within 15 (fifteen) days from the Deemed Date of Allotment, submission of a net-worth certificate (along with details of the Debentures), in a form and manner mutually agreed between the Issuer and the Debenture Trustee;
7. within 60 (sixty) days from the Deemed Date of Allotment, submission of evidence of repayment of the Existing Debt and release of charge created over the Secured Assets in favour of Existing Lenders (other than the Sponsor) in relation to the Existing Debt (excluding debt availed from the Sponsor);
8. within 30 (thirty) days from the Deemed Date of Allotment, filing of the return of Allotment with the Registrar of Companies, in Form PAS-3, as required under Section 42 of the Act;
9. filing of the Offer Letter with the Registrar of Companies in the manner as prescribed under Section 42 (7) of the Act;
10. within 60 (sixty) days from the Deemed Date of Allotment:
  - (a) obtain all approvals, corporate authorizations and consents (including no-dues certificates obtained by the Issuer and the Sponsor from Income Tax authorities under Section 281 of the Income Tax Act, 1961) as may be required for the purpose of creation and perfection of the Security contemplated in Clause 6.1 and 6.2, to the satisfaction of the Debenture Trustee and/or the Security Trustee; and
  - (b) create and perfect the Security contemplated in Clause 6.1 and 6.2, in form and manner satisfactory to the Debenture Trustee and/or the Security Trustee.

## SCHEDULE V

### Provisions for the Meetings of the Debenture Holders

The following provisions shall apply to the meetings of the Debenture Holder(s):

1. The Debenture Trustee or the Issuer may, at any time, and the Debenture Trustee shall at the request in writing of the Debenture Holders representing not less than 1/10<sup>th</sup> (One Tenth) of the Debentures for the time being outstanding, or on the happening of any event, which constitutes a breach, default or which in the opinion of the Debenture Trustee affects the interest of the Debenture Holders, convene a meeting of the Debenture Holders. Any such meeting shall be held at such place in the city where the Registered Office of the Issuer is situated or at such other place as the Debenture Trustee shall determine.
2.
  - (i) A meeting of the Debenture Holder(s) may be called by giving not less than 21 (twenty one) days' notice in writing.
  - (ii) A meeting may be called after giving shorter notice than that specified in clause 2(i) above, if consent is accorded thereto by Debenture Holders representing not less than 95% (ninety five percent) of the Debentures for the time being outstanding.
3.
  - (i) Every notice of a meeting shall specify the place and day and hour of the meeting and shall contain a statement of the business to be transacted thereat.
  - (ii) Notice of every meeting shall be given in the manner as authorised by the Act as pertaining to the service of documents on the members of the Issuer to the following Persons:-
    - (a) every Debenture Holder;
    - (b) the Persons entitled to Debentures in consequence of death or insolvency of any of the Debenture Holder(s), by sending it through post in a prepaid letter addressed to them by name or by the title of the representatives of the deceased, or assignees of the insolvent or by any like description at the address, if any, in India supplied for the purpose by the Persons claiming to be so entitled or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred; and
    - (c) the auditor or auditors for the time being of the Issuer in the manner authorised by Section 20 of the Act read with the Companies (Incorporation) Rules, 2014 in the case of any members of the Issuer:

Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the Registered Office of the Issuer under the Act, the statement of material facts referred to in the Act need not be annexed to the notice as required by that Section but it shall be mentioned in the advertisement that the statement has been forwarded to the Debenture Holder(s) in question.
4. The accidental omission to give notice to, or the non-receipt of notice by, any Debenture Holder(s) or other Person to whom it should be given shall not invalidate the proceedings at the meeting.
5.
  - (i) There shall be annexed to the notice of the meeting a statement setting out all material

facts concerning each such item of business, including in particular the nature of the concern or interest, if any, therein of every Director and the Manager, if any.

- (ii) Where any item of business relates to the approval of any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.
6. (i) A minimum of the Majority Debenture Holder(s), personally present or through video conferencing or conference call shall be the quorum for the meeting of the Debenture Holders.
- (ii) If, within half an hour from the time appointed for holding a meeting of the Debenture Holder(s), a quorum is not present, the meeting, if called upon the requisition of the Debenture Holder(s) shall stand dissolved but in any other case the meeting shall stand adjourned to the next business day, at the same time and place, or to such other day and at such other time and place as the Debenture Trustee may determine.
7. (i) The Trustee shall nominate 2 (two) Persons to attend each meeting one of which shall be nominated by the Trustee to act as the Chairman of the meeting and in his absence the Debenture Holder(s) personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.
- (ii) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act.
- (iii) If some other Person is elected Chairman as a result of the poll, he shall be Chairman for the rest of the meeting.
8. The Debenture Trustee and the Directors of the Issuer and their respective representatives may attend any meeting but shall not be entitled as such to vote thereat.
9. At any meeting, a resolution put to the vote of the meeting shall be decided by way of a poll.
10. At every such meeting each Debenture Holder(s) shall be entitled to 1 (one) vote in respect of every Debenture of which he is a holder in respect of which he is entitled to vote.
11. (i) Any Debenture Holder(s) entitled to attend and vote at the meeting shall be entitled to appoint another Person (whether any of the Debenture Holder(s) or not) as his proxy to attend and vote instead of himself.
- (ii) In every notice calling the meeting there shall appear with reasonable prominence a statement that any of the Debenture Holder(s) entitled to attend and vote is entitled to appoint one or more proxies, to attend and vote instead of himself, and that a proxy need not be one such Debenture Holder(s).
- (iii) The instrument appointing a proxy and the power of attorney (if any) under which it is signed or a notarially certified copy of the power of attorney shall be deposited at the Registered Office of the Issuer not less than 48 (forty eight) hours before the time for holding the meeting or adjourned meeting at which the Person named in the instrument proposes to vote or in case of a poll, not less than 24 (twenty four) hours before the time appointed for the taking of the poll and in default, the instrument of proxy shall not be treated as valid.
- (iv) The instrument appointing a proxy shall:-

- (a) be in writing; and
  - (b) be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
- (v) The instrument appointing a proxy shall be in any of the forms prescribed under the Act for this purpose, and shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the Articles of Association of the Issuer.
- (vi) All Debenture Holder(s) are entitled to vote at a meeting of the Debenture Holder(s) of the Issuer on any resolution to be moved thereat shall be entitled during the period beginning 24 (twenty four) hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting to inspect the proxies lodged, at any time during the business hours of the Issuer, provided not less than 3 (three) days' notice in writing of the intention so to inspect is given to the Issuer.
12. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed or the transfer of the Debentures in respect of which the proxy is given. Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the Issuer at the Registered Office before the commencement of the meeting or adjourned meeting at which the proxy is used.
13. On a poll taken at any meeting of the Debenture Holder(s), any of the Debenture Holder(s) entitled to more than 1 (one) vote or his proxy or other Person entitled to vote for him, as the case may be, need not if he votes, use all his votes or cast in the same way all the votes he uses.
14. (i) When a poll is to be taken, the Chairman of the meeting shall appoint 2 (two) scrutineers to scrutinise the votes given on the poll and to report thereon to him.
- (ii) The Chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.
- (iii) Of the 2 (two) scrutineers appointed under this clause 14(i), one shall always be a Debenture Holder (not being an officer or employee of the Issuer) present at the meeting, provided such a Debenture Holder is available and willing to be appointed.
15. (i) Subject to the provisions of the Act, the Chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.
- (ii) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.
16. In the case of joint Debenture Holder(s), the vote of the Person whose name appears first in the Register of Debenture Holder(s) shall be accepted to the exclusion of the other joint-holder or holders.
17. The Chairman of a meeting of the Debenture Holder(s) may, with the consent of the meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting

from which the adjournment took place.

18. In the case of equality of votes, the Chairman of the meeting, shall be entitled to a second or casting vote in addition to the vote or votes to which he may be entitled to as a Debenture Holder(s).
19. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
20. The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting. The Chairman present at the taking of a poll shall be the sole judge of the validity of every vote tendered at such poll.
21. A meeting of the Debenture Holder(s) shall be entitled to discuss matters and arrive at decisions in respect of all such items for which the consent of the Debenture Holder(s) would be required in terms of the Debenture Documents.
22. The powers set out in clause 21 hereof shall be exercisable by a resolution passed at a meeting of the Debenture Holder(s) duly convened and held in accordance with provisions herein contained and carried by the Debenture Holder(s) by a majority representing not less than 75% (seventy five percent) in value of the votes cast on such poll.
23. A resolution, passed at a general meeting of the Debenture Holder(s) duly convened and held in accordance with these presents shall be binding upon all of the Debenture Holder(s), whether present or not at such meeting, and each of the Debenture Holder(s) shall be bound to give effect thereto accordingly, and the passing of any such resolutions shall be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.
24. Minutes of all resolutions and proceedings at every such meeting as aforesaid shall be made and duly entered into books from time to time provided for the purpose by the Debenture Trustee at the expenses of the Issuer and any such minutes as aforesaid, if purported to be signed by the Chairman of the meeting at which such resolutions were passed or proceeding held or by the Chairman of the adjourned meeting shall be conclusive evidence of the matters therein contained and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings taken, to have been duly passed and taken. In the event that the Chairman shall expire or otherwise be unable to sign the minutes in accordance with the above, the second nominee of the Trustee shall sign the minutes on behalf of the Chairman and such signed minutes shall be conclusive evidence of the matters therein contained and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made.
25. Notwithstanding anything herein contained, it shall be competent to all the Debenture Holder(s) to exercise the rights, powers and authorities of the Debenture Holder(s) under the Agreement by a letter or letters signed by or on behalf of the Debenture Holder(s) without convening a meeting of the Debenture Holder(s) as if such letter or letters constituted a resolution passed at a meeting duly convened and held as aforesaid and shall have effect accordingly.



**SCHEDULE VI**  
**Repayment Schedule**

[•]

**SCHEDULE VII**

**Insurance**

[•]

## **SCHEDULE VIII**

### **Regular Credit Enhancement Scheme of IIFCL**

#### **1. Title**

- 1.1. The scheme would be known as "Credit Enhancement Scheme" for viable infrastructure projects and would come into force from the date of this scheme's approval by the Competent Authority.

#### **2. Eligibility**

- 2.1. Credit enhancement Scheme would be extended to commercially viable infrastructure projects which satisfy the following:
- 2.2. The infrastructure project should be from the infrastructure sectors as defined under SIFTI.
- 2.3. The minimum stand-alone credit rating of the infrastructure project / Proposed Bond structure to be credit enhanced should be at least BBB.
- 2.4. The amount raised by way of credit enhanced bonds shall be used only to repay the existing debt partially or fully.
- 2.5. The infrastructure project should have achieved COD / provisional COD as on the date of extension of Guarantee/Credit Enhancement by IIFCL.

#### **3. Extent of Credit Enhancement**

- 3.1. IIFCL can extend partial credit guarantee to the extent of 20% of Total Project Cost (up to 40% of Total Project Cost with a backstop guarantor/risk sharing partner).
- 3.2. However, total exposure of IIFCL will be a maximum of 20% of the Total Project Cost including exposure by way of direct lending.
- 3.3. However, the extent of guarantee / credit enhancement extended by IIFCL to any infrastructure project for its project bonds shall be limited to the extent which enhances the credit rating of the project bonds to its desired credit rating (minimum AA rating) subject to a maximum of 50% of the total amount of Project Bonds issued.

#### **4. Nature of Credit Enhancement**

- 4.1. IIFCL will provide credit enhancement by way of unconditional and irrevocable partial credit guarantee to enhance the credit rating of the proposed bonds.

#### **5. Security**

- 5.1. Investors to the project bond will have pari-passu charge, on the assets of the project bond Issuer, with other senior lenders in the project, if any. IIFCL will have a charge, which may be subordinated to the project bond Investors and other senior debt lenders. However, IIFCL will have pari-passu charge to the extent of invoked guarantee on either acceleration of the Project Bonds and/or termination of the concession agreement and/or enforcement of security after paying its obligations under the Guarantee.
- 5.2. In addition to above, IIFCL to explore securing corporate guarantee/undertaking/personal guarantee from the sponsor/holding company/promoters or any other form of security to

secure its exposure.

## **6. Risk Sharing / Backstop Guarantee**

- 6.1. IIFCL may enter into risk sharing agreements with Asian Development Bank/ World Bank / other institutions including domestic banks and financial institutions in respect of any Guarantee / credit enhancement extended/to be extended by IIFCL. Risk sharing arrangements could be in the form of a guarantee, reinsurance, back stop guarantee, unfunded risk participation or any other agreements which is intended to reduce/cover/share the risk of IIFCL. Such arrangement to be entered into by IIFCL on terms based on merits & requirements of each case and shall be subject to the approval of Board.
- 6.2. IIFCL may also enter into such arrangement for transactions (defined based on number of transactions or amount of transactions etc.) with any institution stated in the paragraph above.

## **7. Tenure**

- 7.1. The minimum tenure of the project bonds to be 5 years with or without a lock-in. However, the complete repayment of Bond Issue should be scheduled to happen within 85% of the Economic Life of the Project.

## **8. Fee Charged by IIFCL**

- 8.1. The Guarantee / Credit enhancement fee to be charged by IIFCL shall be based on the external rating of the project, bond yields, market conditions, Risk analysis, fee to be charged by the backstop guarantor, if any, etc. The guarantee fee to be charged by IIFCL shall however not be less than 0.5% p.a. of its exposure.
- 8.2. The terms of payment of Guarantee / Credit enhancement fee such as frequency (monthly/quarterly/annually) or time of payment, mode of payment etc. may be decided as per the requirements of each case.
- 8.3. The total guarantee fee may be charged by IIFCL in any form and break up such as upfront fee, processing fee, recurring fee, commitment fee etc. and may be worked out by IIFCL at the time of transaction.
- 8.4. IIFCL may share the Guarantee fee with the institutions providing reinsurance/backstop guarantee in the manner & proportion depending on the merits & requirements of the transaction.

## **9. Appraisal**

- 9.1. IIFCL shall conduct an independent appraisal of the credit risks of the project solely or jointly with an institution providing back stop guarantee / reinsurance etc. as mentioned above, if applicable. Alternatively, IIFCL may engage an outside agency / specialist / subsidiary of IIFCL for appraising the same.

## **10. Other Features**

- 10.1. The promoters of the project should not be on the defaulters list of Reserve Bank of India (RBI) or Credit Information Bureau (India) Limited (CIBIL) and no criminal proceeding has been pending against the promoters.
- 10.2. In case, IIFCL notices any of the following before the guarantee becoming effective:

- 10.2.1. Any fraud or forgery committed by the Borrower or promoters of the project.
- 10.2.2. Any criminal proceeding has been instituted against the borrower or the promoters of the project.
- 10.2.3. It may terminate the guarantee even if executed. However, once the Guarantee is effective it would not terminate (as the nature of Guarantee is unconditional & irrevocable).
- 10.3. Any other Term used in the scheme and not assigned specific meaning here would have the meaning as defined in SIFTI. Any term not defined either here or in SIFTI or any other additional term may be defined by IIFCL as and when such need arises by IIFCL and such term would have a meaning as assigned by solely by IIFCL. Further, IIFCL would have the sole right to assign meaning, clarification etc., as the case may be, in case of any contradiction in the meanings or any clauses in this scheme. Such meaning, clarification etc. as assigned by IIFCL would be final.
- 10.4. Modifications to this scheme may be made at the level of Board of Directors of IIFCL subject to the approval of the Department of Financial Services, Ministry of Finance, and Government of India.

**IN WITNESS WHEREOF** the Common Seal of the Issuer has been hereunto affixed and the Debenture Trustee and the Security Trustee have caused these presents to be executed by their authorized officer the day and year first hereinabove written in the manner hereinafter appearing.

THE COMMON SEAL of [•] is affixed hereunto )  
pursuant to the )  
resolution passed in the Meeting of Board of Directors held )  
on [•] and in the presence of )  
[•] )  
who has signed these presents in token thereof. )

SIGNED AND DELIVERED by the within named )  
[•], )  
being the Debenture Trustee )  
by the hand of \_\_\_\_\_ )  
an authorized representative of )  
the Debenture Trustee )

SIGNED AND DELIVERED by the within named )  
[•], )  
being the Security Trustee )  
by the hand of \_\_\_\_\_ )  
an authorized representative of )  
the Security Trustee )