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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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**Asian Development Bank**



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**IIFCL GUARANTEE AGREEMENT**

Between

**INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED**  
Guarantor

and

**[•]**  
Debenture Trustee

and

**[•]**  
Security Trustee

and

**[•]**  
Issuer

relating to  
secured redeemable non-convertible debentures issued by  
the Issuer

**DATED** \_\_\_\_\_

**Partial Credit Guarantee**

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**THIS IIFCL GUARANTEE AGREEMENT ("IIFCL Guarantee")** is made at [•] on \_\_\_\_\_,

**AMONGST:**

- (1) **INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED**, a company incorporated under the Companies Act, 1956, having corporate identity number U67190DL2006GOI144520 and its registered office at 8th Floor, Hindustan Times Building, 18 & 20, Kasturba Gandhi Marg, New Delhi 110001 in the National Capital Territory of Delhi, India (hereinafter referred to as the "**Guarantor**", which expression shall include its successors and assigns); and
- (2) [•], a company incorporated under the Companies Act, [•], having corporate identity number [•] and its registered office at [•] 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 (hereinafter referred to as the "**Debenture Trustee**"), which expression shall include its successors and assigns); and
- (3) [•], a company incorporated under the Companies Act, [•], having corporate identity number [•] and its registered office at [•] (hereinafter referred to as the "**Security Trustee**"), which expression shall include its successors and assigns); and
- (4) [•], a company incorporated under the Companies Act, [•], having its corporate identity number [•] and its registered office at [•] ("**Issuer**"), which expression shall include its successors and permitted assigns.

**WHEREAS:**

- (A) The Issuer operates a [•] project at [•], in the state of [•] (the "**Project**"). The commercial operation date of the Project was [•].
- (B) 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 [•] each, aggregating up to Rs. [•] ("**Debentures**") on a private placement basis in terms of the Offer Letter to specific investors (the "**Debenture Holders**").
- (C) The Issuer has availed of financial assistance from certain creditors(the "**Existing Debt**").
- (D) The funds from the subscription of the Debentures shall be utilised by the Issuer for the purpose of refinancing such Existing Debt.
- (E) The Issuer has appointed the Debenture Trustee to act as the trustee for the Debenture holders vide a debenture trustee agreement dated \_\_\_\_\_ (the "**Debenture Trustee Agreement**"). The Debenture Trustee has entered into the debenture

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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trust deed dated \_\_\_\_\_ (the "**Debenture Trust Deed**") with the Issuer in terms of which the Debentures are proposed to be issued.

- (F) The Issuer has requested and the Guarantor has agreed to provide an unconditional and irrevocable first loss partial credit guarantee for the benefit of the Debenture Holders up to the IIFCL Maximum Guaranteed Amount, on the terms hereinafter appearing.
- (G) In consideration for the provision of such guarantee, the Issuer has agreed to enter into a Counter-Indemnity in favour of the Guarantor.
- (H) IIFCL also intends to execute 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 this IIFCL Guarantee. At or about the time of execution of this IIFCL Guarantee, such Back-Stop Guarantor is proposed to be ADB and accordingly, IIFCL has entered/ will enter into a back-stop guarantee agreement with ADB on or about the date of this IIFCL Guarantee.
- (I) The Parties have, therefore, agreed to execute this IIFCL Guarantee setting out the terms on which the Guarantor has agreed to provide such an unconditional and irrevocable first loss partial credit guarantee for the benefit of the Debenture Trustee.

**NOW THIS IIFCL GUARANTEE WITNESSETH AND IT IS HEREBY MUTUALLY AGREED AND DECLARED BY AND AMONG THE PARTIES AS FOLLOWS:**

## **1 DEFINITIONS, INTERPRETATION AND INCONSISTENCY**

### **1.1 Definitions**

Capitalised terms and expressions used in this IIFCL Guarantee (including in the recitals), unless otherwise indicated or the context otherwise requires, shall unless defined herein have the meaning given to such terms and expressions in the Debenture Trust Deed:

"**Acceleration**" shall have the meaning specified in the Debenture Trust Deed.

"**Annual Administration Fee**" has the meaning specified in Clause 3.3 (Annual Administration Fee).

"**Applicable Law**" shall have the meaning specified in the Debenture Trust Deed.

"**Authority**" means any national, supranational, regional or local government or governmental administrative, regulatory, fiscal, judicial, or government owned body, department, commission, authority, tribunal, agency or entity or central bank (or any person, whether or not government owned and howsoever constituted or called, that exercises the functions of a central bank) or other entity of any kind or other person exercising executive, legislative, judicial, regulatory or administrative functions.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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"**Backstop Guarantor**" shall have the meaning given to such term in the Recitals.

"**Backstop Guarantee**" shall have the meaning given to such term in the Debenture Trust Deed.

"**Business Day**" shall have the meaning specified in the Debenture Trust Deed.

"**CIBIL**" shall have the meaning specified in the Debenture Trust Deed.

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

"**Collusive Practice**" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

"**Corrupt Practice**" means offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

"**Corporate Guarantee**" shall mean the guarantee executed by the Sponsor dated on or about the date of this Agreement in favour of the Guarantor.

"**Counter-Indemnity**" shall have the meaning specified in the Debenture Trust Deed.

"**Debenture Documents**" shall have the meaning specified in the Debenture Trust Deed.

"**Debenture Trustee**" means the debenture trustee appointed to act as the "Debenture Trustee" and any replacement thereof.

"**Financing of Terrorism**" means 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 Quarter**" shall have the meaning specified in the Debenture Trust Deed.

"**Fraudulent Practice**" means an act or omission, including a misrepresentation, that knowingly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

"**Guarantee Fee Reserve**" shall have the meaning given to such term in the Debenture Trust Deed.

"**Guarantor**" means the person named at paragraph (1) of the preamble to this IIFCL

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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Guarantee.

"**Host Country**" means India.

"**IIFCL Available Residual Guarantee Amount**" means, on the first day of any IIFCL Guarantee Fee Calculation Period, the amount that:

- (i) shall equal the IIFCL Maximum Guaranteed Amount on the first day of the first IIFCL Guarantee Fee Calculation Period, and
- (ii) shall, on the first day of the second IIFCL Guarantee Fee Calculation Period and any IIFCL Guarantee Fee Calculation Period thereafter, equal the lower of:
  - (a) the aggregate of (i) IIFCL Available Residual Guarantee Amount at the start of the immediately preceding IIFCL Guarantee Fee Calculation Period plus (ii) any Shortfall Recovery Amount received during immediately preceding IIFCL Guarantee Fee Calculation Period, (iii) less any Shortfall Amount Paid during the immediate preceding IIFCL Guarantee Fee Calculation Period; and
  - (b) the IIFCL Maximum Guaranteed Amount on the first day of such IIFCL Guarantee Fee Calculation Period.

"**IIFCL Benchmark Rate**" shall mean the interest rate specified by the Guarantor from time to time in accordance with its policy.

"**IIFCL Event of Default**" shall have the meaning given to such term in Clause 8A.

"**IIFCL Guarantee**" means this partial credit guarantee comprising Clauses 1 (DEFINITIONS, INTERPRETATION AND INCONSISTENCY) to 14 (ASIGNMENT) (inclusive) together with the Schedules attached hereto.

"**IIFCL Guarantee Effective Date**" means the later of the (i) Signing Date, and (ii) the date on which the Guarantor has confirmed in writing to the Debenture Trustee that each of (a) the conditions set out in Schedule A have been satisfied to its satisfaction, or (b) it has waived in its sole discretion any such conditions, provided that the IIFCL Guarantee Effective Date shall always precede the Deemed Date of Allotment.

"**IIFCL Guaranteed Event**" means the receipt by the Guarantor of a Shortfall Instruction.

"**IIFCL Guarantee Fee**" means in respect of each IIFCL Guarantee Fee Payment Date, an amount calculated in accordance with the following:

$$(\text{IIFCL Available Residual Guarantee Amount} + \text{IIFCL Net Guarantee Amount Paid}) \times \text{IIFCL Guarantee Fee Rate} \times (\text{Number of Days} \div \text{number of calendar days})$$

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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in the calendar year for which the relevant IIFCL Guarantee Fee is being calculated).

Provided that the amount of the IIFCL Guarantee Fee to be paid by the Issuer on the IIFCL Guarantee Effective Date shall be reduced by the amount of the Upfront Fee.

**"IIFCL Guarantee Fee Calculation Period"** means each period corresponding to each Interest Period, provided that after the expiry of the last Interest Period the IIFCL Guarantee Fee Calculation Period shall end on, and include, the last day of the IIFCL Guarantee Term.

**"IIFCL Guarantee Fee Payment Date"** means the IIFCL Guarantee Effective Date and thereafter the last day of each IIFCL Guarantee Fee Calculation Period.

**"IIFCL Guarantee Fee Rate"** means:

- (a) [•] per annum expressed as a decimal, in the event that as of the relevant IIFCL Guarantee Fee Payment Date, ADB is the Backstop Guarantor and the Backstop Guarantee provided by ADB is in full force and effect;
- (b) [•] per annum expressed as a decimal, in the event that as of the relevant IIFCL Guarantee Fee Payment Date, the Backstop Guarantor is an entity other than ADB or if the Backstop Guarantee provided by ADB is no longer in full force and effect.

**"IIFCL Guarantee Term"** has the meaning given to it in Clause 2.3 (Term of IIFCL Guarantee).

**"IIFCL Interest Rate"** shall have the meaning given to such term in Clause 5.2(ii).

**"IIFCL Maximum Guaranteed Amount"** means the amount:

- (i) not exceeding [•]% of the Principal Amount until [•];
- (ii) for the period commencing on [•] until the final Redemption Date, not exceeding [•]% of the Principal Amount or Rs. [•], whichever is higher,

and which amounts shall not be less than zero at the time of calculating the IIFCL Maximum Guaranteed Amount, where such Principal Amount shall be in the amount specified under the relevant Schedule of the Debenture Trust Deed as at the time of signing the Debenture Trust Deed (and without subsequent amendment) as being the scheduled Principal Amount at such time (less amounts prepaid, if any).

Provided that the IIFCL Maximum Guaranteed Amount shall not exceed [•]% of the Principal Amount at any time during the IIFCL Guarantee Term.

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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**"IIFCL Net Guarantee Amount Paid"** means on the first day of each IIFCL Guarantee Fee Calculation Period an amount which is equivalent to:

- (i) all Shortfall Amount Paid less all Shortfall Recovery Amount, calculated as at the first day of the immediately preceding IIFCL Guarantee Fee Calculation Period; plus
- (ii) all Shortfall Amount Paid less all Shortfall Recovery Amount received, during the immediately preceding IIFCL Guarantee Fee Calculation Period,

provided that the IIFCL Net Guarantee Amount Paid at the start of the first IIFCL Guarantee Fee Calculation Period shall be 0 (zero).

**"IIFCL Secured Obligations"** shall have the meaning specified in the Debenture Trust Deed.

**"Interest"** shall have the meaning specified in the Debenture Trust Deed.

**"Interest Payment Date"** shall have the meaning specified in the Debenture Trust Deed.

**"Interest Period"** shall have the meaning specified in the Debenture Trust Deed.

**"Indian Rupees"** and **"INR"** mean Indian rupees, the lawful currency of India.

**"Intercreditor Agreement"** shall have the meaning specified in the Debenture Trust Deed.

**"Interest Recovery Amount"** means any amount of interest (i) accruing on any Shortfall Amount Paid, (ii) calculated at the rate and in the manner specified in the Counter-Indemnity and Clause 5.2. of this IIFCL Guarantee, and (iii) recovered by the Guarantor.

**"Issuer"** means the person named at paragraph (4) of the preamble to this IIFCL Guarantee.

**"Money Laundering"** means the:

- (i) conversion or transfer of property, knowing it is derived from a criminal offense, for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions;
- (ii) 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 a criminal offense;

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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- (iii) acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offense; or
- (iv) act, omission or commission that qualifies as money laundering and is punishable under the Prevention of Money Laundering Act, 2002.

**"Number of Days"** means, for the purposes of determining the IIFCL Guarantee Fee for any IIFCL Guarantee Fee Calculation Period, the number of calendar days in such period.

**"Obstructive Practice"** means:

- (i) deliberately destroying, falsifying, altering or concealing evidence material to an investigation, or making false statements to investigators, in order to materially impede an investigation by the Guarantor into allegations of a Coercive Practice, Collusive Practice, Corrupt Practice or Fraudulent Practice; and threatening, harassing or intimidating any person to prevent it from disclosing its knowledge of matters relevant to an investigation or from pursuing an investigation; or
- (ii) acts intended to materially impede the exercise of the Guarantor's contractual rights including any contractual right of audit or right to access to information under this IIFCL Guarantee in connection with an investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

**"Party"** means the Guarantor, Debenture Trustee, Security Trustee or Issuer and **"Parties"** means all of them.

**"Prevention of Money Laundering Act"** means the Prevention of Money Laundering Act, 2002 including any statutory modifications, re-enactments or amendments thereof, from time to time, and the rules, regulations or guidelines issued thereunder.

**"Principal Amount"** shall have the meaning specified in the Debenture Trust Deed.

**"Prohibited Activities"** shall have the meaning specified in the Debenture Trust Deed.

**"Project"** shall have the meaning specified in the Debenture Trust Deed.

**"Project Documents"** shall have the meaning specified in the Debenture Trust Deed.

**"Put Option"** shall have the meaning specified in the Debenture Trust Deed.

**"RBI"** means a statutory corporation established under the Reserve Bank of India Act, 1934.

**"Recovery Amount"** means any Interest Recovery Amount and any Shortfall Recovery Amount, collectively.

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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**"Redemption Amount"** shall have the meaning specified in the Debenture Trust Deed.

**"Redemption Instalment Date"** means each of the dates specified in the relevant Schedule of the Debenture Trust Deed as at the time of signing the Debenture Trust Deed (and without subsequent amendment) being each date for payment of the scheduled Redemption Amount.

**"Safeguard and Integrity Provisions"** shall have the meaning assigned to it under Schedule D.

**"Secured Assets"** shall have the meaning specified in the Debenture Trust Deed.

**"Security Interest"** shall have the meaning specified in the Debenture Trust Deed.

**"Security Trustee"** means security trustee appointed to act as the "Security Trustee", and any replacement thereof.

**"Security Trustee Agreement"** shall have the meaning specified in the Debenture Trust Deed.

**"Shortfall Amount"** means the amount claimed by the Debenture Trustee in accordance with this IIFCL Guarantee towards a shortfall in the amount required to repay Redemption Amounts (only to the extent of Principal Amounts and Interest) under the Debenture Trust Deed on the respective due dates thereof, as more particularly specified in the Trust and Retention Account Agreement.

**"Shortfall Amount Paid"** shall have the meaning specified in Clause 4.4 (Payment of Shortfall Amounts).

**"Shortfall Instruction"** means a demand by the Debenture Trustee to the Guarantor for payment under this IIFCL Guarantee in the form set out in Schedule B (Form of Shortfall Instruction).

**"Shortfall Recovery Amount"** means in respect of any Shortfall Amount Paid, any amount of the relevant Shortfall Amount that is repaid to or recovered by the Guarantor, in accordance with the provisions of the Debenture Documents, excluding any payments made to IIFCL under the Backstop Guarantee.

**"Signing Date"** means the date of this IIFCL Guarantee as set forth in the preamble to this IIFCL Guarantee.

**"Sponsor Undertaking"** shall mean the undertaking executed by the Sponsor dated on or about the date of this Agreement in favour of the Guarantor.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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**"Third Party Costs"** means the costs, fees and expenses (including disbursements) reasonably incurred by the Guarantor which are payable to any legal counsel, auditors, consultants, receivers and managers and to any other person in connection with this IIFCL Guarantee.

**"Trust and Retention Account"** means the account (including Sub-Accounts) specified in the Trust and Retention Account Agreement.

**"Trust and Retention Account Agreement"** shall have the meaning specified in the Debenture Trust Deed.

**"Upfront Fee"** shall mean an amount of Rs. [•] paid by the Issuer to the Guarantor prior to the date of this IIFCL Guarantee.

## 1.2 Construction

Unless a contrary indication appears, any reference in this IIFCL Guarantee to:

- 1.2.1 a Sub-Account is a reference to a Sub-Account of the Trust and Retention Account and is more particularly specified in the Trust and Retention Account Agreement;
- 1.2.2 an "amendment" includes a supplement, modification, novation, replacement or re-enactment and "amended" is to be construed accordingly;
- 1.2.3 "assets" include all assets whatsoever both present and future, (whether tangible, intangible or otherwise, including intellectual property rights), investments, cash-flows, revenues and rights, benefits, interests and title of every description;
- 1.2.4 "authorisation" includes an authorisation, consent, clearance, approval, permission, resolution, licence, exemption, filing and registration;
- 1.2.5 statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the Signing Date) for the time being in force and to all statutory instruments or orders made pursuant to such statutory provisions;
- 1.2.6 words denoting the singular shall include the plural and words denoting any gender shall include all genders;
- 1.2.7 headings, sub-headings, titles, subtitles to clauses, sub-clauses and paragraphs are for information only and shall not form part of the operative provisions of this IIFCL Guarantee or the Schedules and shall be ignored in construing this IIFCL Guarantee;
- 1.2.8 if a payment under this IIFCL Guarantee is due on a day, which is not a Business

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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Day, the due date for that payment shall instead be the immediately preceding Business Day;

- 1.2.9 "writing" shall include printing, typing, lithography, transmissions by facsimile or in electronic form (including e-mail) and other means of reproducing words in visible form;
- 1.2.10 the words "include" and "including" are to be construed without limitation;
- 1.2.11 the words "other", "or otherwise" and "whatsoever" shall not be construed ejusdem generis or be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- 1.2.12 whenever provision is made for the giving of notice, approval, agreement, confirmation or consent by any Party unless otherwise specified, such notice, approval, agreement, confirmation or consent shall be in writing and the words "notify", "approve", "confirm" and "consent" shall be construed accordingly;
- 1.2.13 no provisions shall be interpreted in favour of, or against, any Party by reason of the extent to which such Party or its counsel participated in the drafting hereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof;
- 1.2.14 if there is any conflict or inconsistency between a term in the body of this IIFCL Guarantee (comprising Clauses 1 to 14 inclusive) and a term in any of the Schedules or any other document referred to or otherwise incorporated in this IIFCL Guarantee, the term in such body shall take precedence;
- 1.2.15 agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned, from time to time;
- 1.2.16 a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation; and
- 1.2.17 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.

## **2 IIFCL GUARANTEE**

### **2.1 Payment of Shortfall Amount**

Subject to the provisions of this IIFCL Guarantee, from the IIFCL Guarantee Effective

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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Date and upon the occurrence of each IIFCL Guaranteed Event, the Guarantor irrevocably and unconditionally agrees to pay to the Debenture Trustee, each Shortfall Amount.

Starting on and from the Guarantee Effective Date and subject to Clause 8A (IIFCL EVENTS OF DEFAULT), the obligation of the Guarantor under the IIFCL Guarantee shall not be contingent upon receipt of any fees and expenses by the Guarantor.

**2.2 Limitation of Guarantor's Liability**

The Guarantor shall pay Shortfall Amounts claimed by the Debenture Trustee under this IIFCL Guarantee in accordance with the terms contained herein, unless such amount exceeds the lesser of (i) the IIFCL Available Residual Guarantee Amount as determined on the start of the IIFCL Guarantee Fee Calculation Period immediately prior to the date such amount is due and payable, and (ii) IIFCL Maximum Guaranteed Amount at such due date in which event the Guarantor shall only be liable to make payment of such lesser amount.

**2.3 Term of IIFCL Guarantee**

Subject to Clauses 2.3.1, and 2.4 (Consequences of Expiry) all rights, remedies, duties and obligations of the Parties under this IIFCL Guarantee are effective as of the IIFCL Guarantee Effective Date and shall cease to become effective and shall expire on the earlier of (i) the last Redemption Date, (ii) the date on which all Principal Amounts and Interest has been repaid or recovered by the Debenture Holders in full, (iii) the Drop-Off Date, (iv) upon payment of the Shortfall Amount by the Guarantor, to the extent payable by Guarantor under the IIFCL Available Residual Guarantee Amount, pursuant to any Shortfall Instruction made under Clause 4.1.4 in the event of an Acceleration, and (v) the exercise by the Debenture Trustee or the Security Trustee (acting on the instructions of the Majority Debenture Holders), without the prior written consent of the Guarantor, of any of the rights under Clause 10.1(a)(iv) to (xi) of the Debenture Trust Deed, prior to exercising the right of Acceleration (such period of effectiveness of this IIFCL Guarantee, the "**IIFCL Guarantee Term**"). Notwithstanding anything to the contrary contained in this IIFCL Guarantee, (i) if the Guarantee does not become effective on or prior to the date on which the period of [•] from the Signing Date expires, or (ii) if the Debentures are not issued on or prior to the date on which the period of [•] from the Signing Date expires, then it shall not thereafter become effective as against the Guarantor (unless the Guarantor agree in writing to extend such date).

2.3.1 Notwithstanding any other provision of this IIFCL Guarantee, the following provisions shall be effective on and from the Signing Date:

- (i) Clauses 3 (FEES AND EXPENSES) and 5 (INTEREST);
- (ii) Clauses 6 (REPRESENTATIONS AND WARRANTIES), 8 (PAYMENTS AND RECOVERIES), 8A (IIFCL EVENTS OF DEFAULT), 9 (MISCELLANEOUS), 10 (AMENDMENTS AND

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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WAIVERS), 11 (NOTICES), 12 (GOVERNING LAW), 13 (JURISDICTION), and 14 (ASSIGNMENT); and

- (iii) Clause 1 (DEFINITIONS, INTERPRETATION AND INCONSISTENCY), to the extent that the conditions and/or terms specified or defined in Clause 1 (DEFINITIONS, INTERPRETATION AND INCONSISTENCY) are referred to in or required to interpret or give effect to any of the Clauses referred to in paragraph (i) and (ii) of this Clause 2.3.1.

## **2.4 Consequences of Expiry**

2.4.1 Except to the extent expressly provided otherwise in this IIFCL Guarantee, expiry of the IIFCL Guarantee Term, is without prejudice to the rights and obligations of the Parties which have accrued prior to such expiry, whether arising under this IIFCL Guarantee, at law or otherwise.

2.4.2 The following Clauses shall survive expiry of this IIFCL Guarantee, until such time as the Guarantor has no further liability under this IIFCL Guarantee and has recovered all amounts which it is entitled to receive under this IIFCL Guarantee (or, but for expiry of this IIFCL Guarantee, would be entitled to recover under this IIFCL Guarantee):

- (i) Clauses 3 (FEES AND EXPENSES), 5 (INTEREST), and 7.2 (Records and Provision of Information);
- (ii) Clauses 8 (PAYMENTS AND RECOVERIES), 9 (MISCELLANEOUS), 10 (AMENDMENTS AND WAIVERS), 11 (Notices), 12 (GOVERNING LAW), 13 (JURISDICTION) and 14 (ASSIGNMENT); and
- (iii) Clause 1 (DEFINITIONS, INTERPRETATION AND INCONSISTENCY), to the extent that the conditions and/or terms specified or defined in Clause 1 (DEFINITIONS, INTERPRETATION AND INCONSISTENCY) are referred to in or required to interpret or give effect to any of the Clauses referred to in paragraphs (i) and (ii) of this Clause 2.4.2.

2.4.3 The Issuer acknowledges and agrees that (i) expiry of this IIFCL Guarantee shall not prejudice the Guarantor's rights under the Counter-Indemnity, and (ii) the Issue's obligations and liabilities thereunder shall continue in full force and effect notwithstanding such expiry.

## **3 FEES AND EXPENSES**

### **3.1 IIFCL Guarantee Fee**

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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The Issuer shall pay to the Guarantor, the IIFCL Guarantee Fee monthly (or as otherwise required in accordance with the terms of the Counter-Indemnity) in advance, on each IIFCL Guarantee Fee Payment Date or on such other dates as may be required in accordance with the terms of the Counter-Indemnity and in the manner specified in the Trust and Retention Account Agreement.

**3.2 Not Used**

**3.3 Annual Administration Fee**

The Issuer shall pay to the Guarantor, on the IIFCL Guarantee Effective Date and no later than [•] Business Days following each anniversary of the IIFCL Guarantee Effective Date in advance an annual administration fee ("**Annual Administration Fee**") of [•].

**3.4 Fee Calculation**

3.4.1 The Issuer shall:

- (i) prior to the first IIFCL Guarantee Fee Payment Date; and
- (ii) at least [•] Business Days prior to each subsequent IIFCL Guarantee Fee Payment Date,

deliver a statement of calculation of Guarantee Fee substantially in the form of Schedule C (Form of Statement of Calculation of IIFCL Guarantee Fee) to the Guarantor (with a copy to the Backstop Guarantor), setting out the calculation of the IIFCL Guarantee Fee due on the immediately succeeding IIFCL Guarantee Fee Payment Date, in such detail, as the Guarantor may reasonably require, from time to time.

3.4.2 The Guarantor shall, on or before the first IIFCL Guarantee Fee Payment Date, deliver an invoice to the Issuer showing the amount of the IIFCL Guarantee Fee, it considers shall be due and payable on such first payment date.

3.4.3 The Guarantor shall deliver an invoice to the Issuer (with a copy to the Debenture Trustee and the Backstop Guarantor) specifying the amount of the IIFCL Guarantee Fee due and payable, provided that the delivery of (or failure to deliver) a statement of calculation by the Issuer or a failure or delay in delivering the invoice by the Guarantor shall be without prejudice to the obligation of the Issuer to make payment of the IIFCL Guarantee Fee on each such payment date.

3.4.4 In the event of any dispute between the Issuer and the Guarantor in respect of the amount of the IIFCL Guarantee Fee, the amount specified in the invoice

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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delivered by the Guarantor shall be binding on the Issuer and the Debenture Trustee and such amount specified shall be due and payable on such IIFCL Guarantee Fee Payment Date and the Issuer shall make payment thereof without deduction, notwithstanding any such dispute.

**3.5 Fees Non-Refundable**

Subject to Clause 8.5 (Adjustment), fees paid by the Issuer to the Guarantor pursuant to Clause 3 (FEES AND EXPENSES) are not refundable under any circumstances including where this IIFCL Guarantee is terminated, is void or any provision is unenforceable for whatsoever reason except to the extent that prior to this IIFCL Guarantee being terminated or void, the Issuer has become entitled to payment (except in relation to any payments on account of the IIFCL Guarantee Fee) pursuant to Clause 8.5 (Adjustment).

**3.6 Cost and Expenses**

3.6.1 The Issuer shall pay to the Guarantor and the Backstop Guarantor, on an indemnity basis, the costs, fees and expenses (including Third Party Costs) incurred by the Guarantor and/or Backstop Guarantor in connection with any (i) dispute and claim arising out of Shortfall Instruction, (ii) steps taken to minimise loss and to recover any payments made by the Guarantor and/or Backstop Guarantor in respect of any Shortfall Instruction, and (iii) in connection with enforcement or preservation of their rights under this IIFCL Guarantee (to the extent not covered in (i) and (ii) above). For the avoidance of doubt, it is clarified that the Issuer’s obligations under this Clause 3.6.1 do not extend to payment of any costs, fees and expenses to the Guarantor on account of any replacement/appointment of the Backstop Guarantor.

3.6.2 The Issuer shall be liable to pay the costs, fees and expenses referred to in Clause 3.6.1 above, within the period specified for payment in any invoice issued by the Guarantor in respect thereof.

**3.7 Guarantee Fee Reserve**

The Issuer shall maintain the Guarantee Fee Reserve at all times in the manner set out in the Trust and Retention Account Agreement.

**4 SHORTFALL INSTRUCTIONS AND PAYMENT**

**4.1 Time for Submitting Shortfall Instructions**

4.1.1 The Guarantor is only liable under this IIFCL Guarantee to pay any Shortfall Amount (and only in accordance with the terms and subject to the conditions set out in this IIFCL Guarantee) if and to the extent that the Debenture Trustee delivers to the Guarantor (with a copy to the Backstop Guarantor), a Shortfall

<p><b>India Infrastructure Finance Company Limited (as the Guarantor)</b></p>	<p><b>[•] (as the Issuer)</b></p>	<p><b>[•] (as the Security Trustee)</b></p>	<p><b>[•] (as the Debenture Trustee)</b></p>
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Instruction in respect of such Shortfall Amount and such Shortfall Instruction complies with the requirements of this Clause 4 (SHORTFALL INSTRUCTIONS AND PAYMENT).

- 4.1.2 The Debenture Trustee shall give notice to the Guarantor of any expected Shortfall Amount [•] days but not earlier than [•] days prior to the relevant Payment Date in respect of such Shortfall Amount. Notwithstanding Clause 4.1.1, the obligation of the Guarantor under the IIFCL Guarantee shall not be contingent upon receipt of such notice.
- 4.1.3 The Debenture Trustee shall submit to the Guarantor (with a copy simultaneously delivered to the Backstop Guarantor) a Shortfall Instruction for payment of any Shortfall Amount at least [•] Business Days prior to the relevant Payment Date, in respect of such Shortfall Amount. Provided however, the Debenture Trustee shall only deliver such Shortfall Instruction to the Guarantor in the event that the funds standing to the credit of the Debt Service Sub-Account along with the amounts (calculated in accordance with the provisions of the Trust and Retention Account Agreement) in the Revenue Sub-Account, Debt Service Reserve Sub-Account, Cash Trap Sub-Account, Refinance Reserve Sub-Account and the Surplus Sub-Account available towards deposits in the Debt Service Sub-Account, are less than the Redemption Amount (only to the extent of Principal Amounts and Interest payable) payable on the immediately next relevant Payment Date, [•] Business Days prior to such next relevant Payment Date.
- 4.1.4 Notwithstanding the provisions of Clause 4.1.3 above, any Shortfall Instruction pursuant to Acceleration shall be delivered by the Debenture Trustee to the Guarantor no later than [•] Business Days after the occurrence of such Acceleration.
- 4.1.5 More than one Shortfall Instruction may be made, during the IIFCL Guarantee Term, provided that under no circumstances shall more than one Shortfall Instruction be made during or in respect of any IIFCL Guarantee Fee Calculation Period, except in relation to a Shortfall Instruction made pursuant to Acceleration.
- 4.1.6 All Shortfall Instructions, other notices and information delivered under this Clause 4 (SHORTFALL INSTRUCTIONS AND PAYMENT) shall be copied to the Issuer, Security Trustee and the Backstop Guarantor at the time of such delivery.

**4.2 Manner of Shortfall Instruction**

- 4.2.1 Each Shortfall Instruction shall be in the form set out in Schedule B (Form of Shortfall Instruction).

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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4.2.2 No Shortfall Instruction shall include any portion of a Shortfall Amount that is or was the subject of another Shortfall Instruction.

#### 4.3 Withdrawal of Shortfall Instruction

4.3.1 A Shortfall Instruction can be withdrawn only when adequate funds to meet the relevant Redemption Amount (to the extent of Principal Amounts and Interest payable) are available in the Debt Service Sub-Account.

4.3.2 A Shortfall Instruction once received by the Guarantor may be withdrawn or revoked by the Debenture Trustee upon notice received by the Guarantor from the Debenture Trustee at least [•] Business Days prior to the due date for payment in respect of such Shortfall Instruction and provided that the Guarantor has not made payment of the Shortfall Amount Paid in respect of such Shortfall Instruction.

4.3.3 The Issuer shall, within [•] Business Days of receipt of such notice or withdrawal, make payment to the Guarantor of all costs, fees and expenses incurred by the Guarantor in connection with setting aside and/or reserving any necessary funds needed to meet payment of the Shortfall Amount for the period from the date of receipt of the Shortfall Instruction in respect of which such notice of withdrawal or revocation was given until the date of receipt of such notice.

4.3.4 The Guarantor shall have no liability in respect of any Shortfall Instruction in respect of which a notice of withdrawal or revocation has been given pursuant to Clause 4.3.1.

#### 4.4 Payment of Shortfall Amounts

Subject to the other provisions of this Clause 4 (SHORTFALL INSTRUCTIONS AND PAYMENT), the Guarantor shall unconditionally and forthwith pay to the account specified in Clause 8.1 (Place of Payment), no later than [•] Business Day before the relevant Payment Date immediately following the date of delivery of such Shortfall Instruction, the amount ("**Shortfall Amount Paid**") which is the lesser of the (i) Shortfall Amount as specified in the Shortfall Instruction, (ii) the IIFCL Available Residual Guarantee Amount on the start of the Guarantee Fee Calculation Period immediately prior to the date of delivery of such Shortfall Instruction, and (iii) the IIFCL Maximum Guaranteed Amount on the day immediately prior to the date of payment. Provided however, the Guarantor shall be required to make payments pursuant to any Shortfall Instruction made under Clause 4.1.4, no later than [•] Business Days following the date of delivery of such Shortfall Instruction under Clause 4.1.4.

### 5 INTEREST

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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## 5.1 Acknowledgment

The Debenture Trustee acknowledges that the Guarantor is entitled to recover interest in respect of Shortfall Amounts Paid, from the Issuer pursuant to the Counter-Indemnity and Clause 5.2 below.

## 5.2 Calculation of Interest

The Issuer undertakes to reimburse and pay to IIFCL, in accordance with the terms of the Counter-Indemnity and the Trust and Retention Account Agreement, an amount in Indian Rupees equal to the aggregate of:

- (i) each Shortfall Amount Paid under this IIFCL Guarantee; and
- (ii) interest on (A) each Shortfall Amount Paid, and (B) on all other monies accruing due to IIFCL pursuant to this IIFCL Guarantee (including the Fees and the costs fees and expenses recoverable pursuant to Clause 3.6 hereof) and other Debenture Documents and outstanding, compounded on a annual basis and calculated at the rate that is the higher of (the "**IIFCL Interest Rate**"):
  - (A) the aggregate of (i) [•] basis points, (ii) the rate of Default Interest as specified in Clause 4.3(a) of Schedule III of the Debenture Trust Deed, and (iii) the Interest Rate of the Debentures as specified in the Debenture Trust Deed (excluding any increase in the Interest Rate on account of Interest Step Up Events), calculated on a per annum basis; and
  - (B) (i) [•] basis points over the secondary market yield of [•] years Government of India security (calculated on a per annum basis), prevailing on the date on which the Shortfall Amount Paid was made available by IIFCL, or (ii) the IIFCL Benchmark Rate (calculated on a per annum basis), whichever is higher.

## 6 REPRESENTATIONS AND WARRANTIES

### 6.1 Debenture Trustee Representations and Warranties

The Debenture Trustee (acting for itself and not on behalf of the Debenture Holders) gives the following representations and warranties to the Guarantor on the IIFCL Guarantee Effective Date by reference to the facts and circumstances existing at the time such representation and warranty is made.

#### 6.1.1 Guarantor Requirements

- (i) The Debenture Trustee is not in breach in any material respect of any

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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Applicable Laws of the Host Country.

- (ii) The Debenture Trustee has not been engaged in:
  - (a) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices in connection with its business and operations, including the procurement or the execution of any contract for goods or works relating to its business;
  - (b) Money Laundering or acted in breach of any Applicable Law relating to Money Laundering; or
  - (c) the Financing of Terrorism.

**6.1.2 Binding obligations**

- (i) The Debenture Trustee is a company, duly incorporated and validly existing under the laws of the Host Country.
- (ii) The Debenture Trustee has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this IIFCL Guarantee, the Debenture Documents to which it is a party and the transactions contemplated by them.
- (iii) The obligations of the Debenture Trustee under this IIFCL Guarantee are legal, valid, binding and enforceable obligations.

**7 COVENANTS**

The Debenture Trustee (acting for itself and not on behalf of the Debenture Holders) undertakes to comply with the obligations set out in this Clause 7. Without prejudice to any rights that the Guarantor may have against the Debenture Trustee, a breach of covenants by the Debenture Trustee shall not discharge the Guarantor from its obligations under this IIFCL Guarantee.

**7.1 Money Laundering; Anticorruption; Financing of Terrorism**

- 7.1.1 The Debenture Trustee shall not, and shall not authorize any person acting on its behalf to, engage in:
  - (i) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices in connection with its business and operations, including the procurement or the execution of any contract for goods, services or works relating to the its business;

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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- (ii) Obstructive Practices;
- (iii) Money Laundering, or act in breach of any Applicable Law relating to Money Laundering; or
- (iv) the Financing of Terrorism,

and it shall institute, maintain and comply with internal procedures and controls following best practice standards which are commonly applied in the Host Country for the purpose of preventing any action in breach of the provisions of this Clause 7.1.1.

7.1.2 The Debenture Trustee shall notify the Guarantor promptly in writing if it should at any time obtain information in relation to:

- (i) any violation or potential violation of the provisions of Clause 7.1.1; or
- (ii) the occurrence or potential occurrence of any Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices, including the procurement or the execution of any contract for goods or works relating to the Project, or any Money Laundering or breach of any Applicable Law relating to Money Laundering or the Financing of Terrorism, in each case in respect of the Issuer or any person on the Issuer's behalf or in connection with the Project.

7.1.3 If the Guarantor notifies the Debenture Trustee of its concern that any of the events specified in paragraphs (i) or (ii) of Clause 7.1.2 have occurred, the Debenture Trustee shall:

- (i) cooperate in good faith with the Guarantor and its representatives in determining whether any such event has occurred;
- (ii) do all things within its power to rectify the event or prevent the occurrence or continuance of such event, and, in the case of an event specified in paragraph (ii) of Clause 7.1.2, exercise all rights and remedies which may be available to it against the Issuer, whether under the Debenture Documents or otherwise and including all enforcement rights it may have under the Debenture Documents;
- (iii) respond promptly and in reasonable detail to any notice from the Guarantor; and
- (iv) furnish documentary support for such response upon the Guarantor's request.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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7.1.4 Notwithstanding any other provision of this IIFCL Guarantee or any confidentiality undertaking executed between the Debenture Trustee and the Guarantor, the Debenture Trustee acknowledges that the Guarantor may disclose to any competent national or international authority any information obtained by the Guarantor in relation to any violation of any of the provisions of Clause 7.1.1.

## 7.2 Records and Provision of Information

During the IIFCL Guarantee Term, the Debenture Trustee shall:

7.2.1 promptly, upon receipt, provide to the Guarantor (with a copy to the Backstop Guarantor) copies of all written information (including notices, details of payment, invoices, reports and claims) received by the Debenture Trustee from the Issuer or any other party under the Debenture Documents and which written information the Debenture Trustee has provided to the Debenture Holders;

7.2.2 promptly, upon receipt, provide to the Guarantor (with a copy to the Backstop Guarantor) any material information in relation to the Issuer, any other party under the Debenture Documents and the Project and which material information the Debenture Trustee has provided to the Debenture Holders.

7.2.3 maintain the documents referred to in Clause 7.2.1 at the Debenture Trustee's principal place of business or such other place agreed by the Guarantor.

## 8 PAYMENTS AND RECOVERIES

### 8.1 Place of payment

8.1.1 Shortfall Amounts Paid shall be paid to the Debt Service Sub-Account.

8.1.2 All payments by the Issuer to the Guarantor under this IIFCL Guarantee shall be to such bank account as the Guarantor may have notified to the Issuer in writing or such other bank account as the Guarantor shall notify, from time to time.

### 8.2 Currency and Availability

All payments by the Guarantor under this IIFCL Guarantee shall be made in Indian Rupees and in immediately available funds.

### 8.3 No set-off

All payments to be made under this IIFCL Guarantee shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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## 8.4 Tax Gross Up

8.4.1 Subject to Clause 8.4.2, all payments to be made by the Issuer to the Guarantor under this IIFCL Guarantee shall be made free and clear of and without deduction for or on account of taxes unless the Issuer is required to make such a payment subject to the deduction or withholding of taxes, in which case the sum payable by the Issuer in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Guarantor receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

8.4.2 If any deduction or withholding is required to be made in respect of any payments by the Issuer to the Guarantor pursuant to this IIFCL Guarantee, pursuant to any Applicable Law in force in the Host Country in respect of any taxes calculated by reference to the income received by the Guarantor in accordance with such Applicable Law, then subject to the Issuer delivering to the Guarantor certificates complying with such Applicable Law in respect of tax withholding or tax deduction, such payments are not required to be grossed up in accordance with Clause 8.4.1.

## 8.5 Adjustment

If there is any error or mistake in any payments of any amount between any of the Parties under this IIFCL Guarantee resulting in a sum being under or over paid, such sum shall be adjusted and paid or repaid (as applicable) with the payment of the next such amount.

## 8.6 Application of Recovery Amounts

If the Guarantor has made a payment pursuant to a Shortfall Instruction, for the purposes of determining (i) the IIFCL Available Residual Guarantee Amount and (ii) the IIFCL Net Guarantee Amount Paid, any amount which is paid by the Issuer to the Guarantor and any amounts received by the Guarantor pursuant to any of the Debenture Documents (excluding the Backstop Guarantee) in respect of such Redemption Amounts and/or Interest shall be first applied by the Guarantor towards (i) any fees, costs and expenses (other than the Guarantee Fee) due and payable to the Guarantor, under any Debenture Document, (ii) the Interest Recovery Amount, and (iii) the Shortfall Amount Paid.

## 8A IIFCL EVENTS OF DEFAULT

8A.1 An IIFCL Event of Default occurs upon the occurrence of any of the following specified events and where applicable, lapse of the cure period provided therein (each an "**IIFCL Event of Default**"):

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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(i) Payment

Failure by the Issuer in the payment, when due, of the IIFCL Guarantee Fee within [•] of any IIFCL Guarantee Fee Payment Date.

(ii) Safeguard and Integrity

(a) The Issuer violates or is in breach of the Safeguard and Integrity Provisions or it is established that the Issuer has violated or was in breach of the Safeguard and Integrity Provisions and in the event the violation or breach is capable of being cured, such violation or breach is not cured within [•] days of its occurrence.

(b) 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 or the Safeguard and Integrity Provisions and the Issuer does not cease to conduct such harmful or hazardous conduct or actions within [•] days of its occurrence.

(iii) Material Breach

Failure or default by the Issuer or the Sponsor to perform any of their respective obligations (other than payment and Safeguard and Integrity Provisions related obligations as specified in Clause 8A.1 (i) and (ii) above) under the IIFCL Guarantee, Counter-Indemnity, the Corporate Guarantee and the Sponsor Undertaking and such failure or default is not cured within [•] days of the occurrence of such failure or default.

8A.2 If an IIFCL Event of Default has occurred, the Guarantor, acting in accordance with the provisions of the Inter-creditor Agreement may at its option, terminate the IIFCL Guarantee. If the Guarantor elects to terminate the IIFCL Guarantee, it shall send a notice to Debenture Trustee of the occurrence of an IIFCL Event of Default. The Debenture Trustee, in accordance with clause 10.1 (b) of the Debenture Trust Deed, may then issue a notice to the Issuer for Acceleration within [•] days of issue of the notice by the Guarantor regarding the occurrence of an IIFCL Event of Default, pursuant to which the Guarantor shall have no obligation to make any payments towards any Shortfall Amount (the "**Drop-Off Date**"). Provided that the obligation of the Guarantor to make payments under this IIFCL Guarantee on account of any Shortfall Instruction issued by the Debenture Trustee prior to the Drop-Off Date shall survive the termination of the IIFCL Guarantee.

**9 MISCELLANEOUS**

**9.1 Confidentiality**

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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9.1.1 Subject to Clause 9.1.2, the:

- (i) Guarantor shall take reasonable measures to comply with any reasonable request of the Debenture Trustee, Security Trustee and the Issuer to safeguard the confidentiality of documents, data and other information received by the Guarantor from the Debenture Trustee, Security Trustee and the Issuer in connection with this IIFCL Guarantee, provided such documents, data and other information are clearly marked confidential; and
- (ii) Debenture Trustee, Security Trustee and the Issuer shall not, without the Guarantor's prior written consent, disclose to any third party: (a) any terms of this IIFCL Guarantee, or (b) any information made available by the Guarantor to the Debenture Trustee, Security Trustee or the Issuer (as the case may be) in connection with this IIFCL Guarantee that is designated as confidential by the Guarantor.

9.1.2 Notwithstanding the foregoing:

- (i) the information referred to in Clause 9.1.1, may be released by the Guarantor, the Debenture Trustee, Security Trustee or the Issuer: (a) to their respective employees, advisors and consultants; (b) to any governmental, banking, taxation or other Authority having jurisdiction over it; (c) if required by any Applicable Law; (d) in connection with any legal or arbitral proceeding; (e) to any prospective permitted assignee of any of their respective rights under this IIFCL Guarantee; (f) to any rating agency; (g) to the Backstop Guarantor in accordance with the terms of the Backstop Guarantee; (h) any prospective investors of the Debentures, and (i) if publicly available, other than as a result of a breach by the disclosing party of Clause 9.1.1; and
- (ii) Clause 9.1.1 does not operate to restrict the Guarantor from disclosing or releasing any information (which is made publicly available in the context of the publication by the Guarantor) on its website, in accordance with the Guarantor's policies, from time to time.

9.1.3 Without prejudice to the rights of the Guarantor to disclose information relating to the Issuer, the Guarantor is permitted to disclose all or any of the following:

- (i) information and data relating to the Issuer or to obligations assumed or to be assumed by the Issuer; and
- (ii) details of any default by the Issuer under this IIFCL Guarantee which the Guarantor considers appropriate and/or necessary to be disclosed to RBI, CIBIL and/or any other Authority of India or any other jurisdiction

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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where such disclosure is required by any Applicable Law.

## 9.2 Certificates and determinations

Unless where otherwise specifically provided in this IIFCL Guarantee, any certification, determination or notification by the Guarantor of a rate or amount under this IIFCL Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates and is final and binding on the Parties, unless the Debenture Trustee notifies the Guarantor that it disagrees with such calculation and provides information and calculations in support not later than [•] Business Days after receipt of the Guarantor's certifications, determination or notification.

## 9.3 Partial Invalidity

If, at any time, any provision of this IIFCL Guarantee is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law in force in the Host Country, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction (including the Host Country) shall in any way be affected or impaired.

## 9.4 Entire Agreement

This IIFCL Guarantee constitutes the entire agreement between the Parties with respect to the subject matter of this IIFCL Guarantee and supersedes any prior written or oral agreement between them with respect to such subject matter.

## 9.5 No Liability for Consequential Loss

No Party is liable to any other Party as a result of any breach, action or inaction under this IIFCL Guarantee or otherwise for any loss of profit, revenue or consequential loss suffered or incurred by any such other Party.

## 9.6 Counterparts

This IIFCL Guarantee may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this IIFCL Guarantee.

## 9.7 Information

9.7.1 Within a reasonable time after a request from the Guarantor, the Debenture Trustee shall provide to the Guarantor such additional evidence, information and/or documentation that the Guarantor reasonably requires in respect of any Shortfall Instruction, provided however that, any non-submission of such information shall not absolve the Guarantor of its obligations hereunder.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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9.7.2 The Guarantor shall provide a notice to the Debenture Trustee and the Issuer upon any replacement of the Backstop Guarantor, which notice shall contain information regarding the identity of such replacement Backstop Guarantor.

## 10 AMENDMENTS AND WAIVERS

10.1 This IIFCL Guarantee may be amended only by written agreement executed by all of the Parties.

10.2 The Guarantor's failure to exercise, or delay in exercising, any right or remedy under this IIFCL Guarantee shall not operate as a waiver of such right or remedy. Furthermore, the Guarantor's single or partial exercise of any right or remedy under this IIFCL Guarantee shall not prevent any further or other exercise of such right or remedy or the exercise of any other right or remedy. The rights and remedies of the Guarantor provided in this IIFCL Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

## 11 NOTICES

### 11.1 Communications in writing

Any communication made under or in connection with this IIFCL Guarantee shall be first sent by electronic mail and mandatorily followed by delivery of a written letter (and with respect to a Shortfall Instruction, such written communication shall be hand delivered), provided however that the date of the notice shall mean the date of receipt of the electronic mail by the relevant Party or Parties.

### 11.2 Addresses

The address and electronic mail details (and the department or officer, if any, to whose attention the communication is to be delivered) of each Party for any communication or document to be delivered under or in connection with this IIFCL Guarantee and the addressee details for, communications to be provided to the Backstop Guarantor is as follows:

(i) **Guarantor**

Name : India Infrastructure Finance Company Limited  
Address : 8th Floor, Hindustan Times House, 18 & 20, Kasturba Gandhi Marg, New Delhi 110001, India  
Phone number : [•]  
Email : [•]  
To the attention of : [•]

(ii) **Debenture Trustee**

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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Name : [•]  
Address : [•]  
Phone number : [•]  
Email : [•]  
To the attention of : [•]

(iii) **Security Trustee**

Name : [•]  
Address : [•]  
Phone number : [•]  
Email : [•]  
To the attention of : [•]

(iv) **Issuer**

Name : [•]  
Address : [•]  
Email : [•]  
Phone number : [•]  
To the attention of : [•]

(v) **Backstop Guarantor**

Name : Asian Development Bank  
Address : [•]  
Email : [•]  
Phone number : [•]  
To the attention of : [•]

Any Party may change any of its addressee details set out in this Clause by not less than [•] Business Days notice to the other Parties. The Guarantor shall notify the other Parties upon such notice of any change in the addressee details for the Backstop Guarantor.

### 11.3 Delivery

Any communication or document delivered by one Party to any other Party under or in connection with this IIFCL Guarantee shall be effective for the purposes of this IIFCL Guarantee:

- (i) if sent by electronic mail before [•] (local time in the place to which it is sent) on a Business Day, when sent or, if sent by electronic mail at any other time, at [•] (local time in the place to which it is sent) on the next Business Day; or
- (ii) if by way of letter, when such letter has been left at such other Party's address

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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specified in Clause 11.2 (Addresses) or [•] Business Days after being deposited in the post postage prepaid in an envelope addressed to such other Party at such address,

and, if a particular department or officer is specified as part of such other Party's address details provided in Clause 11.2 (Addresses), if addressed to that department or officer.

#### **11.4 Reliance**

11.4.1 Any notice sent under this Clause 11 (NOTICES) 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 (without the need for further enquiry or confirmation).

11.4.2 Each Party shall take reasonable care to ensure that no forged, false or unauthorised notices are sent to any other Party.

#### **11.5 English language**

11.5.1 Any notice given under or in connection with this IIFCL Guarantee shall be in English.

11.5.2 All other documents provided under or in connection with this IIFCL Guarantee shall be:

(i) in English; or

(ii) if not in English, accompanied by a certified English translation from the Issuer or the authorised signatory of the person providing such document.

11.5.3 To the extent an English translation is provided pursuant to Clause 11.5.2, such English translation shall prevail to the extent of any conflict between such English translation and the original document, unless the document is a constitutional, statutory or other document required under law to be provided in another language.

### **12 GOVERNING LAW**

This IIFCL Guarantee and all non-contractual obligations arising out of or in connection with it, is governed by the laws of India.

### **13 JURISDICTION**

The courts and tribunals of [•] shall have jurisdiction to deal with any matters or disputes

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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arising out of or incidental to this IIFCL Guarantee.

**14 ASSIGNMENT**

Neither the Guarantor nor the Issuer shall be entitled to assign or transfer its rights under this IIFCL Guarantee, without the prior written consent of the other Party, provided that the Guarantor may assign its rights to any bank, financial institution, multilateral financial institution, multilateral development bank or non-banking financial company without the consent of the other Parties.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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**SCHEDULE A  
CONDITIONS PRECEDENT**

1. All fees, costs and expenses due and payable under Clause 3 (FEES AND EXPENSES) have been paid.
2. All conditions precedent (other than any condition precedent as to the effectiveness of this IIFCL Guarantee):
  - (a) for the issue of the Debentures under the Debenture Trust Deed; and
  - (b) under the Counter-Indemnity,
 have been satisfied and the Debenture Trust Deed and Counter-Indemnity are in full force and effect.
3. There has been no material adverse change in respect of (a) the business, operations, property, condition (financial or otherwise) or prospects of the Issuer, (b) the ability of the Issuer to perform its obligations under the Debenture Documents, or (c) the validity, legality or enforceability of this IIFCL Guarantee or the rights or remedies of the Guarantor under the Debenture Documents.
4. No default by the Issuer has occurred including under or in connection with any of the Debenture Documents to which it is a party.
5. An original legal opinion addressed to the Guarantor relating to the Debenture Documents governed by Indian law.
6. The Guarantor has received a satisfactory legal diligence report on the Issuer and the Project.
7. The Guarantor has received a certificate from the Issuer confirming that the IIFCL Maximum Guaranteed Amount as at the IIFCL Guarantee Effective Date does not exceed [•] % of the Project Costs.
8. The Guarantor has received a certificate from the Issuer confirming that the promoters of the Project are not on the defaulters list of Reserve Bank of India or Credit Information Bureau (India) Limited and no criminal proceeding are pending against such promoters or the Issuer.
9. The Guarantor has received a letter addressed to the Guarantor from the Debenture Trustee and the Security Trustee confirming that the original copies of the Sponsor Undertaking, Corporate Guarantee, Debenture Documents and the certified copies of the Project Documents required to be executed as of the date of this IIFCL Guarantee have been lodged with the Debenture Trustee and Security Trustee.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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10. The Guarantor has received a certificate signed by at least 2 (two) Directors of the Issuer, certifying that the Issuer has been and continues to be in compliance with the Safeguard and Integrity Provisions.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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**SCHEDULE B  
FORM OF SHORTFALL INSTRUCTION**

[Debenture Trustee's Letterhead]

[Date]

India Infrastructure Finance Company Limited,  
8th Floor, Hindustan Times Building,  
18 & 20, Kasturba Gandhi Marg,  
New Delhi 110001

Attention:

Shortfall Instruction No. [ ]\*

1. Please refer to the IIFCL Guarantee Agreement (the "IIFCL Guarantee") dated \_\_\_\_\_, 200[ ], between Renew Wind Energy (Jath) Limited (the "Issuer"), [ ] (the "Security Trustee"), [ ] (the "Debenture Trustee") and India Infrastructure Finance Company Limited ("IIFCL"). All terms defined in the IIFCL Guarantee shall bear the same meanings herein.

2. The Debenture Trustee hereby invokes the provisions of the IIFCL Guarantee and requests a Shortfall Amount of [ ] \_\_\_\_\_ (\_\_\_\_\_)] in accordance with the provisions of Clause 4.1 of the IIFCL Guarantee. You are requested to pay such amount to the account in [details of bank] bearing Account No. \_\_\_\_\_ at [Name and Address of Bank] in [city].

	As on _____ (Date)	Account	Amount
1	Amount to the credit of :	Revenue Sub-Account	
		Debt Service Sub-Account	
		Debt Service Reserve Sub-Account	
		Refinance Reserve Sub-Account	
		Surplus Sub-Account	
		Cash Trap Sub-Account	

\* Each to be numbered in series.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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		<b>Total</b>	
2	Amount due for payment to Debenture Holders	Principal Amount	
		Interest	
		<b>Total</b>	
3	Shortfall Amount (A)		
4	IIFCL Available Residual Guarantee Amount at the beginning of IIFCL Guarantee Fee Calculation Period immediately prior to the date of delivery of this Shortfall Instruction (B)		
5	IIFCL Maximum Guaranteed Amount (C)		
6	Shortfall Amount claimed under IIFCL Guarantee, being the lower of (A), (B) and (C)		

Yours truly,

[NAME OF DEBENTURE TRUSTEE]

By \_\_\_\_\_  
Authorized Representative

Copy to: [Contact details of Backstop Guarantor]

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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**SCHEDULE C**  
**FORM OF STATEMENT OF CALCULATION OF IIFCL GUARANTEE FEE**

[Date]

India Infrastructure Finance Company Limited  
8th Floor, Hindustan Times Building  
18 & 20 Kasturba Gandhi Marg,  
New Delhi 110001  
India

Attention: [TBA]  
E-mail: [TBA]  
Facsimile: [TBA]

With a copy to:

Asian Development Bank

[•]  
Attention: [•]  
E-Mail: [•]  
Telephone: [•]  
Facsimile: [•]

Dear Sirs,

**Re: IIFCL Guarantee dated [•] issued by India Infrastructure Finance Company Limited in favour of [ ] (Debenture Trustee) ("IIFCL Guarantee")**

All capitalised terms used herein and not otherwise defined have their respective meanings specified in the IIFCL Guarantee.

This statement is being delivered under Clause 3.4 (Fee Calculation) in relation to the IIFCL Guarantee Fee Calculation Period ending on [•] (the "**Relevant Period**").

The Issuer hereby certifies as follows:

1. The IIFCL Available Residual Guarantee Amount as at the first day of the Relevant Period was [•].
2. The IIFCL Net Guarantee Amount Paid as at the first day of the Relevant Period was [•].
3. The number of days ("N") in the Relevant Period was [•].
4. The IIFCL Guarantee Fee Rate is [•].

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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5. The IIFCL Guarantee Fee for the Relevant Period is [●].

[ ]

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Authorised Representative  
Name:  
Title:

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[●] (as the Issuer)</b>	<b>[●] (as the Security Trustee)</b>	<b>[●] (as the Debenture Trustee)</b>
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## Safeguard and Integrity Provisions

### A SAFEGUARD PROVISIONS

#### PART I - ENVIRONMENTAL AND SOCIAL SAFEGUARDS

##### 1. Representations on Environmental and Social Matters

The Issuer represents and warrants that:

###### 1.1 The Project and the Issuer:

- (a) are in compliance with all Environmental and Social Requirements, except as identified in a Corrective Action Plan;
- (b) have not received any written notice indicating that any Approvals required under all applicable Environmental and Social Laws is likely to be terminated, revoked, suspended or cancelled; and
- (c) have not breached any of the Environmental and Social Requirements from the date of the PPA.

###### 1.2 With respect to the Project, the Issuer to the best of its knowledge after due inquiry confirms that:

- (a) there is no existing past non-compliance with any applicable Environmental and Social Requirement other than any such non-compliance which has been (i) cured or waived or (ii) notified to IIFCL; and
- (b) no Hazardous Substances have at any time been generated, used, treated, recycled, stored on, transported to or from or released at, on, under or from the Project other than in compliance at all times with all applicable Environmental and Social Laws (other than as has been (i) cured or waived or (ii) notified to IIFCL).

###### 1.3 No Environmental and Social Claim is currently pending or, to the Issuer's knowledge, threatened in writing against the Issuer in relation to the Project which if adversely determined against the Issuer could reasonably be expected to result in a Material Adverse Effect.

###### 1.4 All information relating to the Project contained in any document submitted by the Issuer or any person whom the Issuer has permitted to act on the Issuer's behalf to any Governmental Authority or any other Party in connection with any Environmental Matter or Social Matter was true, complete and accurate in all material respects at the time of

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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submission, and no such document omitted any information the omission of which would have made such document misleading in any material respect.

- 1.5 To the best of the Issuer's knowledge after due inquiry, there are no facts, circumstances, conditions or occurrences regarding the Project that could reasonably be expected to:
- (a) form the basis of an Environmental and Social Claim with respect to the development, construction, ownership or operation of the Project or against the Project or the Issuer; or
  - (b) cause the Project to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental and Social Law,

which if adversely determined against the Issuer could reasonably be expected to result in a Material Adverse Effect.

- 1.6 There have been no investigations, studies, audits, reviews, reports, plans or other analyses conducted by other parties for the Issuer, or which are in the possession of the Issuer with respect to any Environmental Matters or Social Matters that have not been delivered to IIFCL.
- 1.7 Save as may have been disclosed to IIFCL in writing, the Issuer has not received nor is aware of any written communication from any person concerning the Project's failure to comply with the Environmental and Social Requirements.

The Issuer makes the representations and warranties set out in this Clause 1 above to and for the benefit of each other Party on the Closing Date and on each Interest Payment Date and each Redemption Date by reference to the facts and circumstances then subsisting.

**2. Environment and Social Procedures**

The Issuer shall:

- (a) develop procedures and practices for the handling of hazardous materials to ensure quick and efficient responses to accidents that may result in injury or environmental damage by way of an Emergency Preparedness and Response Plan ("**EPRP**") covering:
  - (i) planning and coordination (to include procedures for informing the public and emergency response agencies, documenting first aid and emergency medical treatment, taking emergency response actions, and reviewing and updating the EPRP to reflect changes and ensuring that employees are informed of such changes);
  - (ii) emergency equipment (to include procedures for using, inspecting,

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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- testing, and maintaining emergency response equipment); and
- (iii) training of employees in any relevant procedures,
  - (b) allocate a budget and timeline for the completion of the EPRP;
  - (c) assign an environment, health and safety officer who will be responsible in implementing the revised operation-phase EMP; and
  - (d) agree to conduct continuing consultation with the affected community members.

**3. Information Covenants**

- 3.1 beginning from [•], deliver to the Debenture Trustee and IIFCL, [•]copies of an Environmental and Social Monitoring Report no later than [•] days after [•] for the [•] period ending on that [•];
- 3.2 beginning from [•], deliver to the Security Trustee [•] copies of (i) the relevant Environmental and Social Monitoring Report [•] period ending on [•], and (ii) whenever required pursuant to the Environmental and Social Requirements, a Resettlement Plan, if applicable;
- 3.3 facilitate the carrying out of any monitoring/verification activities by or on behalf of IIFCL or the Backstop Guarantor and, if required under the Environmental and Social Requirements, any independent advisory panel or other external experts engaged by the Issuer to verify monitoring information;
- 3.4 promptly notify the Debenture Trustee if any unanticipated environmental and/or social impacts arise during the operation of the Project that were not considered in the EMP, providing detailed information and proposals, including (if applicable) the preparation of an RP following the Resettlement Framework, to address the same.

**4. Environmental or Social Non-Compliance**

- (a) In the event of a Significant Environmental and Social Event or a Significant Environmental and Social Non Compliance the Issuer shall:
  - (i) notify IIFCL promptly and in any event within [•] Business Days of its occurrence;
  - (ii) undertake such emergency actions (if any) as are appropriate in response to the Significant Environmental and Social Event or Significant Environmental and Social Non Compliance and notify IIFCL of such emergency actions as soon as possible;

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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- (iii) undertake all other actions (if any) as are required to be implemented without delay to remedy or mitigate the effects of the Significant Environmental and Social Event or Significant Environmental and Social Non Compliance, obtaining IIFCL's and the Backstop Guarantor's agreement to such actions whenever reasonably practicable to obtain the same within the time available; and
  - (iv) as soon as is reasonably practicable, provide IIFCL with a proposed Corrective Action Plan (for approval by IIFCL) in relation to all remaining corrective measures required in relation to the Significant Environmental and Social Event or Significant Environmental and Social Non Compliance.
- (b) The Issuer shall send to IIFCL a copy of any written communication sent to or received from any Governmental Authority or any other person regarding the Project's non-compliance with the applicable Environmental and Social Requirements as soon as possible and in any event within [•] Business Days after the Issuer sends or receives the same.
- (c) The Issuer shall send to IIFCL written details of any current, threatened or pending Environmental and Social Claim as soon as possible and in any event within [•] Business Days upon the Issuer becoming aware of the same, and shall send to IIFCL written details of its proposed response to that Environmental and Social Claim as soon as possible and in any event within [•] Business Days upon the Issuer becoming aware of the relevant Environmental and Social Claim.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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## PART II - INTEGRITY SAFEGUARDS

### 1. Representations on Sanctionable Practices

- 1.1 The Issuer has not been, engaged in or has permitted any person acting on its behalf to engage in:
- (a) any Sanctionable Practice in connection with the Project, including the procurement or the execution of any contract for goods or works relating to the Project;
  - (b) Money Laundering or acted in breach of any Applicable Law relating to Money Laundering; or
  - (c) Financing of Terrorism.
- 1.2 The Issuer makes the representations and warranties set out in this Clause 1.2 to and for the benefit of each other Party on the Closing Date and on each Interest Payment Date and each Redemption Date by reference to the facts and circumstances then subsisting.

### 2. Undertakings regarding Sanctionable Practices

- 2.1 The Issuer shall not engage in (or authorise or permit any person acting on its behalf to engage in):
- (a) any Sanctionable Practice with respect to the Project or any transaction contemplated by the Debenture Documents or the Project Documents, including the procurement or the execution of any contract for goods or works relating to the Project; or
  - (b) Money Laundering or act in breach of any Applicable Law relating to Money Laundering; or
  - (c) Financing of Terrorism.
- 2.2 The Issuer undertakes to inform IIFCL promptly if it should at any time obtain information in relation to any violation or potential violation of the provisions of this Part II of Schedule D (*Integrity Safeguards*).
- 2.3 The Issuer further covenants that should IIFCL or the Backstop Guarantor notify the Issuer of its concerns that there has been a violation of the provisions of this Part II of Schedule D (*Integrity Safeguards*) it shall cooperate in good faith with IIFCL and their representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from IIFCL, and shall furnish documentary support for such response upon IIFCL's or the Backstop Guarantor's request.
- 2.4 Notwithstanding any other provision of the Debenture Documents or any confidentiality undertaking executed between the Issuer and the other Parties, the Issuer acknowledges that IIFCL or the Backstop Guarantor may disclose to any Governmental Authority any information obtained by IIFCL or the Backstop Guarantor in relation to any violation of

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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any of the provisions of this Part II of Schedule D (*Integrity Safeguards*).

2.5 The Issuer shall institute, maintain and comply with internal procedures and controls following international best practice standards for the purpose of preventing any action in breach of the provisions of this Part II of Schedule D (*Integrity Safeguards*).

**3. Use of Proceeds**

3.1 The Issuer shall apply the proceeds of the Debentures for the express purposes specified in the Debenture Trust Deed.

3.2 The Issuer shall not use the proceeds from the Debentures in any country that is identified by the Financial Action Task Force as having deficiency in the counter-measures adopted for anti-money laundering and combating the financing of terrorism for reimbursements of expenditures in those countries or for goods purchased in or services supplied from any such country. The Issuer shall not apply any amounts received by it pursuant to the Debenture Documents to any Prohibited Activity.

**4. Compliance with Environmental and Social Requirements; Monitoring Expert**

(a) The Issuer shall:

(i) provide IIFCL with such assistance (including providing information) as it may reasonably request from time to time in order to respond to (i) any correspondence or enquiry received by it from any third party and/or (ii) any statements made by any third party, in either case, relating to any of the environmental, health and safety aspects of the Project;

(ii) comply with all obligations on its part in the Environmental and Social Requirements in the accordance with the terms thereof;

(iii) promptly upon the request of IIFCL, IIFCL (or a representative thereof) shall be given access to the relevant sites of the Project and to such premises, technical and statistical data, books, records and other data as may be required by IIFCL to monitor compliance with the Environmental and Social Requirements provided that IIFCL, shall ensure that such access rights are exercised at reasonable times of the day and on reasonable notice to the Issuer and upon obtaining all necessary Approvals for such visit.

(b) If the Issuer is required at any time to prepare a Corrective Action Plan, the Issuer shall promptly, and in any event within [•] days of becoming aware of such requirement, do so and shall:

(i) promptly provide the Security Trustee and IIFCL with all such further

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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information and assistance as the Security Trustee requires to facilitate agreement of each Corrective Action Plan;

- (ii) promptly provide the Security Trustee with such information and monitoring reports as may be requested by the Security Trustee from time to time to confirm the status of the implementation of any such Corrective Action Plan; and
  - (iii) provide to the Security Trustee as soon as possible and in any event within **[•]** Business Days after any date specified in a Corrective Action Plan (approved by the Security Trustee and IIFCL) as being the date by which the relevant event, circumstance or occurrence will be remedied, a notice which either confirms that the relevant remedial action has been completed or which provides details of the reasons why such remedial action has not been completed and the proposed steps being taken to remedy the relevant event, circumstance or occurrence.
- (c) Disclosure: make public disclosures on an annual basis at all times up to the end of the Final Settlement Date in respect of (i) revenues under the PPAs paid to the Governmental Authorities, and (ii) health, safety, environmental and social issues relating to the Project.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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### PART III - DEFINITIONS

#### 1. Definitions

Unless otherwise defined, capitalised terms used but not defined herein shall have the meaning assigned to them in the Debenture Trust Deed. For the purposes of this Schedule D, the following capitalized terms shall have the meanings hereinafter respectively assigned to it:

**"Coercive Practice"** means 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"** means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

**"Corrective Action Plan"** means a corrective action plan required in accordance with the Environment and Social Requirements in relation to the Project as approved by the IIFCL which shall include the following:

- (a) a description of each relevant Environment and Social Non Compliance including their extent, magnitude and impact;
- (b) a description of the cause of each Environment and Social Non Compliance and the period for which each continued;
- (c) the proposed actions to correct any damage or adverse consequences caused by the relevant Environment and Social Non Compliance;
- (d) the identity of the person or persons who will be implementing such proposed actions;
- (e) a time schedule for implementing such proposed actions, including the start date, the proposed end date and key milestones;
- (f) if required under Environmental and Social Requirements, the estimated cost of such proposed actions; and
- (g) the proposed actions (including any proposed updates to the Environmental and Social Documents) to prevent any similar Environmental and Social Non Compliance from occurring in the future.

**"Corrupt Practice"** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

India Infrastructure Finance Company Limited (as the Guarantor)	[•] (as the Issuer)	[•] (as the Security Trustee)	[•] (as the Debenture Trustee)
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**"Environmental and Social Approval"** means any permit, certificate or other Approvals (including any condition which attaches to the foregoing) required under any Environmental and Social Law.

**"Environmental and Social Claim"** means, with respect to the Issuer, any administrative, regulatory or judicial action or any written notice, claim, suit, lien, judgment or demand by any Governmental Authority or other person, which alleges circumstances which (if established) would constitute a Environmental and Social Non Compliance.

**"Environmental and Social Documents"** means:

- (a) the Environmental Management Plan;
- (b) Environmental Impact Assessment;
- (c) Emergency Preparedness and Response Plan;
- (d) Resettlement Plan; and
- (e) any other document, plan or programme designated in writing by IIFCL or the Secured Parties as an Environmental and Social Document.

**"Environmental and Social Laws"** means all applicable laws relating to Environmental Matters, Social Matters, indigenous peoples, involuntary resettlement, human health or safety or laws relating to social issues, including minimum labour standards and laws prohibiting forced labour or harmful child labour.

**"Environmental and Social Non Compliance"** means any failure to comply with, or any action or omission which is inconsistent with, any of the Environmental and Social Requirements.

**"Environmental and Social Provisions"** means any provision of this Deed or any Transaction Documents relating to environmental, health and safety or social matters.

**"Environmental and Social Requirements"** means:

- (a) any Environmental and Social Law (as amended from time to time);
- (b) any Environmental and Social Approval issued by any Governmental Authority or otherwise under any Environmental and Social Law;
- (c) the Environmental and Social Provisions;

IIFCL's Environmental and Social Management System; and

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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**"Environmental Impact Assessment"** or **"EIA"** means the environmental impact assessment prepared by or on behalf the Issuer in relation to the development of the Project and all supplements, modifications and amendments thereto (including all environmental documents to be provided by the Issuer).

**"Environmental Management Plan"** or **"EMP"** the environmental management plan for the Project; and, where the Issuer is required to prepare an updated or a new environmental management plan either (i) under the Environmental and Social Requirements; or (ii) in accordance with any requirement of the current Environmental Management Plan, then it means such updated and/or new environmental management plan agreed by IIFCL.

**"Environmental Matters"** means any of the following:

**"Environmental Matters"** means any of the following:

- (a) any emission, release, entry or introduction of any Hazardous Substance into the air including the air within buildings and other natural or man-made structures above or below ground;
- (b) any discharge, release, entry or introduction of any Hazardous Substance into water including into any river, watercourse, lake or pond (whether natural or artificial, above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;
- (c) any deposit, release, keeping or disposal of any Hazardous Substance in land or on land, whether or not covered by water;
- (d) any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled; and
- (e) nuisance, noise, health and safety at work, preservation or protection of the natural environment or of man or any living organisms supported by the environment.

**"Fraudulent Practice"** means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

**"Financing of Terrorism"** means 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.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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**"Hazardous Substance"** means any hazardous waste, substance, material or product referred to in the Environmental and Social Requirements, or defined, listed, classified or regulated as such in or under any Applicable Law.

**"Money Laundering"** means:

- (a) the conversion or transfer of property, knowing it is derived from a criminal offense, for the purpose of concealing or disguising its illegal origin or of assisting any party who is involved in the commission of the crime to evade the legal consequences of 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 a criminal offense; or
- (c) acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offense;
- (d) any act or omission or commission that qualifies as money laundering and is punishable in terms of the Prevention of Money Laundering Act, 2002 and the rules framed thereunder.

**"Obstructive Practice"** means:

- (a) deliberately destroying, falsifying, altering or concealing of evidence material to an IIFCL investigation, or making false statements to investigators, in order to materially impede an IIFCL investigation into allegations of a corrupt, fraudulent, coercive or collusive practice and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- (b) acts intended to materially impede IIFCL's rights of audit or access to information.

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

**"Resettlement Plan"** or **"RP"** means any resettlement plan regarding the Project which the Issuer is required to prepare under the Environmental and Social Requirements cleared by the Security Trustee, acting on the instructions of IIFCL.

**"Sanctionable Practices"** means any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice, or Obstructive Practice.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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**"Significant Environmental and Social Event"** means:

- (a) the release of any Hazardous Substance on or from any property owned, leased occupied or used the Issuer other than in accordance with the Environmental and Social Requirements which has resulted in or is likely to result in significant, severe or irreversible damage or impact on the environment, or damage, impact or harm to the lives, livelihood, quality of life, health, safety, security or property of affected people;
- (b) any unanticipated incident, accident or circumstance which has resulted in or is likely to result in significant, severe or irreversible damage or impact on the environment, or damage, impact or harm to the lives, livelihood, quality of life, health, safety, security or property of affected people;
- (c) any incident or accident in connection with the Project resulting in death or significant injury; and/or
- (d) any material explosion or fire at or on any property associated with the Project.

**"Significant Environmental and Social Non Compliance"** means any Environmental and Social Non Compliance which:

- (a) is an intentional or reckless disregard of any specific prohibition, commitment or obligation set out in the Environmental and Social Requirements; or
- (b) has resulted in or is likely to result in significant or severe damage to or impact on the environment or damage to, impact on or harm to the lives, livelihood, quality of life, health, safety, security or property of affected people; or
- (c) has had a material and adverse impact on the reputation or business of IIFCL or any other Party.

**"Social Matter"** means:

- (a) public consultation and disclosure with respect to the Project;
- (b) impact on a person of any resettlement or land acquisition activities undertaken in connection with the Project; or
- (c) impact of the Project on indigenous peoples and other vulnerable groups.

<b>India Infrastructure Finance Company Limited (as the Guarantor)</b>	<b>[•] (as the Issuer)</b>	<b>[•] (as the Security Trustee)</b>	<b>[•] (as the Debenture Trustee)</b>
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## SIGNATORIES

**THE COMMON SEAL OF [•]** has pursuant to the Resolutions of its Board of Directors passed in that behalf on [•] hereunto been affixed in the presence of \_\_\_\_\_, its Director/Managing Director, who has signed these presents in token thereof.

SIGNED AND DELIVERED BY the within named **SECURITY TRUSTEE, [•]**, by the hand of Shri./Smt. \_\_\_\_\_, its \_\_\_\_\_ and authorised official.

SIGNED AND DELIVERED BY the within named **DEBENTURE TRUSTEE, [•]**, by the hand of Shri./Smt. \_\_\_\_\_, its \_\_\_\_\_ and authorised official.

SIGNED AND DELIVERED BY the within named **INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED**, by the hand of Shri./Smt. \_\_\_\_\_, its \_\_\_\_\_ and authorised official.