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Project Number: 48422  
February 2016

# India: Enhancing Bond Guarantee Structuring Skills in India

(Financed by the Financial Sector Development Partnership Special Fund)

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For India Infrastructure Finance Company Ltd.  
Asian Development Bank

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**Asian Development Bank**

[SPECIMEN AGREEMENT]

[SUBJECT TO CHANGE]

[Please note that this specimen agreement has been drafted to capture commercial and legal negotiations between certain parties and is merely intended to serve as a template. All parties using this specimen agreement should consult their legal, business and other relevant advisors prior to entering into definitive documentation. ADB and its advisors are providing this specimen agreement on an “as-is-basis” and assume no responsibility towards any party for any consequences arising out of the use of this document]

Dated: \_\_\_\_\_

**DEBENTURE TRUSTEE AGREEMENT**

BETWEEN

[•]  
AS THE ISSUER OF DEBENTURES (COMPANY)

AND

[•]  
AS THE DEBENTURE TRUSTEE

## DEBENTURE TRUSTEE AGREEMENT

This Debenture Trustee Agreement (“**Agreement**”) is made at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_;

BETWEEN

[•], a company incorporated under the Companies Act, [•], having its corporate identity number [•] and its registered office at [•] (hereinafter referred to as the “**Company**”, which expression shall, unless repugnant to the subject or context thereof, be deemed to mean and include its successors and permitted assigns) of the **ONE PART**;

AND

[•], a company incorporated under the Companies Act, 1956, 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, unless repugnant to the subject or context thereof, be deemed to mean and include its successors in office and permitted assigns) of the **OTHER PART**

The Company and the Debenture Trustee shall be individually referred to as a “**Party**” and collectively as “**Parties**”.

### **WHEREAS**

- A. With a view to raising debt, the Company intends to issue secured, listed, partially guaranteed, redeemable, non- convertible debentures of a face value of Rs. [•] each, aggregating up to Rs. [•] (“**Debentures**”) on a private placement basis in terms of the Offer Letter to specific investors (hereinafter referred to as the “**Issue**”) in accordance with the provisions of the Companies Act, 2013 and the regulations applicable to the issuance of debentures notified by Securities Exchange Board of India (SEBI) and the Reserve Bank of India (RBI), from time to time;
- B. The Company shall have the Debentures listed on the Wholesale Debt Market segment of the Bombay Stock Exchange Limited and/or the National Stock Exchange (“**Stock Exchange**”) in accordance with the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 as soon as possible and in no event later than [•] calendar days from the Deemed Date of Allotment;
- C. The Company is desirous of appointing a debenture trustee for the benefit of the holders of the Debentures from time to time (hereinafter referred to as the “**Debenture Holders**”);
- D. The Debenture Trustee is registered with the Securities Exchange Board of India as a debenture trustee under the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993;
- E. The issue of the Debentures comprised in the Issue and described under the Information Memorandum has been authorised by the Issuer through the resolution(s) passed by the shareholders of the Issuer on [•] and the Board of Directors of the Issuer on [•];
- F. The Company has approached the Debenture Trustee to act as the debenture trustee for the Debenture Holders and the Debenture Trustee has vide its letter dated \_\_\_\_\_ (bearing reference number \_\_\_\_\_) (hereinafter referred to as the “**Debenture Trustee Consent Letter**”) agreed to act as the debenture trustee, for the benefit of the Debenture Holders to secure the payment and other obligations of the Company in respect of the Issue, on such terms and conditions as agreed upon and hereinafter set out.

### **NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

Capitalised terms and expressions used herein but not defined shall have the meaning respectively assigned to such terms and expressions in the Debenture Trust Deed. The principles of

interpretation set out in the Debenture Trust Deed shall mutatis mutandis apply to this Agreement, as if the same were set out in full herein, and form part of this Agreement.

1. The Company hereby appoints the [•] as the debenture trustee for the Debenture Holders and [•] hereby agrees to act as debenture trustee for the benefit of the Debenture Holders and for purposes related thereto in accordance with the provisions of the Transaction Documents. The Debenture Trustee and the Company shall on or around the date hereof also enter into a debenture trust deed (hereinafter referred to as the “**Debenture Trust Deed**”) and such other documents as may be required from time to time in relation to the Debentures.
2. The Company shall pay to the Debenture Trustee so long as it holds the office of the Debenture Trustee, remuneration and all reasonable costs, charges and expenses as set out in the offer letter \_\_\_\_\_ dated \_\_\_\_\_, for its services as Debenture Trustee (hereinafter referred to as the “**Debenture Trustee Fees**”).
3. The Company shall comply with the provisions of the Companies Act, 2013, the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and other Applicable Laws, as amended from time to time and agrees to furnish to the Debenture Trustee such information as may be required in terms of the Companies Act, 2013, the Debenture Trust Deed and other Applicable Laws on a regular basis.
4. This Agreement shall be effective on and from the date first hereinabove written and shall be in force till all the moneys in respect of the Debentures have been fully paid-off or until the appointment of the Debenture Trustee is terminated in accordance with the Debenture Trust Deed.
5. The Company shall *inter-alia* furnish / shall have furnished to the Debenture Trustee the following documents:
  - a. Prospectus / Information Memorandum / Disclosure Document in relation to the Issue;
  - b. The necessary corporate authorisations by way of board resolution and/or shareholder resolutions necessary for the Issue;
  - c. Letters from the Credit Rating Agency regarding the ratings afforded to the Debentures;
  - d. This Agreement;
  - e. Proof of Credit / Dispatch of Debenture Certificates;
  - f. Details of the depository with whom the Debentures are held in dematerialised form;
  - g. Latest Annual Report of the Company;
  - h. Debenture Trust Deed;
  - i. Confirmation/Proofs of payment of interest and principal made to the Debenture Holders on the relevant due dates;
  - j. Periodical reports on quarterly basis as required;
  - k. Information to be submitted to the Stock Exchange(s) as required by the Debt Listing Agreement;
  - l. Acknowledgement of filing the Information Memorandum with the Stock Exchange(s);
  - m. In-principle and final listing approval from the Stock Exchange(s);
  - n. Beneficiary position reports as provided by the registrar;
  - o. Due diligence certificate from legal counsel, if any;
  - p. Offer letter issued by the Company pursuant to the provisions of the Act;
  - q. Trading permission from the Stock Exchange; and
  - r. Such other documents as may be reasonably required by the Debenture Trustee.

Further, the Company shall, within [•] days of the issue of the Debentures, furnish the following details to the Debenture Trustee:

- i. Copies of the final signed Information Memorandum;
  - ii. Date of actual allotment of the Debentures;
  - iii. Amounts raised pursuant to the issue of the Debentures; and
  - iv. List of Debenture Holders including name, address and holdings for the amounts raised under the Issue.
6. The obligations of the Debenture Trustee under this IIFCL Guarantee are legal, valid, binding and enforceable obligations.
7. **AUTHORIZATION AND CONSENTS**

All actions (including corporate actions), conditions and things required to be taken, fulfilled and done (including the obtaining of any consents (if applicable) by the Company in order (a) to enable it to lawfully enter into, exercise its rights and perform and comply with its obligations under this Agreement, (b) to ensure that those obligations are legally binding and enforceable, and (c) to make this Agreement admissible in evidence in the courts of India have been taken, fulfilled and done in strict compliance with all Applicable Laws.

Any payment in respect of the Debentures required to be made by the Debenture Trustee to a Debenture Holder (who is a foreign institutional investor or a qualified foreign investor) at the time of enforcement would, be made in accordance with Applicable Law. The Company / relevant Debenture Holder shall obtain all such approvals, if required, to ensure prompt and timely payments to the said Debenture Holder.

8. **BENEFIT OF AGREEMENT**

This Agreement shall enure to the benefit of and be binding on the Parties and their respective successors and permitted assigns of each Party.

9. **EXPENSES**

The Company shall pay to the Debenture Trustee, all actual legal, traveling and other costs, charges and expenses incurred by them, their officers, employees, agents in connection with execution of these presents including costs, charges and expenses of and incidental to, the approval, execution and amendment of these presents and all other Transaction Documents and waiver or consents under or in relation to the Transaction Documents against submission of the supporting documents.

Apart from the Debenture Trustee Fees, the Company shall, from time to time, make payment to/ reimburse the Debenture Trustee in respect of all reasonable expenses and out-of-pocket costs incurred by the Debenture Trustee.

10. **STAMP DUTY**

The Company shall promptly pay, and in any event before any interest or penalty becomes payable, any stamp, documentary, registration or similar tax payable in connection with the entry into, registration, performance, enforcement or admissibility in evidence of this Agreement and/or any such amendment, supplement or waiver.

11. **CONFIDENTIALITY**

(i) The information received by any of the Parties to this Agreement relating to the other Party and the existence of this Agreement itself (hereinafter referred to as “**Confidential Information**”) shall be kept in the strictest confidence and shall not be divulged or disclosed to any person, other than such of the directors, officers, employees, advisors and accountants of the recipient Party on a need to know basis in accordance with the intent and purpose of this Agreement, provided always that each such person to whom Confidential Information is disclosed shall have been made aware of its confidential nature and of the terms of this Agreement prior to such disclosure by the disclosing Party expressly marking or stating as confidential such Confidential Information and each such person to whom the Confidential Information is disclosed shall also keep the same in the strictest confidence and shall not divulge or disclose the same to any other person.

(ii) The restriction set forth in Clause 11(i) herein shall not apply to any part of the Confidential Information, which:

- (1) is known at the time of disclosure to the recipient Party, or thereafter, becomes part of the public domain, other than as a result of the acts or omissions of the recipient Party, its directors, officers or employees; or
- (2) is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by Applicable Law or by any other regulatory authority; or

- (3) is required to be disclosed by the Company or the Debenture Trustee to the Debenture Holders or to a rating agency or any other third party pursuant to the terms of the Debenture Trust Deed or other documents executed pursuant thereto.

12. **GOVERNING LAW AND JURISDICTION**

- i. This Agreement shall be governed by and construed in accordance with the laws of India.
- ii. The Parties agree that any disputes which may arise out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts at [•] and that accordingly, any suit, action or proceedings arising out of or in connection with this Agreement may be brought before such courts.
- iii. This Clause 12 shall survive the termination of this Agreement.

13. **WAIVER**

No failure by any Party to exercise, nor any delay by any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy, prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by and available under applicable Law or the Debenture Trust Deed or the other documents executed pursuant thereto. No notice to or demand on any Party in any case shall entitle that Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the other Party to any other or further action in any circumstances without notice or demand.

14. **COMMUNICATIONS**

- (i) Any notice, demand, communication or other request (individually, a “**Notice**”) to be given or made under this Agreement shall be in writing. Such Notice shall be delivered by hand, registered mail/speed post (postage prepaid), recognized overnight courier service or facsimile to the Party to which it is addressed at such Party's address specified below or at such other address as such party shall from time to time have designated by 5 (five) days' prior written Notice. Provided however, that in case of a Notice delivered by facsimile, the Party delivering such Notice shall also deliver a copy of the same by hand, registered mail/speed post (postage prepaid), recognized overnight courier service.
- (ii) Notice by the Parties to each other and the Debenture Holders shall be deemed effectively given and received upon delivery in person, or 1 (one) Business Day after delivery by overnight courier service, if sent for next business day delivery, or by facsimile transmission with senders acknowledgment of transmission receipt, or 5 (Five) Business Days after deposit via certified or registered mail / speed post (postage prepaid), return receipt requested, in each case addressed as below:
  - (a) **Company** : [•]  
Phone number : [•]  
To the attention of : [•]
  - (b) **Debenture Trustee:** [•]  
Phone number : [•]  
To the attention of : [•]
- (iii) This Clause 14 shall survive the termination or expiry of this Agreement.

15. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, all of which taken together and when delivered to the Debenture Trustee shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

16. **PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

17. **FURTHER ASSURANCES**

The Parties hereby agree to execute and do such further documents, assurances, deeds, acts or things as may be necessary to give full effect to the provisions herein contained.

18. All rights and obligations of the Debenture Trustee, including the terms of the appointment and removal shall be as set out in the Debenture Trust Deed

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed the day and year first hereinabove written in the manner hereinafter appearing.

**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 **DEBENTURE TRUSTEE, [•]**, by the hand of Shri./Smt. \_\_\_\_\_, its \_\_\_\_\_ and authorised official.