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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]

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UNDERTAKING

BY

[•]

IN FAVOUR OF

INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED

Dated _____

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UNDERTAKING

This UNDERTAKING ("**Undertaking**") is dated _____ and issued by [•], a company organized and existing under the laws of India (the "**Sponsor**") in favour of INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED ("**IIFCL**").

RECITALS

(A) [•] ("**Issuer**") is a subsidiary of the Sponsor. The Issuer proposes to issue secured, listed, partially guaranteed, redeemable, non-convertible debentures of a face value of Rs. [•] each, aggregating up to Rs. [•] ("**Debentures**") on a private placement basis in terms of the Offer Letter to specific investors. The Issuer has appointed the Debenture Trustee to act as the trustee for the Debenture Holders *vide* a debenture trustee agreement dated on or about the date of this Undertaking. Pursuant to a security trustee agreement dated on or about the date of this Undertaking, the Issuer has appointed the Security Trustee to act as the security trustee for the benefit of the Secured Parties.

(B) Pursuant to a debenture trust deed entered into on or about the date of this Undertaking, between the Issuer, the Debenture Trustee and the Security Trustee (the "**Debenture Trust Deed**"), the Debenture Holders have agreed to subscribe to the Debentures with the proceeds of such subscription being used to refinance the entire Existing Debt. Further, in order to secure the Secured Obligations, Security will be created in favour of the Security Trustee on the terms and conditions contained in the Debenture Trust Deed and the Security Documents.

(C) IIFCL has introduced a scheme titled '*Regular Credit Enhancement Scheme of IIFCL*' ("**Credit Enhancement Scheme**") wherein IIFCL has agreed to provide a "first loss" partial credit guarantee to the holders of bonds issued by companies engaged in viable infrastructure projects. The Issuer approached IIFCL under the Credit Enhancement Scheme to issue a partial credit guarantee ("**IIFCL Guarantee**") in accordance with the terms of the IIFCL Guarantee Agreement (defined below).

(D) In furtherance thereto, IIFCL has executed an irrevocable and unconditional guarantee dated on or about the date of this Undertaking in favour of the Debenture Trustee and the Security Trustee ("**IIFCL Guarantee Agreement**"), subject to the terms and conditions stated in such IIFCL Guarantee Agreement. IIFCL also intends to execute back-stop guarantee(s) (the "**Back-Stop Guarantee**") with third party guarantor(s), from time to time (the "**Back-Stop Guarantor**"), in order to support its guarantee obligations under the IIFCL Guarantee Agreement. At or about the time of execution of this Undertaking, such Back-Stop Guarantor is proposed to be Asian Development Bank, an international financial institution organised and existing under the Agreement Establishing the Asian Development Bank by and among its member countries and accordingly, IIFCL has entered into/ will enter into a Back-Stop Guarantee with Asian Development Bank on or about the date of this Undertaking.

(E) one of the terms of the providing the IIFCL Guarantee is that the Sponsor shall undertake the obligations set out herein; and

(F) the Sponsor accordingly issues this Undertaking in favour of IIFCL.

ARTICLE I

Definitions and Interpretation

Section 1.01. Definitions. Terms defined in the Debenture Trust Deed and the IIFCL Guarantee Agreement (as applicable) shall have the same meanings when used in this Undertaking, unless the context otherwise requires. Additionally, the following terms shall have the meanings set out against them below:

"**Back-Stop Guarantee**" has the meaning assigned to it under Recital D.

"**Back-Stop Guarantor**" has the meaning assigned to it under Recital D.

"**Credit Enhancement Scheme**" has the meaning assigned to it under Recital C.

"**Debenture Trust Deed**" has the meaning assigned to it under Recital B.

"**Debentures**" has the meaning assigned to it under Recital A.

"**IIFCL Guarantee**" has the meaning assigned to it under Recital C.

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

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

"**Issuer**" has the meaning assigned to it under Recital A.

"**Proceedings**" has the meaning assigned to it under Section 6.03(i).

"**Undertaking**" shall mean this undertaking executed by the Sponsor in favour of IIFCL.

"**Undertaking Amount**" shall mean an amount equal to the IIFCL Secured Obligations.

"**Undertaking Period**" shall mean [•]

Section 1.02. Interpretation. In this Undertaking, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the interpretation of this Undertaking;

(b) words importing the singular include the plural and vice versa;

(c) a reference to an Article, party or Section is a reference to that Article or Section of, or that party to, this Undertaking;

(d) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document in accordance with the terms of this Undertaking;

(e) general words in this Undertaking shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words; and

(f) a reference to a party to any document includes that party's successors and permitted assigns.

ARTICLE II

Undertaking

Section 2.01. *Undertaking.* (a) The Sponsor hereby agrees and undertakes to provide on demand by IIFCL at any time during the Undertaking Period, an amount up to but not exceeding the Undertaking Amount.

(b) Upon receiving a notice from IIFCL invoking the undertaking under this Section 2.01 ("**Invocation Notice**"), at any time during the Undertaking Period, the Sponsor shall, no later than fifteen (15) Business Days from the date of such notice, provide the amount specified in such Invocation Notice by way of wire transfer of immediately available funds to such bank account/s as may be specified in the Invocation Notice. It is hereby clarified that the total and aggregate amount payable by the Sponsor under this Section 3.01 shall not exceed the Undertaking Amount.

Section 2.02. *Taxes.* (a) The Sponsor shall pay or cause to be paid all present and future taxes (other than taxes, if any, payable on the income of IIFCL), duties, fees and other charges of whatsoever nature, if any, now or in the future levied or imposed by any authority or any jurisdiction through or out of which a payment is made on or in connection with the payment of any and all amounts due under this Undertaking.

(b) All payments due under this Undertaking shall be made without deduction for or on account of any such taxes, duties, fees or other charges other than in respect of any withholding tax in respect of income of IIFCL, which as mandated by applicable law has to be deducted at source.

(c) All taxes in respect of the income of IIFCL, which are required by applicable law to be paid/ deducted by the Sponsor from any amounts payable under this Undertaking shall be so deducted and paid by the Sponsor to the appropriate authorities when due and within the statutory limits prescribed under applicable law. The Sponsor shall deliver to IIFCL within 60 (sixty) days from the end of the Fiscal Quarter in which such payment is made to the appropriate authority, a certificate of tax deduction at source or any other evidence prescribed under applicable law satisfactory to IIFCL that the payment has been duly remitted to the appropriate authority. It is clarified that upon failure to deliver such certificate or evidence of payment within the said period, the Sponsor shall be deemed not to have made such payment.

Section 2.03. *Indemnity.* The Sponsor hereby irrevocably, absolutely and unconditionally agrees, as a primary obligation, to indemnify IIFCL from time to time on demand from and against any loss suffered by IIFCL as a result of any of the obligations of the Sponsor incurred during the Undertaking Period in relation to the Undertaking Amount being or becoming void, voidable, unenforceable or ineffective for any reason whatsoever.

Section 2.04. No Set-off. Subject to Section 2.02(b) and (c), all payments which the Sponsor is required to make under this Undertaking shall be made without any set-off, counterclaim, deduction or condition.

Section 2.05. Certificate Conclusive. A certificate of IIFCL delivered to the Sponsor stating any amount due and payable by the Sponsor under this Undertaking shall be conclusive in the absence of manifest error.

ARTICLE III

Saving Provisions

Section 3.01. Waivers of Defences. The Sponsor's obligations under this Undertaking and the rights of IIFCL shall not be discharged, impaired, waived or precluded for additional or future exercise, by any act, omission, circumstance, matter or thing (other than irrevocable payment in full of the Undertaking Amount) which, but for this provision, would reduce, release or prejudice any of the Sponsor's obligations or the rights of IIFCL, including (without limitation):

(a) any time, waiver, composition, forbearance or concession given to the Sponsor, the Issuer or any other person;

(b) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Sponsor, the Issuer or any other person, in respect of any security for the obligations of the Issuer under the Debenture Trust Deed or any other Transaction Document or of the Sponsor under this Undertaking;

(c) any amplification, amendment (however fundamental), variation or replacement of the provisions of the Debenture Trust Deed or any other Transaction Document or of any related document or of any security granted to IIFCL;

(d) any failure of the Issuer or the Sponsor to comply with any requirement of any law, regulation or order;

(e) the dissolution, liquidation, reorganization or other alteration of the legal status or structure of the Issuer or the Sponsor;

(f) any failure by IIFCL to take, enforce, release, discharge, exchange or substitute, or to realise the full value of, any security taken in respect of the obligations hereunder.

Section 3.02. Immediate Recourse. The Sponsor waives any right it may have of first requiring IIFCL (or any trustee, agent, receiver or other person acting on their behalf), and IIFCL shall not be required at any time, to:

(a) give any notice to, make a demand upon, or take any action against the Issuer; or

(b) proceed against, obtain a judgment, file a proof in a winding-up or dissolution of the Issuer, enforce any other rights or security or make a demand or claim payment from any person, before making a claim against the Sponsor under this Undertaking.

Section 3.03. Non-Competition. If any amounts have become payable or have been paid by the Sponsor under this Undertaking, the Sponsor shall not, in respect of such amounts, seek to enforce repayment, obtain the benefit of any security, be indemnified or receive collateral from the

Issuer or a contribution from any other person, or exercise any other rights or legal remedies of any kind which may accrue to the Sponsor against the Issuer in respect of such amounts, including (without limitation) in any proceeding of the type referred to in Section 3.04, and whether by way of subrogation, offset, counterclaim or otherwise, in respect of the amount so payable or so paid (or in respect of any other monies for the time being due to the Sponsor from the Issuer) if and for so long as any of the obligations under this Undertaking have not been irrevocably paid in full. The Sponsor shall hold in trust for, and forthwith pay or transfer to, IIFCL any payment or distribution or benefit of security received by it contrary to this Section 3.03, including, without limitation, where (notwithstanding Section 3.04) such payment, distribution or benefit was received by the Sponsor in any proceeding of the type referred to in Section 3.04.

Section 3.04. Bankruptcy or Liquidation of the Issuer. If the Issuer becomes bankrupt, insolvent, enters into a composition or makes any arrangement with its creditors, or is dissolved, liquidated or wound up, or anything equivalent or analogous to any of the foregoing occurs in respect of the Issuer, the Sponsor shall not claim, rank, prove or vote as a creditor of the Issuer or its estate in competition with IIFCL, in respect of any amounts owing to the Sponsor by the Issuer on any account whatsoever, but instead shall give IIFCL the benefit of any such proof and of all amounts to be received in respect of that proof until and to the extent that all of the obligations of the Sponsor under this Undertaking have been irrevocably and fully paid.

Section 3.05. Reinstatement. (a) Where any discharge (whether in respect of the obligations to IIFCL of the Sponsor, or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the basis of any payment, security or other disposition which is subsequently avoided or must be restored as a result of any applicable insolvency, liquidation, bankruptcy or equivalent proceedings or otherwise, then the liability of the Sponsor under this Undertaking shall continue or shall be reinstated (as the case may be) as if such discharge or arrangement had not occurred.

(b) Section 3.05(a) shall be unaffected by any concession or compromise by IIFCL (or any trustee, agent or other person acting on any such party's behalf) of any claim that any payment, security or other disposition is liable to avoidance or restoration.

Section 3.06. Additional Security. This Undertaking is in addition to, and is not in any way prejudiced by, any collateral or other security now or hereafter held by IIFCL for the obligations of the Sponsor hereunder, nor shall such collateral or other security held by IIFCL or the liability of any person for all or any part of the such obligations under this Undertaking be in any manner prejudiced or affected by this Undertaking.

ARTICLE IV

Representations and Warranties

Section 4.01. Representations and Warranties. The Sponsor represents and warrants that as of the date of this Undertaking:

(a) it is a company duly incorporated and validly existing under the laws of India, and has the corporate power to enter into and deliver, and to perform its obligations under, this Undertaking;

(b) this Undertaking has been duly authorized, executed and delivered by it and constitutes its valid and legally binding obligations enforceable in accordance with its terms;

(c) neither the execution and delivery by it of this Undertaking nor the performance by it of its obligations under this Undertaking conflicts or will conflict with or result in any breach of any of the terms, conditions or provisions of, or violate or constitute a default or require any consent under any indenture, mortgage, agreement or other instrument or arrangement to which it is a party or by which it is bound or violate any of the terms or provisions of its constitutional documents or any authorization, judgment, decree or order or any statute, rule or regulation applicable to the Sponsor;

(d) all authorizations required for the execution and delivery of this Undertaking by it and the performance by it of its obligations hereunder, have been duly obtained or granted and are in full force and effect;

(e) neither the Sponsor nor any of its property enjoys any right of immunity from set off, suit or execution with respect to its assets or its obligations under this Undertaking;

(f) the Issuer is a direct subsidiary of the Sponsor. The Sponsor and its nominee owns 100% (one hundred per cent) of the economic and voting interests in the share capital of the Issuer; and

(g) it has been provided with a copy of the Debenture Trust Deed, the IIFCL Guarantee Agreement, the Counter-Indemnity and each of the other Transaction Documents and acknowledges the obligations of the Issuer under such documents.

ARTICLE V

Covenants

Section 5.01. Affirmative Covenants. During the term of this Undertaking, the Sponsor shall:

(a) Corporate Existence; Conduct of Business. Do all things necessary to maintain its existence and keep in full force and effect its material rights, franchises, licenses, permits, copyrights, trademarks and patents, comply with its charter, conduct its operations with due diligence and efficiency and in accordance with sound industry, financial and business practices; and

(b) Compliance with Law. Comply in all material respects with all applicable laws, statutes, regulations and orders of, and all applicable restrictions imposed by, all authorities in respect of its operations and the ownership of its property.

Section 5.02. Negative Covenants. During the term of this Undertaking, the Sponsor shall not:

(a) Fundamental Changes. Change (i) its constitutional documents in any manner which would be inconsistent with the provisions of this Undertaking (or in any manner restrict or prohibit it from undertaking and implementing its obligations hereunder) or any Transaction Document; and

(b) Amendments, Waivers, Etc. of Material Agreements. Terminate, amend or grant any waiver with respect to any provision of any Transaction Document.

Section 5.03. Information Covenant. The Sponsor shall promptly inform IIFCL if it takes or has consented to take any action towards its reorganisation.

ARTICLE VI

Miscellaneous

Section 6.01. *Saving of Rights.* No course of dealing and no delay in exercising or omission to exercise by IIFCL, any right, power, remedy or discretion accruing to IIFCL under this Undertaking shall impair such right, power, remedy or discretion or be construed as a waiver thereof or of any other right, power, remedy or discretion on the part of IIFCL under this Undertaking. No single or partial exercise by IIFCL of any such right, power, remedy or discretion shall preclude its additional or future exercise. All waivers given under this Undertaking shall be in writing.

Section 6.02. *Notices.* Any notice, request or other communication to be given or made under this Undertaking shall be in writing. Any such notice, request or other communication must mandatorily be delivered by way of e-mail and may additionally be delivered by hand, airmail, facsimile (or established courier service) at the e-mail address or address or facsimile number specified below or at such other e-mail address or address or facsimile number as may be designated by notice from time to time and will be effective upon receipt.

For the Sponsor:

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

For IIFCL:

Address: India Infrastructure Finance Company Limited
8th Floor, Hindustan Times House,
18 & 20, Kasturba Gandhi Marg,
New Delhi 110001
Email: [•]
Fax No.: [•]
Attention: [•]

Section 6.03. *Enforcement.*

This Undertaking is governed by and shall be construed in accordance with the laws of India. The courts and tribunals having jurisdiction shall be as provided below:

- (i) The Sponsor agrees that the courts and tribunals in [•] shall have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Undertaking and that accordingly any suit, action or proceedings (together referred to as "**Proceedings**") arising out of or in connection with this Undertaking may be brought in such courts or tribunals and the Sponsor irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.
- (ii) The Sponsor irrevocably waives any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals at [•] and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts and tribunals at [•] shall be conclusive and binding upon it and may be enforced in the

courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.

- (iii) The Sponsor hereby consents generally in respect of any Proceedings arising out of or in connection with this Undertaking to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.
- (iv) To the extent that the Sponsor may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Sponsor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

Section 6.04. Successors and Assignees. This Undertaking binds and benefits the respective successors and assignees of the Sponsor and IIFCL, except that the Sponsor may not assign or otherwise transfer all or any part of its rights or obligations under this Undertaking without the prior written consent of IIFCL. The benefit of this Undertaking may be freely and unconditionally assigned, transferred or otherwise disposed of, in whole or in part, by IIFCL.

Section 6.05. Amendments, Waivers and Consents. Any amendment or waiver of, or any consent given under, any provision of this Undertaking shall be in writing and, in the case of an amendment, signed by the Sponsor and acknowledged by IIFCL.

Section 6.06. Partial Invalidity. If, at any time, any provision of this Undertaking is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Undertaking nor of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the Sponsor, acting through its duly authorised representative, has caused this Undertaking to be signed in its name as of the day and year first above written.

[•]

By _____

Name:

Title:

Acknowledged by:

INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED

By _____

Name:

Title: