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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**

[SPECIMEN AGREEMENT]

[SUBJECT TO CHANGE]

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## **Sponsor Support Agreement**

**between**

**[•]**

**and**

**IL&FS TRUST COMPANY LIMITED  
(as the Debenture Trustee)**

**Dated** \_\_\_\_\_

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## SPONSOR SUPPORT AGREEMENT

SPONSOR SUPPORT AGREEMENT (this "**Agreement**") dated \_\_\_\_\_ between:

1. [•], a company incorporated under the provisions of the Companies Act, 1956, bearing corporate identity number [•], and having its registered office at [•] (the "**Sponsor**"); and
2. [•], a company incorporated under the provisions of the Companies Act, 1956 and registered with the Securities Exchange Board of India as a debenture trustee under the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, having its registered office at [•] (the "**Debenture Trustee**").

### WHEREAS:

(A) [•] ("**Issuer**") is a subsidiary of the Sponsor. The Issuer operates a [•] MW wind farm project at [•] District, in the state of [•] (the "**Project**"). The Project achieved its commercial operation date on [•]. The Issuer proposes to issue secured, listed, partially guaranteed, redeemable, non-convertible debentures of a face value of Rs. [•] each, aggregating up to [•] ("**Debentures**") on a private placement basis in terms of the Offer Letter to specific investors (the "**Transaction**"). 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 Agreement. Pursuant to a security trustee agreement dated on or about the date of this Agreement, 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 Agreement 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) India Infrastructure Finance Company Limited ("**IIFCL**") has introduced a scheme titled '*Regular Credit Enhancement Scheme of IIFCL*' ("**Credit Enhancement Scheme**") wherein, IIFCL has agreed to provide a "first loss" partial credit guarantee to the holders of bonds issued by companies engaged in viable infrastructure projects. The Issuer has approached IIFCL under the Credit Enhancement Scheme to issue a partial credit guarantee ("**IIFCL Guarantee**") in accordance with the terms of the IIFCL Guarantee Agreement. In furtherance thereto, IIFCL has executed an irrevocable and unconditional guarantee dated on or about the date of this Agreement 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.

(D) one of the terms of the Transaction is that the Sponsor shall undertake the obligations set out herein; and

(E) the Sponsor and the Debenture Trustee (collectively, the "**Parties**") are accordingly entering into this Agreement.

NOW THEREFORE, the Parties hereto hereby agree as follows:

## ARTICLE I

### Definitions

Section 1.01. *Debenture Trust Deed Definitions.* Wherever used in this Agreement, unless otherwise defined herein, or unless the context shall otherwise require, terms defined in the Debenture Trust Deed and the Trust and Retention Account Agreement (as applicable) shall have the same meanings.

Section 1.02. *Other Definitions.* In addition, unless the context otherwise requires, the following terms shall have the following meanings:

"**Agreement**" means this Sponsor Support Agreement executed between the Sponsor and the Debenture Trustee.

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

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

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

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

"**Deficiency**" means [•]

"**Deficiency Notice**" means any notification given to the Sponsor by the Debenture Trustee, specifying that a Deficiency exists and the amount of such Deficiency.

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

(A) the aggregate of (a) profit after tax computed based on Project 'revenues realized' (excluding non-cash adjustments, if any) for that period as per audited financials of the Issuer; (b) depreciation for such period; (c) all Interest, IIFCL Guarantee Fee and any other financing costs payable for such period under the Debenture Documents and the Project Documents;

divided by:

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

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

"**Event of Default**" has the meaning assigned to it under the Debenture Trust Deed.

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

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

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

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

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

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

**"Management Control"** means with respect to the Issuer: (a) the power to direct the management or policies of the Issuer, whether through the ownership of Shares or other securities, by contract or otherwise and (b) the power (whether or not exercised) to elect a majority of the board of directors of the Issuer.

**"Parties"** has the meaning assigned to it under Recital E.

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

**"Shares"** means the shares in the issued and paid-up share capital of the Issuer.

**"Sponsor"** has the meaning assigned to it under the Preamble.

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

Section 1.03. *Interpretation.* The principles of interpretation and construction set forth in Clause 2.1 of the Debenture Trust Deed shall apply to, and are hereby incorporated by reference as if fully set forth in, this Agreement.

## ARTICLE II

### Sponsor Support

Section 2.01. *Notification of Deficiencies.* (a) If, at any time or from time to time prior to the Final Settlement Date, the Debenture Trustee determines that a Deficiency exists or is likely to exist, it shall give a Deficiency Notice to the Sponsor.

(b) The Sponsor shall provide to the Issuer and/or the Debenture Trustee (as applicable), in accordance with the provisions of this Article II, funds equal to the amount of the Deficiency specified in such Deficiency Notice.

Section 2.02. *Source of Funds.* (a) Each Deficiency specified in a Deficiency Notice shall be funded by the Sponsor by way of (i) subscription to Shares or (ii) subordinated loans provided to the Issuer ("**Deficiency Loans**") or (iii) a combination of both.

(c) Within seven (7) days after the date of issue of a Deficiency Notice, the Sponsor shall notify the Debenture Trustee whether it elects to provide the funds required to cover the relevant Deficiency by way of subscriptions to Shares, Deficiency Loans or a combination of both (and if both, the respective amounts of each).

Section 2.03. *Provision of Funds.* (a) The funds required to cover a Deficiency specified in a Deficiency Notice shall be provided by the Sponsor in accordance with this Agreement no later than fifteen (15) Business Days after the date of receipt of the relevant Deficiency Notice.

(b) Each Deficiency Loan shall be subordinated to the Secured Obligations in accordance with the provisions of Article III.

Section 2.04. *Government Approvals.* Failure to obtain any required governmental consent shall not release the Sponsor from, or otherwise constitute a defense to the performance by any of them of, their respective obligations under this Article II.

## ARTICLE III

### Subordination and Deferment Provisions

Section 3.01. *Subordination.* Notwithstanding any provision to the contrary contained in any of the agreements/documents relating to the Deficiency Loans, the Deficiency Loans shall be subordinated to the Secured Obligations.

Section 3.02. *Written Instrument(s).* Each Deficiency Loan shall be in the form of a long-term unsecured subordinated loan evidenced by a written instrument or instruments, in each case in form and substance reasonably satisfactory to the Debenture Trustee.

Section 3.03. *Maturity.* The maturity of each Deficiency Loan shall not occur prior to the Final Settlement Date. Provided that the principal amount of the Deficiency Loan can be re-paid by the Issuer at any time at the option of the Issuer, in accordance with the terms of the Trust and Retention Account Agreement and subject to the prior written approval of the Debenture Trustee (acting on behalf of the Majority Debenture Holders) and IIFCL.

Section 3.04. *Payments other than in Bankruptcy.* Subject to Section 3.03 and unless otherwise permitted under the provisions of the Trust and Retention Account Agreement, no payment of the principal of, or interest on, any Deficiency Loans shall be made at any time unless all Secured Obligations shall have been paid in full, unless otherwise permitted under the provisions of the Trust and Retention Account Agreement.

Section 3.05. *No Acceleration.* The Sponsor may not accelerate the repayment of any Deficiency Loan without the prior written consent of the Debenture Trustee. Any Deficiency Loan, the repayment of which has been accelerated as permitted by this Section 3.05, shall nonetheless remain subject to the other provisions of this Article III.



Section 3.06. No Commencement of Any Proceeding. Until payment in full of the Secured Obligations, the Sponsor shall not, without the prior written consent of the Debenture Trustee claim, demand, require, commence any action or proceeding of any kind against the Issuer in order to obtain or with a view to obtaining any payment or reduction of or in respect of any Deficiency Loan.

Section 3.07. No Set-Off. The Sponsor shall not set-off, counterclaim or otherwise reduce any payment obligation of the Sponsor to the Issuer against any payment which is required to be deferred under the provisions of Article III until all the Secured Obligations have been repaid.

Section 3.08. Subordination in Bankruptcy. Upon any distribution of assets in connection with any dissolution, winding up, liquidation or reorganization of the Issuer (whether in bankruptcy, insolvency or receivership proceedings or otherwise) or upon an assignment for the benefit of creditors of the Issuer, all Secured Obligations shall be paid in full before any amount on account of any Deficiency Loan is paid.

Section 3.09. Rights of Subrogation. The Sponsor shall not, in respect of any payment or distribution made on account of any Deficiency Loan, seek to enforce repayment, obtain the benefit of any Security or exercise any other rights or legal remedies of any kind which may accrue to the Sponsor against the Issuer, whether by way of subrogation, offset, counterclaim or otherwise, whether or not such rights or legal remedy arise in equity or under contract, statute or common law, in respect of such payment or distribution until payment in full of the Secured Obligations.

Section 3.10. No Assignment. The Sponsor shall not, without the prior written consent of the Debenture Trustee, assign, transfer, encumber or otherwise dispose of all or part of its interest in any Deficiency Loan to any Person.

Section 3.11. No Amendment to Deficiency Loans. The Sponsor shall not and shall ensure that the Issuer shall not, without the prior written consent of Debenture Trustee, terminate, amend or grant any waiver in respect of any document or instrument evidencing any Deficiency Loan.

Section 3.12. Amounts Held in Trust. If, for any reason whatsoever, the Sponsor receives any payment or distribution contrary to the provisions of this Article III, then the Sponsor shall hold the same in trust for the Debenture Trustee and, promptly notify the Debenture Trustee of the receipt of such payment or distribution

## ARTICLE IV

### Waiver of Defenses

Section 4.01. Waiver of Defenses. The obligations of the Sponsor under this Agreement shall not be affected by any act, circumstance, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Agreement or prejudice or diminish those obligations in whole or in part, including (whether or not known to the Sponsor or Debenture Trustee):

(a) any time, indulgence or waiver granted to, or composition with, the Issuer, the Sponsor or any other Person;

(b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or security over assets of, the Issuer, the Sponsor or any other Person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realize the full value of any security;

(c) any legal limitation, disability, incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of the Issuer, the Sponsor or any other Person;

(d) any variation (however fundamental and whether or not involving an increase in liability of the Issuer, the Sponsor or other person) or replacement of a Transaction Document or any other document or security so that references to that Transaction Document in this Agreement shall include each variation or replacement;

(e) any unenforceability, illegality, invalidity or frustration of any obligation of any person under any Transaction Document or any other document or security or any failure of the Issuer or the Sponsor to become bound by the terms of any Transaction Document; or

(f) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Issuer or the Sponsor under a Transaction Document resulting from any insolvency, liquidation or dissolution proceeding or from any law, regulation or order;

so that each such obligation shall, for purposes of the Sponsor's obligations under this Agreement, remain in full force and be construed as if there were no such act, circumstance, variation, omission, matter or thing.

## ARTICLE V

### Representations, Warranties and Covenants

Section 5.01. *Representations and Warranties.* The Sponsor hereby represents and warrants that:

(a) it is a legal entity duly organized and validly existing under the laws of its place of incorporation and has the corporate power to enter into, deliver and perform its obligations under this Agreement;

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

(c) the execution, delivery and performance of this Agreement will not contravene (i) any law, regulation, order, decree or authorization applicable to it, (ii) any provision of its constitutional documents, or (iii) any contractual restriction binding on or affecting it or any of its assets;

(d) all authorizations required for the execution and delivery of this Agreement and the performance of its obligations hereunder have been obtained and are in full force and effect;

(e) it has been provided with, and acknowledges receipt of, a copy of the Debenture Trust Deed, the Trust and Retention Account Agreement and each of the other Transaction Documents and acknowledges the obligations of the Issuer under such documents; and

(f) none of the representations and warranties made by it in this Section 5.01 omits any matter the omission of which makes any such representations and warranties misleading.

Section 5.02. *Information Covenant.* The Sponsor shall promptly inform the Debenture Trustee if it takes or has consented to take any action towards its reorganisation.

Section 5.03. *Management Control*. The Sponsor shall retain Management Control over the Issuer at all times until the final Redemption Date. This covenant shall survive the termination/ expiry of this Agreement.

## ARTICLE VI

### Miscellaneous

Section 6.01. *Severability*. In case any obligation of any Party contained in this Agreement should be held to be invalid, void, null, illegal or unenforceable in any respect or to any extent in any jurisdiction, the validity, effectiveness, legality or enforceability of the remaining obligations contained herein shall not be in any way affected, impaired or restricted thereby in that jurisdiction nor shall the validity, effectiveness, legality or enforceability of the obligation concerned or of any other obligation contained herein be thereby affected in any other jurisdiction.

Section 6.02. *Remedies and Waivers*. No course of dealing and no delay in exercising or omission to exercise by Debenture Trustee, any right, power, remedy or discretion accruing to the Debenture Trustee under this Agreement 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 the Debenture Trustee under this Agreement. No single or partial exercise by the Debenture Trustee of any such right, power, remedy or discretion shall preclude its additional or future exercise. All waivers given under this Agreement shall be in writing.

Section 6.03. *Amendment*. Any amendment of any provision of this Agreement shall be in writing and signed by the Parties.

Section 6.04. *Notices*. Any notice, request or other communication to be given or made under this Agreement 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) to the Party to which it is given at such Party's e-mail address or address or facsimile number specified below or at such other e-mail address or address or facsimile number as such Party shall have designated by notice to the Party giving such notice and will be effective upon receipt.

For the Sponsor:

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

For the Debenture Trustee:

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

Section 6.05. Benefit of Agreement. This Agreement shall bind and inure to the benefit of the successors and assignees of the Parties. However, the Sponsor shall not assign or delegate any of its rights or obligations hereunder without the prior written consent of the Debenture Trustee.

Section 6.06. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 6.07. Applicable Law and Jurisdiction. This Agreement 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 Parties agree 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 Agreement and that accordingly any suit, action or proceedings (together referred to as "**Proceedings**") arising out of or in connection with this Agreement 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 Agreement 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.

IN WITNESS WHEREOF, the Parties acting through their duly authorised representatives, have caused this Agreement to be signed in their respective names as of the day and year first above written.

[•]

By \_\_\_\_\_

Name:

Title:

IL&FS TRUST COMPANY LIMITED

By \_\_\_\_\_

Name:

Title: