

AGREEMENT
BETWEEN
THE NEW DEVELOPMENT BANK
AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA
ON THE HOSTING OF
THE NEW DEVELOPMENT BANK
INDIAN REGIONAL OFFICE
IN THE REPUBLIC OF INDIA

PREAMBLE

The New Development Bank and the Government of the Republic of India (hereinafter referred to as the "**Parties**" and in the singular as a "**Party**"),

TAKING INTO ACCOUNT the Agreement on the New Development Bank and its Annex on the Articles of Agreement of the New Development Bank amongst the Governments of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa, signed in Fortaleza, on 15 July 2014;

SEEKING to further strengthen and develop relations and co-operation between the Republic of India and the New Development Bank;

RECALLING Article 4 of the Articles of Agreement of the New Development Bank contained in the Annex to the Agreement on the New Development Bank, which stipulates that the New Development Bank may establish offices necessary for the performance of its functions;

DESIROUS THEREFORE to conclude an agreement regarding the hosting of the New Development Bank regional office in the Republic of India;

HAVE AGREED as follows:

Article 1 Definitions

For the purpose of this Agreement, including all annexures, appendices and all amendments made from time to time, the following terms shall have, unless the context otherwise requires, the meanings ascribed to them as below:

- (a) "**Agreement on the New Development Bank**" means the Agreement on the New Development Bank including its Annex amongst the Governments of Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa, signed on 15 July 2014 at the city of Fortaleza, Brazil and any amendment thereto;
- (b) "**Archives of the Bank**" means the records, correspondence, documents, manuscripts, still and moving pictures, films, sound recordings, electronic records including e-mails, computer programs, written materials, video tapes or discs, discs or tapes containing data, and any information contained therein stored in electronic form or in any other form whatsoever, belonging to, or held by the Bank;
- (c) "**Articles of Agreement**" means Articles of Agreement of the New Development Bank, which forms Annex to the Agreement on the New Development Bank;

- (d) "**Bank**" or "**NDB**" means New Development Bank, including the Indian Regional Office, unless specifically referred to separately;
- (e) "**Director General**" means the principal executive officer of the Indian Regional Office appointed by the Bank, and, during his or her absence or incapacity, the person authorized to perform the duties on behalf of the Director General;
- (f) "**Experts**" means persons, who not being Staff of the Bank, but including consultants who may have been contracted by the Bank in accordance with provisions of policies of the Bank and other relevant internal regulations in force for the purpose of providing expertise and performing certain tasks for and on behalf of the Bank and who are categorised as "Experts" or "Consultants" by the Bank;
- (g) "**Government**" means the Government of the Republic of India;
- (h) "**Indian Regional Office**" means the regional office, and any sub-regional office(s) of the New Development Bank in the Republic of India;
- (i) "**Local Staff**" means persons, who not being Staff of the Bank, are hired in the Republic of India by the Bank to perform administrative and support activities for the Indian Regional Office in accordance with the provisions of policies of the Bank and other relevant internal regulations in force and who are categorised as "Local Staff" by the Bank;
- (j) "**Meetings of the Bank**" means meetings of the Bank, including any international conference, retreats, workshops or other meeting convened by the Bank;
- (k) "**Member**" means a member of the Bank as defined in the Agreement on the New Development Bank;
- (l) "**Members of the Board of Directors**" means authorized representatives of the Members in the Board of Directors and their alternates appointed in accordance with Article 12 of the Articles of Agreement;
- (m) "**Members of the Board of Governors**" means authorized representatives of the Members on the Board of Governors and their alternates appointed in accordance with paragraph (a) of Article 11 of the Articles of Agreement;
- (n) "**Members of the families**" means spouses and dependent children of the Staff as considered under the laws of the Republic of India;
- (o) "**Premises**" means the land, buildings, parts of buildings and includes access facilities used for the official purposes of Indian Regional Office, and includes any office;
- (p) "**President**" means the President of the Bank, and during his or her absence or incapacity, the person authorised to act as President of the Bank;

- (q) **“Property and assets of the Bank”** means all assets of the Bank wheresoever located and by whomsoever held, and includes funds, income and rights belonging to, or held or administrated by on behalf of, the Bank;
- (r) **“Staff of the Bank”** or **“Staff”** means all persons employed by the Bank, to work at Indian Regional Office, in accordance with provisions of policies of the Bank and other relevant internal regulations in force, but excluding the Local Staff, Experts and those assigned to work on an hourly basis; and
- (s) **“Vice President”** means any of the Vice Presidents of the Bank, and during his or her absence or incapacity, the person authorised to act as a Vice President of the Bank.

Article 2
Seat of the Indian Regional Office

- (1) The seat of the regional office of Indian Regional Office shall be in GIFT City, Gandhinagar, Gujarat, Republic of India.
- (2) The Bank may also establish the sub-regional office(s) of the Indian Regional Office, upon consent by the Government, in other cities within the Republic of India in the future based on the business needs of the Bank.

Article 3
Functions and Activities of the Indian Regional Office

The Indian Regional Office shall undertake such functions and activities pursuant to provisions of the Agreement on the New Development Bank and, in conformity with the said Agreement and this Agreement, and other activities as determined by the Bank from time to time.

Article 4
Legal Personality

- (1) The Government recognizes the international legal personality and capacity of the Bank for the purposes of exercising its functions in the Republic of India including to contract, acquire and dispose of movable and immovable property and institute legal proceedings.
- (2) The Indian Regional Office shall have the independence and freedom of action similar to those available to other international organizations operating in the Republic of India.

Article 5
Premises and Facilities

- (1) The Government shall, provide or arrange for suitable office accommodation to serve as the seat of the Indian Regional Office as well as such other facilities as required for the operations of the Indian Regional Office for two years. The terms of such support, shall

be mutually agreed between the relevant authorities of the Republic of India and the Bank. The Government shall be responsible, at its own cost, for maintenance and repairs of a non-recurring nature of the Indian Regional Office, as well as for the Indian Regional Office's accommodation, furniture, equipment and other facilities required for the operation of the Indian Regional Office. The terms of such support, shall be mutually agreed between the relevant authorities of the Republic of India and the Bank.

- (2) The office accommodation, its furniture and equipment and the other facilities referred to in paragraph (1) above shall be determined by the Government, in consultation with the Bank.
- (3) The Bank shall be responsible for the day-to-day maintenance of the Premises, furniture and equipment other than on account of normal wear and tear, and making arrangements for any other services as may be required by it.
- (4) As the operations of the Indian Regional Office evolve, the Bank and the Government will consider building and furnishing a suitable office building to serve as the permanent seat of the Indian Regional Office. The Government shall provide a suitable plot of land, subject to availability, as assessed by the Government, and facilitate the construction, including by aiding in procurement of necessary clearances, licenses and permits, of the building to be undertaken by the Bank, it being understood that the Government will not be required to cover the expenses related to construction.

Article 6 **Immunities of Property, Funds and Assets of the Bank**

- (1) The Bank and Property and assets of the Bank wherever situated in the territory of the Republic of India and by whomsoever held, shall enjoy the status, immunities and privileges as provided for by Chapter VI of the Articles of Agreement, except:
 - (a) to the extent that the Bank shall have expressly waived such immunity in any particular case in accordance with the provisions of Article 36 of the Articles of Agreement;
 - (b) in respect of a civil action in the Republic of India, arising out of or in connection with its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities;
 - (c) in respect of a civil action brought by a third party for damages arising from an accident caused by a vehicle belonging to the Bank or operated on its behalf;
 - (d) in respect of the enforcement of an arbitration award made against the Bank, as a result of an express submission to arbitration by or on behalf of the Bank; or
 - (e) in respect of any counter-claim directly connected with court proceedings initiated by the Bank.

- (2) The Property and assets of the Bank shall be immune from all forms of seizure, attachment or execution before the delivery of a final judgment against the Bank.
- (3) The Property and assets of the Bank, wherever situated in the Republic of India and by whomsoever held, shall be immune from seizure, search, requisition, foreclosure, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action. To the extent necessary for the operation of the Indian Regional Office in the Republic of India and subject to the provisions of this Agreement, all Property and assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.
- (4) No action shall be brought against the Bank by the Government, or by any of Government's agencies or instrumentalities or by any entity or person directly or indirectly acting for or deriving claims from the Government or from any of Government's agencies or instrumentalities.

Article 7

The inviolability of the Premises and Archives and immunity of Property and Assets

- (1) The Premises shall be inviolable and under the exclusive control and authority of the Bank.
- (2) The Archives of the Bank shall be inviolable, wherever located and by whomsoever held within the Republic of India.
- (3) The authorities and representatives of the government bodies of the Republic of India shall not enter the Premises for any reason, including for the performance of any official duties therein or execution of any legal process or of any ancillary act such as seizure of private property. All entries shall be subject to consent of the Director General and on terms agreed with the Bank.
- (4) The Director General and the Government shall agree on the circumstances under and the manner in which the authorities of the Republic of India may enter the Premises. In the event of natural disaster, fire or any other emergency, constituting an immediate threat to human life, the consent of the Bank to enter the Premises is presumed. The entry into the Premises under these conditions shall be immediately communicated to the Director General by the appropriate authorities.
- (5) The Bank shall have the power to establish rules and regulations operative within the Premises for the full and independent exercise of its operations, administration and performance of its activities and functions. Except as otherwise provided in this Agreement or in the Agreement on the New Development Bank, the laws of Republic of India shall be applicable. The Bank, Staff, Local Staff and Experts shall respect the laws of the Republic of India.

- (6) Without prejudice to the terms of this Agreement, the Bank shall prevent the Premises from becoming a refuge for fugitives from justice, or for persons subject to extradition, or for persons avoiding service of legal process or judicial proceedings under the laws of Republic of India.

Article 8
Protection of the Premises

The Government shall exercise due diligence to ensure the safety and tranquillity of the Premises. The Government shall accord to it the same protection and provide security to it on the same basis as is provided to other international organizations.

Article 9
Public utility services

- (1) The Government shall ensure that the Indian Regional Office receives all the public services necessary for its activities/operation, including but not limited to water, electricity, gas, telephone, fax, internet and other facilities, on terms and conditions not less favourable than those provided to other comparable international organizations, and in case of any interruption or threatened interruption of any of such services the Government shall give, as far as within its powers, the same priority to the needs of the Bank as to other comparable international organizations and shall take appropriate measures to ensure that the operations of the Indian Regional Office are not prejudiced.
- (2) The Staff of the Indian Regional Office shall allow duly authorized representatives of public utilities to inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the Premises in accordance with the procedures established in consultation with the Bank.

Article 10
Facilities in respect of communications

- (1) The Bank shall enjoy in the Republic of India, in respect of its official communications and the transfer of documents, treatment no less favourable than that accorded by the Government to other international organisations, in the matter of priorities, rates and taxes on mail, cablegrams, telephotos, telephone, telegraph, telex, telefax, Internet and other modes of communication.
- (2) The official communications and correspondence to, from and between the Bank and/or Indian Regional Office, in whatever form transmitted, shall be inviolable and shall not be subject to any censorship or any form of interference. For the purposes of this Article, communications shall include, but not limited to, publications, documents, still and moving pictures, films and sound recordings, and electronic and other modes of communication.

- (3) The Indian Regional Office shall have the right to use codes and encrypted messages and to dispatch and receive correspondence or other material by courier or in sealed bags, which will have the same privileges and immunities as diplomatic couriers and bags.
- (4) Subject to applicable laws, the Indian Regional Office may establish and use in the Republic of India means of long-distance communication between two points and other means of receiving and transmitting messages that may be necessary to facilitate the provision of communications to the Indian Regional Office, both within and outside of the Republic of India.

Article 11
Exemption from taxation, Custom duties, prohibitions
or restrictions on imports and exports

- (1) With respect to all official activities, operations and transactions, the Bank, its assets, income, transfers and property in the Republic of India shall be:
 - (a) (i) exempt from all forms of direct taxes, and (ii) refunded of all indirect taxes in accordance with the laws of Republic of India. It is understood, however, that the Bank will not claim exemption for taxes, which are, in fact, no more than charges for public utility services paid by other international organizations in the Republic of India; and
 - (b) exempt from all custom duties, prohibitions and restrictions on goods and articles, including motor vehicles and spare parts, publications, films, still and moving pictures, imported or exported for its official purpose. It is understood, however, that goods and articles imported under such exemption shall be only sold in accordance with the terms agreed with the Government.
- (2) The Indian Regional Office is also exempted from any obligations to pay, withhold or collect any taxes, fees, duties, contributions, social security payments and other mandatory payments for which and to the extent it is exempt under this Agreement and in accordance with the laws of Republic of India.
- (3) From the time the Bank establishes its social security program, the Staff shall be exempt from the provisions of any social security scheme established by the Republic of India, with respect to the services rendered by the Bank. In case of individuals who are nationals or permanent residents of the Republic of India and who voluntarily participate in such a scheme, the Bank shall be exempt from any obligation for the payment, withholding or collection of any social security or benefits to the Republic of India.
- (4) While the Bank will not claim exemption from indirect taxes and from taxes on the sale of movable and immovable property which form part of the price to be paid, when the Indian Regional Office makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will make, in accordance with the laws of Republic of India, appropriate administrative arrangements

for the remission or return of the amount of duty or tax. Documentation signed by or on behalf of the President or the Director General shall be conclusive evidence as to the necessity of any such imports or exports for the official activities of the Indian Regional Office.

Article 12 Financial Transactions

The Bank may hold or use funds or negotiable instruments of any kind. The Government recognises the right of the Bank to maintain and operate accounts in any currency and convert any currency held by it to any other currency. The Bank may freely transfer its funds into the Republic of India and, through a non-resident bank account, may also at any time freely transfer all or part of the balance thereof out the Republic of India, which for that purpose may be switched into any foreign currency.

Article 13 Flag and emblem

The Indian Regional Office has the right to use and display the Bank's flag, emblem and trademarks in the Premises, on the buildings where the Premises are located, at the Meetings of the Bank and on motor vehicles belonging to, or in use by the Bank for the President and the Director General.

Article 14 Meetings

The Bank has the right to convene meetings at its Premises, as well as in other places within the territory of the Republic of India, in accordance with the laws and regulations of the Republic of India. The Government guarantees that there will be no obstacles to full freedom of discussion and decision-making at the Meetings of the Bank.

Article 15 Privileges and immunities of Members of the Board of Governors, Members of the Board of Directors and representatives of Member Countries of the NDB

The Members of the Board of Governors, Members of the Board of Directors and representatives of member countries shall have the following status, exemptions, immunities and privileges when travelling to the Republic of India on official missions:

- (a) immunity from legal process in respect of acts committed by them in the performance of official capacity, except when the Bank waives this immunity;
- (b) when not Indian nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by the Republic of India to the representatives and officials of comparable rank of other international organizations; and

- (c) the same privileges in respect of travelling facilities as are accorded by the Republic of India to representatives, officials and employees of comparable rank of other international organizations.

Article 16

Immunities and privileges of the Director General and Staff

- (1) The Government shall accord to Director General and members of his or her family, the same (i) privileges and immunities as accorded to heads of diplomatic missions; and (ii) exemptions and facilities, including those related to tax exemption, as accorded to heads of UN organisations and other notified international organisations in India.
- (2) The Government shall accord to the Staff, as applicable, the following immunities, status, exemptions and privileges:
- (a) immunity from jurisdiction and all forms of legal process in respect of words spoken or written and acts performed by them in their official capacity, which shall continue after the termination of service;
 - (b) immunity from personal arrest or detention for all acts performed by them in their official capacity, which shall continue after their termination of service;
 - (c) exemption from taxation in respect of salaries and emoluments paid by the Bank;
 - (d) immunity from national service obligations in force in the Republic of India;
 - (e) immunity, together with members of their family, from immigration restrictions and alien registration and from formalities for the purposes of immigration control;
 - (f) the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of UN organisations and other notified international organisations in India;
 - (g) the same treatment in respect of travelling facilities as it is generally accorded to officials of comparable rank of UN organisations and other notified international organisations in India;
 - (h) the same protection and repatriation facilities with respect to themselves, and Members of the families, as are accorded in time of international crisis to persons of comparable rank of UN organisations and other notified international organisations in India;
 - (i) freedom of movement, within or from the Republic of India to the extent necessary for carrying out their activities and functions for and on behalf of the

Bank and for the purpose of their official communications, to use codes and receive papers and correspondence by courier or in sealed bags;

- (j) refund of indirect taxes on purchase of goods and services procured or chargeable in the Republic of India in accordance with the laws of the Republic of India and appropriate administrative arrangements;
 - (k) the same immunities and facilities, including immunity from inspection and seizure of their baggage, as are accorded to officials in UN organisations and other notified international organisations in India; and
 - (l) the right to (i) import free of duty their furniture and effects at the time of first taking up their post in the Republic of India and, (ii) export upon termination of their services with the Bank. Articles imported under such exemptions will not be sold in the Republic of India except under conditions agreed upon with the Government and in any case not being less favourable than those extended to officials of comparable ranks of other international organizations in the Republic of India.
- (3) Nationals and permanent residents of the Republic of India who are appointed as the Director General or employed as Staff shall be entitled to the immunities set out in paragraph (2) (a), (b), (c), (i) and (k) of this Article.
- (4) The Bank shall communicate to the Government the names of the Staff and members of their family to whom the provisions of the present Article shall apply.
- (5) The Government shall authorize and facilitate the registration of vehicles utilized by the Director General and the Staff as vehicles of similar status of comparable international organizations accredited in the Republic of India, and issue them with license plates.
- (6) The Government shall provide the Director General, Staff and Members of the families with a special identity card which shall serve to identify the holder to the authorities of the Republic of India and to certify that the holder enjoys the privileges and immunities specified in this Agreement. Upon termination of employment or reassignment from the Republic of India, the special identity card shall be returned promptly to the Government for cancellation.
- (7) The terms and conditions of the Staff and all matters relating to employment relations between the Staff and the Bank, shall be governed exclusively by the Bank's own policies, rules and procedures adopted by or under the authority of the Bank's Board of Directors, and shall not be subject to the labour laws of the Republic of India.

Article 17
Immunities and Privileges of Experts

- (1) Experts performing functions of the Bank, who are not nationals or permanent residents of the Republic of India, shall be accorded the following immunities and privileges as are necessary for the independent exercise of their functions during the period of their mission or contract, including time spent on journeys in connection with their functions:
 - (a) immunity from jurisdiction and legal process, including detention and arrest, even after the termination of their mission or service, in respect of acts performed by them in their official capacity, including words written or spoken by them;
 - (b) immunity from the seizure of their baggage;
 - (c) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - (d) the same protection and repatriation facilities with respect to themselves, and members of their families, as are accorded in time of international crisis to persons of comparable rank of UN organisations and other notified international organisations in India; and
 - (e) for the purpose of communication with the Bank, the right to use codes and to receive papers or correspondence by courier or in sealed bags.
- (2) Experts, who are nationals or permanent residents of the Republic of India shall only be accorded the immunities referred to in paragraph 1 (a) of this Article.
- (3) The terms and conditions of the Experts and all matters relating to employment relations between the Experts and the Bank, shall be governed exclusively by the Bank's own policies, rules and procedures adopted by or under the authority of the Bank's Board of Directors, and shall not be subject to the labour laws of the Republic of India.

Article 18
Local Staff

- (1) Members of the Local Staff of the Indian Regional Office shall be hired under the Indian labour legislation and shall not be exempted from tax or social security payments on the salaries paid to them by the Bank, as well as from any other legal obligation arising from their employment.
- (2) The Bank shall not be exempted from collecting the applicable taxes, as well as social security or any other payments in accordance with Indian legislation, in respect of the salaries paid to the Local Staff. Such obligation may be fulfilled through a service provider retained by the Bank for this purpose.

Article 19
Waiver of privileges and immunities

- (1) Privileges and immunities are conferred under this Agreement in the interest of the Bank and not for the personal benefit of the individuals themselves.
- (2) The Bank may waive to such extent, and upon such conditions as it may determine, any of the privileges, immunities and exemptions conferred under this Agreement in cases where such action would, in its opinion, be appropriate and in the best interests of the Bank. The President shall have the right and duty to waive any privilege, immunity or exemption in respect of any Staff of the Bank or any Expert performing services for the Bank, other than the President or a Vice-President, where, in her or his opinion, the privilege, immunity or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive any privilege, immunity or exemption in respect of the President and a Vice-President.
- (3) The Bank shall co-operate at all times with the Government to facilitate the proper administration of justice, secure the observance of the laws of the Republic of India and prevent the occurrence of any abuse in connection with the immunities and privileges granted in this Agreement.

Article 20
Settlement of Disputes

Any dispute between the Bank and the Government arising out of or in relation to this Agreement shall be settled amicably by negotiations or other modes of settlement as may be mutually agreed.

Article 21
Interpretation

This Agreement shall be interpreted in accordance with the rules of interpretation provided for in the 1969 Vienna Convention on the Law of Treaties. This Agreement shall not modify or derogate from the provisions of the Agreement on the New Development Bank.

Article 22
Entry into force, amendment and termination

- (1) This Agreement shall enter into force on the date of receipt by the Bank of a written intimation from the Government informing the fulfilment of its internal/domestic legal procedures required for the entry into force of this Agreement.

- (2) This Agreement may be amended by mutual consent of the Parties. Amendments shall take form of a written agreement which shall enter into force in the same manner as this Agreement.
- (3) The Parties may enter into such necessary additional/supplementary agreements as may be necessary within the scope of this Agreement.
- (4) The Agreement may be terminated by either Party. Termination shall take effect 1 (one) year after the receipt, through diplomatic channels, of a note indicating such intent, or after any other extended period as may be agreed to by the Parties. However, in the event of termination of this Agreement, all relevant provisions shall continue to be applicable for a reasonable period, as agreed to by the Parties, required for settlement of the affairs of the Bank and disposal of the Property and assets of the Bank in the Republic of India.
- (5) In case of conflict between this Agreement and the Agreement on the New Development Bank, the Agreement on the New Development Bank shall prevail.

IN WITNESS THEREOF the undersigned, being duly authorised thereto, have on behalf of the Parties signed and sealed this Agreement in duplicate in English language.

DONE on this 11th day of December 2020.



**FOR THE NEW
DEVELOPMENT BANK**

Name: MR. MARCOS TROYJO

Designation: PRESIDENT, NDB



**FOR THE GOVERNMENT OF
REPUBLIC OF INDIA**

Name: TARUN BAJAJ

Designation: SECRETARY, ECONOMIC
AFFAIRS, GOVT OF INDIA