

POWER PURCHASE AGREEMENT
Between
Jubilant Infrastructure Limited,
And
<<NAME OF THE SELECTED BIDDER>>

This Power Purchase Agreement (hereinafter referred to as Agreement or PPA) is entered on the Day of ____ 2023 between

JUBILANT INFRASTRUCTURE LIMITED a company incorporated under the Companies Act, 1956, bearing CIN no. U45201UP2006PLC031618C031618 having its registered office at Plot No. 1-A, Sector 16-A, Noida – 201301, Uttar Pradesh (hereinafter referred to as the “**Procurer**”), which expression, unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns;

AND

<<Name of the Selected Bidder>> is a
<<public/private/limited>> company incorporated under the Companies Act, 1956 bearing CIN _____ and having its registered office at <<Insert registered office address>> (hereinafter referred to as “**Seller**”) which expression, unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns.

The Procurer and the Seller are hereinafter collectively referred to as the “**Parties**” and individually as the “**Party**”.

WHEREAS

- A. Procurer is a Deemed Distribution Licensee of its SEZ spread over an area of 125.72.07 Ha in Vilayat and Vorasamni village in Taluka Vagra, District Bharuch in the State of Gujarat. Hon’ble GERC vide its order dated 11.October.2012, issued the Specific Conditions of Distribution License applicable for JIL’s said SEZ.
- B. In accordance with revised guidelines for short term procurement of power notified by the Ministry of Power vide resolution dated 30.March.2016 for short term procurement of power by distribution licensee through e-bidding portal (“**DEEP**”), the procurer had

initiated a competitive bidding process through issue of RFP dated <<Date to be inserted>> for procurement of power for short term for meeting its power requirements for the period from

- C. Pursuant to the said bidding process, <<Name of the Selected Bidder>> has emerged as L1 and accordingly selected by the Procurer, as the Seller for supply of Electricity to the Procurer, for the aggregate Contracted Capacity (as described hereunder) in accordance with the terms of this Agreement:

Requisition	Period	Time Slot	Quantum (in MW)	Minimum Bid Quantity (in MW)
1 –	00:00 – 23:59 Hrs.	4.0	4.0

- D. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of Contracted Capacity (defined below) at the Delivery Point (defined below) by the Seller to the Procurer.
- E. The RFP terms and conditions as per JIL tender document Tender no: JIL/MEE/US/SEZ-POWER SUPPLY/2023/E293 (herein after referred to, as “RFP”) and the bid submitted by the seller are an integral part of this PPA.

NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH PROCURER AND THE SELLER HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and any rules amendments, regulations, notifications, guidelines or policies issued there under from time to time;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the CERC, or the SERC or the Joint Commission referred to in Section 76, 82 and 83 of the Electricity Act 2003 respectively, as the case may be;
"Base Rate" of Late Payment Surcharge	shall mean the marginal cost of funds based lending rate for 1 year of the State Bank of India, as applicable on the 1st of April of the FY in which the period lies, plus five percent, and in the absence of marginal cost of funds based lending rate, any other arrangement that substitute its, which the Central Govt. may, by notification, in the official gazette
"Bid"	shall mean Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Bill i.e. a) energy bill or a supplementary bill or a compensatory bill issued by the other Party, as per Article 5.4;
"Business Day"	shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub - section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

“Contract Performance Guarantee”	shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller to the Procurer in the form attached hereto as Annexure 1, in accordance with the terms of PPA and RFP;
“Contracted Capacity”	shall mean the net capacity of power (in MW) contracted between the Seller and the Procurer(s) at the Delivery Point;
“Contract Period”	shall mean the period commencing from
“Central Transmission Utility” or “CTU”	shall mean the Board or the Government company notified as “Central Transmission Utility” or “CTU” means any Government company which the Central Government may notify under sub-section (1) of section 38 of The Electricity Act 2003
“Delivery Date”	shall mean the date on which the Seller commences supply of the Contract Capacity to the Procurer;
"Delivery Point"	The Delivery Point for the power shall be the State Transmission Periphery of Gujarat (Gujarat- STU);
“Dispute”	shall mean any dispute or difference of any kind between the Procurer and the Seller in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 7.2 of this Agreement;
"Due Date"	shall have the meaning ascribed thereto in Article 5.3.2
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Earnest Money Deposit”	Shall have the meaning ascribed in RFP;
“Force Majeure” or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 6.1 of this Agreement;
“Forced Outage”	Refers to an outage of a generating unit or transmission facility due to a fault or reasons not planned which is accepted by SLDC/RLDC/CTU/STU;
GERC	shall mean Gujarat Electricity Regulatory Commission
"Grid Code" / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Indian Governmental Instrumentality”	shall mean the Government of India, Governments of state(s) of Gujarat and [Insert name of state where Seller and Power Station is located] in India, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer;

Injection Point:	shall mean the interconnection point of the Seller with the STU/CTU
"Invoice" or "Bill"	shall mean weekly energy bill or Open Access charges bill or supplementary bill or compensatory bill raised by any Party;
"Minimum Quantum"	shall have the meaning ascribed thereto in Article 5.1 of this Agreement;
"Open Access"	shall mean the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation;
"Procurer/JIL"	shall mean Jubilant Infrastructure Limited or JIL SEZ;
"Seller"	shall mean the Successful Bidder who submitted the Contract Performance Guarantee and executes the PPA and other documents with the Procurer and who shall be responsible for supplying power to the Procurer at the Delivery Point for the term of PPA as per the terms and conditions specified therein;
"SERC"	shall mean the relevant State Electricity Regulatory Commission, constituted under sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83, or their successors;
"SLDC"	shall mean the Centre established under Sub-section (1) of Section 31 of the Electricity Act 2003;
SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer;
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified as "State Transmission Utility" or "STU" by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Successful Bidder"	shall mean the bidder selected by the Procurer pursuant to the RFP for supply of power as per the terms of PPA and RFP;
"Tariff"	shall mean the tariff as computed in accordance with Article 5.2 of this Agreement.

1.2 Interpretation

In this Agreement, except to the extent that the context otherwise requires:

- (a) Headings are for convenience only and shall not affect interpretation.
- (b) The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to any person or persons or circumstances except as the context otherwise permits.

- (c) The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Clause of this Agreement.
- (d) The annexures to this Agreement form an integral part of this Agreement.
- (e) The recitals and annexures shall form a part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.
- (f) Any reference to this Agreement shall include any recitals and annexures to it.
- (g) Any references to Clauses and Annexures in this Agreement are to clauses of and annexures to this Agreement.
- (h) References to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.
- (i) Each representation, warranty and covenant made by the Parties under this Agreement are independent of the other.

ARTICLE 2

TERM OF AGREEMENT

2.1 Effective Date

This Agreement shall come into effect from the receipt of Open Access approval from nodal agency and such date shall be referred to as the "Effective Date".

2.2 Term of the Agreement and Termination

This Agreement shall be valid for a period of one year from Effective Date ("Term of Agreement"), unless terminated earlier by Procurer by giving 30 (thirty) days written notice to Seller.

2.3 Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication.

2.4 Representations & Warranties

In addition to any other representations and warranties contained in the Agreement, each Party represent and warrants to the other that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its incorporation;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other governmental authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) the execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under (i) any contract or agreement to which it is a party or by which it is bound, (ii) any applicable laws.

ARTICLE 3
CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER

3.1 Seller's Obligation

- 3.1.1 The Seller shall be responsible for making application for Open Access approval as per Open Access Regulation in vogue at its own cost, failing which EMD/CPG shall be forfeited.
- 3.1.2 The Seller shall provide to the Procurer, Contract Performance Guarantee(s) as per the format specified in Annexure 1 of this Agreement.
- 3.1.3 The Seller agrees and undertakes to obtain necessary permissions for scheduling of contracted power up to Procurer periphery at Seller's own cost and risk and ensure the commencement of supply from the first day of the Term of the Agreement.
- 3.1.4 The Seller shall be responsible for intimating Procurer two clear days in advance before revising the schedules in accordance with applicable regulations.

3.2 Procurer's obligation

The procurer shall make payment of the energy bill as mentioned in Article 5.3 of this PPA.

3.3 Contract Performance Guarantee (CPG)

- 3.3.1 The Seller shall be required to furnish CPG within 7 (seven) Days from the date of letter of award issued by the Procurer for an amount calculated at Rs. 2 lakhs per MW per month(30 days, 24 hours and same shall be reduced on pro-rata basis) of contract period or part thereof

Example: For a requirement of 1 MW for 15 days for 4 hours, the CPG shall be Rs. 2,00,000 X (15 days/30 days) X (4 hrs/24 hrs) = Rs. 16,667/-

- 3.3.2 The CPG shall be in the form of unconditional bank guarantee issued by any Nationalized/ Schedule Bank in the format as prescribed in Annexure 1 and valid for the period of contract with a claim period of 1 year after the expiry of Term of Agreement ("Claim Period").
- 3.3.3 In the event, the CPG is not furnished within 7 (seven) Business Days of signing the PPA; the Earnest Money Deposit shall be forfeited.
- 3.3.4 The CPG provided by the Seller shall be forfeited for non-performing the contractual obligations. The CPG would be released within 30 (thirty) days after completion of Claim Period.

ARTICLE 4

AVAILABILITY, SCHEDULING AND DISPATCH

4.1 Availability

Seller shall comply with the provisions of the applicable law regarding availability including, in particular, to the provisions of the Deviation Settlement Mechanism ("DSM")/ Availability Based Tariff ("ABT")/ Unscheduled Interchange ("UI") regulations and Grid Code from time to time relating to declaration of availability and the matters incidental thereto. Booking of transmission corridors: Seller shall apply for booking of the Open Access transmission corridor to the nodal agency. Seller shall be fully responsible for the timely filing of Open Access application before the nodal agency and coordinating with the relevant RLDC / SLDC so as to get the timely booking of the Open Access corridor for the quantum on advance basis, first-cum-first serve basis, day ahead basis, contingency basis as required.

4.2 Scheduling and Dispatch

The scheduling and dispatch of the energy shall be coordinated with respective RLDC(s) / SLDC(s) as per the provisions of IEGC and ABT framework and decisions of RLDC/ SLDC. The energy shall be scheduled and dispatched as per the relevant provisions of CERC/SERC Regulations for Open Access and procedure for reservation of transmission capacity (inclusive of all the amendments till date).

4.3 Revision of Open Access Corridor

The party seeking revision in Open Access shall intimate other party in accordance with applicable regulations in advance before revising the schedules as per Open Access Regulations. The party seeking revision in schedule would bear the Open Access charges retained by RLDC/SLDC for the entire path.

4.4 Change in Source

Procurer may, at its sole discretion, allow the Seller to supply power through an alternate source on request of the Seller. If the power is being supplied through alternate source, additional charges and ~~losses~~ if any, due to cancellation of existing corridor and booking of new corridor including ~~Open Access~~ charges, application fees, cancellation charges, scheduling charges of Gujarat SLDC etc. shall be to the account of Seller.

Provided that the Minimum Quantum has to be supplied through each alternate source for the entire Term of Agreement.

ARTICLE 5
QUANTUM, TARIFF, BILLING AND PAYMENT

5.1 Quantum of Power:

Requisition	Period	Time Slot	Minimum Quantum (in MW)	Minimum Bid Quantity (in MW)
1 –	00:00 – 23:59 Hrs.	4.0	4.0

5.2 Tariff:

The tariff payable by the Procurer for energy delivered at the Delivery Point shall be as summarized hereunder.

Requisition	Period	Time Slot	Quantum at Delivery Point (in MW)	Rate at Delivery Point (Rs/kWh)
1 –	00:00 – 23:59 Hrs.	4.0	

The Tariff shall not change in case if any tax/duty/levy/cess become applicable after the submission of bid or there is any change in transmission charges applicable to the seller after submission of bid.

5.3 Billing:

- 5.3.1 For the energy supplied during the month, the successful bidder(s) will be raising weekly bills. For the purpose of the weekly bills each month shall be divided into four parts, starting from 1st, 9th, 16th and 24th day of the month to 8th, 15th, 23rd and last day of the month respectively. The bill shall be raised to the Procurer on the basis of implemented schedule as per RLDC/SLDC indicating energy supplied to Procurer at the Delivery Point. Final credit/debit if any, will be as per Regional Energy Account (“REA”)/State Energy Account (“SEA”) issued by Regional PowerCommittee (“RPC”) / SLDC. In the event of dispute, the State Energy Accounts issued by the DGVCL shall be binding on all the Parties for billing and payment purposes.
- 5.3.2 Seller shall raise bill on weekly basis for the energy scheduled with following details; “Jubilant Infrastructure Limited”, JIL SEZ, Plot No. 4 & 5, Vilayat Industrial Estate, Tal. Vagra, Dist. Bharuch, Gujarat – 390012. For avoidance of doubt due date for payment of the bills shall be 7 (Seven) Business Days from the date of receipt of the weekly invoice from the seller through email/fax including the date of submission.
- 5.3.3 Seller shall be raising bills on JIL on account of open access charges/ transmission charges paid on their behalf by Seller, if any. The billing of the same shall be raised on the day of receipt of approval from the nodal agency.

5.3.4 In relation to both the Parties, the payment for invoice related to Liquidated Damages, Open Access charges/transmission charges and any other invoices shall be made within 7 (seven) days (Due Date) from the receipt of invoice by e-mail(including the day of receipt of invoice).

5.3.5 Treatment of Open Access Charges and Losses:

The transmission charges & losses, RLDC/SLDC charges, application fees or any other charges covered in Open Access Regulations notified by CERC/ SERC and the procedure for Open Access Regulations notified by CERC/ SERC and the procedure for Open Access stipulated by Central Transmission Utility (CTU)/ State Transmission Utility (STU) (as amended from time to time) for supply of energy up to Delivery Point shall be borne by the Seller.

Similarly, Open Access charges & losses beyond the Delivery Point i.e., Gujarat STU transmission charges and losses and Gujarat SLDC scheduling charges shall be borne by Procurer.

5.3.6 The Procurer will in no way be liable for any other charges except for the quoted tariff at Delivery Point on the basis of the SEA issued by SLDC / REA issued by RPC, as applicable.

5.3.7 Liquidated Damages:

Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved Open Access on calendar quarterly (three months) basis.

In case deviation from Procurer side is more than 15% of the energy for which Open Access has been allocated on monthly basis; Procurer shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay Open Access charges as per the contract.

In case deviation from Seller side is more than 15% of the energy for which Open Access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the Open Access charges to the extent not availed by the Procurer.

In case the Seller fails to offer the contracted power as per the Agreement to the Procurer and sells this power without Procurer's consent to any other party, the Procurer shall be entitled to claim damages from the Seller for an amount equal to the higher of: (a) twice the Tariff as per the PPA for the corresponding contracted power, and (b) the entire sale revenue accrued from third party on account of sale of this contracted power. These damages shall be in addition to Liquidated Damages mentioned above, for failure to supply

the instructed capacity.

In case of revision/ cancellation of approved Open Access corridor, the party seeking revision/ cancellation of Open Access corridor shall bear all the Open Access charges as applicable from the injection point till the point of drawl applicable due to such surrender/ cancellation.

Further, if the power is not supplied by the Seller due to forced outage or constraint in generator evacuation system, the Seller shall bear the Open Access charges as applicable from the injection point till the point of drawl due to such revision.

5.4 Payment & Rebate

5.4.1 **Payment:** Procurer will make the payment to Seller within 7 days from the date of receipt of the energy bills through email. However, Seller shall ensure submission of Hard Copy of the said energy bill to Mr. [REDACTED], "JIL SEZ", Jubilant Infrastructure Limited SEZ, Plot No. 4 & 5, Vilayat Industrial Estate, Tal. Vagra, Dist. Bharuch, Gujarat – 390012. In the event of the due date of payment being a Bank holiday, the next working day shall be considered as the due date of payment. In case of default in payment by the due date then the admitted amount shall be recovered through Letter of Credit (LC).

5.4.2 **Surcharge:** A late payment surcharge shall be payable on the payments outstanding after the due date at the 'Base Rate of Late Payment Surcharge' applicable for the 1st month of the default.

The Rate of Late Payment Surcharge for the successive months of default shall increase by 0.5% for every month of delay provided that the Late Payment Surcharge shall not be more than 3% higher than the base rate at any time.

5.4.3 The Procurer(s) shall provide revolving Letter of Credit (LC) as mentioned in clause 5.5 below.

5.5 Disputed Bill

If a Party does not dispute a Bill raised by the other Party within thirty (30) days from receipt of such Bills, such Bill shall be taken as conclusive;

If a Party disputes the amount payable under a Bill, that such Party shall, within seven (7) days of receiving such Bill, issue a notice (the "**Bill Dispute Notice**") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

However, the party disputing the Bill shall release undisputed bill amount to other party within the Due Date. The party will settle the dispute on the basis relevant documents mutually.

Notwithstanding any Dispute, disagreement or difference including but not limited to Dispute related to Bill, the Parties hereto shall continue to perform the respective obligations under this Agreement.

5.6 Payment security to be made available by the procurer

The Procurer shall be required to provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity at the tariff indicated in PPA. LC may be opened prior to commencement of supply of power.

ARTICLE 6

FORCE MAJEURE AND CHANGE IN LAW

6.1 Force Majeure

A force majeure event shall mean any event or circumstance or combination of event or circumstances that adversely affects, prevents or delays any party in the performance of its obligation in the terms of this agreement, but only if and to the extent that (i) such event or circumstances are beyond the reasonable control of the affected party, and (ii) such events or circumstances could not have been prevented through employment of prudent utility practices. For avoidance of doubt, it is clarified that constraint in any input like fuel, water etc. for generation and forced outage of the generating unit shall not be considered as force majeure.

Neither party shall be in breach of its obligation pursuant to this understanding to the extent that the performance of its obligation was prevented, hindered or delayed due to a force majeure event and without in any way prejudicing the obligation of either party to make payments of the amounts accrued due prior to the occurrence of the event of force majeure, which shall be payable on the original due date.

Force Majeure events shall include, but not limited to;

- a) Any restriction imposed by RLDC/SLDC in scheduling of power due to breakdown of Transmission/Grid constraint shall be treated as Force Majeure without any liability on either side.
- b) Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, pandemic, epidemic, volcanic eruption, fire or landslide or acts of war, armed conflict, riots, acts of terrorism causing disruption of the system.
- c) The contracted power will be treated as deemed reduced for the period of transmission constraint. The non/part availability of transmission corridor should be certified by the concerned RLDC/SLDC.
- d) Regulatory intervention related to this RFP & PPA and also orders from State Govt./CERC/GERC/Appellate Tribunal of Electricity/High Courts/Supreme Court related to purchase/ sale of power under this Agreement.

- e) The Procurer would return the CPG in case of non-availability of transmission corridor during the contract period.
- f) Non-grant / delay of NOC/concurrence/open access by SLDC/RLDC/STU/CTU/DISCOM.

If a force majeure event shall have occurred that has affected the Seller's performance of its obligations hereunder and that has continued for a continuous period of 90 (ninety) days, then Procurer shall be entitled to terminate the Agreement by notice to the Seller. Upon such termination for a force majeure event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

6.2 Change In Law

Change in Law means the occurrence of any of the following events after the date of acceptance of letter of award resulting into any additional recurring / non-recurring expenditure by the Seller or any income to the Seller.

- i. Any change in transmission charges and Open Access charges.
- ii. Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable for supply of power by the Seller.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Severability

The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this agreement unless the part held invalid or unenforceable is fundamental to this agreement.

7.2 Jurisdiction

All differences or disputes between the Parties arising out of or in connection with this matter shall be settled through the statutory provisions under the Electricity Act 2003. Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission.

All other disputes shall be resolved by the sole arbitrator jointly appointed by the Parties as per the Indian Arbitration and Conciliation Act, 1996. The Place of Arbitration will be Delhi. The Courts at Delhi shall have exclusive Jurisdiction to entertain all/any disputes between Parties.

Notwithstanding the provisions under this agreement, the Seller agrees and acknowledges that the Procurer may at any time disclose the terms and conditions of the Agreement and the other RFP documents to any person, to the extent stipulated under the Law.

7.3 Publicity

Each Party shall not disclose without other Party's prior written consent (i) the terms and conditions of this Agreement, or (ii) the existence of the project or any contractual relationship between Off-taker and Power Producer except as is otherwise required or necessary in order to carry out or perform its obligations hereunder or required to disclose by order of law, or (iii) issue any publication or press release relating directly or indirectly to (i) or (ii) above.

Either Party shall not use, without the other Party's prior written consent in each instance, the names, characters, artwork, designs, trade names, trademarks or service marks of the other Party, in any manner whatsoever.

7.4 Stamp duty

The stamp duty payable on this Agreement shall be borne equally by both the Parties.

7.5 Waiver

The failure of either Party to enforce at any time or for any period of time any of the provisions of this Agreement shall not constitute a waiver of such provisions or the right of such Party to enforce each and every provision.

7.6 Time is of essence.

Time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

8 INDEMNITY AND LIMITATION OF LIABILITIES

Each Party ("Indemnifying Party") hereby agrees to indemnify, defend and hold the harmless the other Party, their affiliates and their officers, representatives, directors and employees (collectively, the "Indemnified Party") from and against any and all suits, actions, proceedings, obligations, debts, fines, fees, penalties, demands, charges, judgments, awards, amounts paid in settlement, losses, liabilities, claims, damages, costs and expenses (including legal fees, disbursements and other costs of defence in connection therewith) (collectively, the "Claims") which directly arise out of, result from or may be payable by virtue of the Indemnifying Party having breached any of the provisions of this Agreement, or any applicable law, except to the extent such Claim(s) is attributable to the misconduct or negligence of, or breach of this Agreement by the Indemnified Party.

Neither Procurer nor the Seller shall be liable for any indirect, incidental or consequential damages including lost profits or lost business opportunity, in each case arising under or in relation to this Agreement, whether arising under breach of contract, tort or any other legal theory, and regardless of whether the Parties have been advised of, knew of, or should have known of the possibility of such damages. Neither Party will be liable for breach-of-contract damages that are remote or speculative, or that the Party could not reasonably have foreseen upon entry into this Agreement.

8.1 Approvals and Permits

Each of the Parties shall assist the other Party in obtaining all necessary government approvals, third party approvals and permits required for the performance of this Agreement under any applicable law.

9. CONFIDENTIALITY

The Parties shall maintain the secrecy and confidentiality of all information set out in this Agreement (including without limitation the purchase price under the Agreement) and shall not disclose the information directly or indirectly to any third party without advance written

consent of the other Party, except where such disclosure is required by law.

AUTHORIZED SIGNATORIES

The Parties represent and warrant that the signatories executing this Agreement for and on behalf of the Parties are duly authorized to execute this Agreement and to bind the Parties hereto. In witness whereof the duly authorized representatives of the Parties have signed on the day and year first hereinbefore written.

SIGNED, SEALED AND DELIVERED For and on behalf of Jubilant Infrastructure Limited SEZ Name: Designation:	SIGNED, SEALED AND DELIVERED For and on behalf of Name: Designation:
In the presence of: Witness: 1. _____ Name: 2. _____ Name:	In the presence of: Witness: 1. _____ Name: 2. _____ Name:

Annexure 1
Contract Performance Guarantee

PROFORMA OF CONTRACT PERFORMANCE BANK GUARANTEE

1. In consideration of the Board of **directors/trustees** of Jubilant Infrastructure Limited, Plot No. 4 & 5, Vilayat Industrial Estate, Tal. Vagra, Dist. Bharuch, Gujarat – 390012 (hereinafter called “The Procurer” which expression shall unless excluded by or repugnant to the context or meaning thereof be deemed to include the Board of **directors/trustees of** Jubilant Infrastructure Limited SEZ, its successors and assigns) has awarded the Contract for ‘subject work’ vide Manager (US)’s letter No. -----, dated ----- (hereinafter called ‘the said Contract’) to ----- (Name of the Supplier) (hereinafter called the ‘Supplier’). Under the terms and conditions of the Contract, made between the Suppliers and the Procurer, the Supplier is bound to submit a performance Guarantee of Rs. ----- (Rupees ----- only) to Procurer, we the ----- (Name of the Bank and address) (hereinafter referred to as ‘the Bank’ at the request of the Suppliers do hereby undertake to pay to the Procurer an amount not exceeding Rs. ----- (Rupees ----- only) for faithful performance of the entire contract.
2. We ----- Bank do hereby guarantee and undertake to pay immediately on first demand in writing and any/all moneys to the extent of ----- (in words -----) without any demur, reservation, contest or protest and/or without any reference to the Supplier. Any such demand made by Procurer on the Bank by serving a written notice shall be conclusive and binding, without any proof, on the Bank as regards the amount due and payable, notwithstanding any dispute(s) pending before any Court, Tribunal, Arbitrator or any other authority and/ or any other matter or things whatsoever, as liability under these presents being absolute and unequivocal. We agree that the guarantee herein contained shall be irrevocable. This guarantee shall not be determined, discharged or affected by the liquidation, winding up, dissolution or insolvency of the supplier and shall remain valid, binding and operative against the Bank.
3. We, ----- (Name of the Bank) undertake to pay to the Procurer any money so demanded notwithstanding any dispute or disputes raised by the Supplier in any suit or proceeding before any court of Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Supplier shall have no claim against us for making such payment.
4. We, ----- further agree with the Procurer that the guarantee herein contained shall remain in full force and effect during the period that will be taken for the performance of the said Contract and it shall continue to be enforceable till all the dues of the Procurer under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged or till the Manager(US) of the said Procurer certified that the terms and conditions of the said Contract have been fully and properly carried out by the said Suppliers and accordingly discharge this guarantee. Unless the demand or claim under this guarantee is made on us in writing on or before the -----, we shall be discharged from all liabilities under this guarantee thereafter. This Guarantee will remain in force from the date hereof, i.e. till ----- and unless a demand or suit or action to enforce any claim under the guarantee is

made within 1 year from the date of expiry of this guarantee, i.e. on or before -----

--- all your rights under this guarantee shall be forfeited and we shall be relieved and discharged from all liabilities under this guarantee thereafter PROVIDED HOWEVER that the Bank shall at the request of the Procurer but at the cost of the Suppliers, renew or extend this guarantee for such further period of periods as the Procurer may require from time to time.

5. We,-----Bank further agree with the Procurer that the Procurer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend the time of performance by the said Suppliers from time to time to postpone from any time or from time to time any of the powers exercisable by the Procurer against the said Suppliers and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the Suppliers or for any forbearance, act or omission on the part of the Procurer or any indulgence shown by the Procurer on the part of the Procurer or any indulgence shown by the Procurer to the Suppliers or by any such matter or thing whatsoever which under the law relating to sureties will but for this provision, have effect of so relieving us.
6. Procurer shall have the unqualified option to operate this Bank Guarantee to recover Liquidated Damages as leviable under the Contract.
7. This Guarantee will remain valid for the entire period as agreed, even though there happens to be change in the constitution of the bank or that of the Supplier.
8. It is also hereby agreed that the Courts in Gujarat shall have exclusive jurisdiction in respect of claims, if any, under this Guarantee.
9. We, ----- Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Procurer in writing.

Dated.....day of.....20

(Name with Designation)

Signature
Seal of the Bank
