

# **PROCUREMENT OF SHORT TERM POWER THROUGH TARIFF BASED COMPETITIVE BIDDING PROCESS**

*Based on the Guidelines for short-term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process (No. 23/25/2011-R&R (Vol-III) issued by Ministry of Power, Government of India vide resolution dated 30 March, 2016 & its amendment dated 30 December, 2016.*



INVITATION OF BID

**TENDER No.: - JIL/MEE/US/SEZ-POWER SUPPLY/2024/E1**

## **JUBILANT INFRASTRUCTURE LIMITED**

*(Deemed Distribution Licensee operating as a Sector Specific SEZ for Chemicals in 310.66 Acres of land at Vilayat GIDC Industrial Estate, in Bharuch District of Gujarat)*

**Table: 1**

S. No.	Event	Date & Time
01	Publication of Request for Proposal (RFP)/Activation of Event	June 20, 2024 10:00 Hrs
02	Queries by Bidders (If Any)	June 21, 2024 14:00 Hrs.
03	Response to bidder's queries	June 24, 2024
04	Submission of RFP (online digitally signed non-financial technical Bid and IPOs)	June 25, 2024 15:00 Hrs
05	Opening of non-financial technical Bids	June 26, 2024 16:00 Hrs
06	Clarification, if any, sought from Bidder(s)	June 27, 2024 16:00 Hrs
07	In case of no clarification, evaluation of non-financial technical Bids	June 28, 2024 16:00 Hrs
08	Opening of IPOs (up to 1300 hrs.) and start of e-RA	July 01, 2024 14:00 Hrs
09	Issuance of LOA and submission of signed LOA	July 02, 2024 14:00 Hrs
10	Signing of PPA*	As per GERC Approval

*\* Successful Bidder(s) shall be responsible for applying for Open Access as per the latest open access guidelines in vogue. Successful Bidder shall ensure submission of Open Access Application to the Nodal Agency within 2 working days on receipt of Hon'ble GERC Approval/JIL Consent.*

E-Bid to be Submitted through	DEEP E-Bidding Portal
Office inviting bids and place of EMD submission	Name: Jubilant Infrastructure Limited Address: Jubilant Infrastructure Limited SEZ, Plot No. 4 & 5, Vilayat Industrial Estate, Tal. Vagra, Dist. Bharuch, Gujarat – 390012

Bidding will be done as per the revised guidelines for short term procurement of power notified by the Ministry of Power vide resolution dated 30th March 2016, through e-bidding portal (DEEP) only. The link for the e-bidding portal is [www.mstcecommerce.com](http://www.mstcecommerce.com) and is also available on the website of Ministry of Power ([www.powermin.nic.in](http://www.powermin.nic.in)) and PFC Consulting Limited ([www.pfcclindia.com](http://www.pfcclindia.com)). Bidders are requested to familiarize themselves with the revised guidelines notified by the Ministry of power on 30-03-16 carefully before submitting the offer.

## **1. Background**

### **1.1. About Jubilant Infrastructure Limited (JIL)**

1.1.1. Jubilant Infrastructure Limited is a wholly owned subsidiary of Jubilant Ingrevia Limited, a global integrated Life Science products and Innovative Solutions provider serving, Pharmaceutical, Nutrition, Agrochemical, Consumer and Industrial customers. Jubilant Ingrevia offers a broad portfolio of high quality ingredients that find application in wide range of industries. Jubilant Ingrevia' s portfolio also extends to custom research and manufacturing for pharmaceutical and agrochemical customers on an exclusive basis.

### **1.2. About JIL – Special Economic Zone (JIL SEZ)**

1.2.1. Jubilant Infrastructure Limited SEZ (JIL SEZ) (hereinafter referred to as “Procurer”), has developed a Sector Specific SEZ for Chemicals in 310.66 Acres of land at Vilayat GIDC Industrial Estate, in Bharuch District of Gujarat.

1.2.2. Ministry of Commerce and Industry (Department of Commerce), Government of India has notified JIL as the developer for the SEZ on 107.16.50 Ha of land Vide Gazette Notification No. S.O. 290(E) dated 11<sup>th</sup> February, 2008. Furthermore, vide Notification No. S.O. 2964(E) dated 5<sup>th</sup> September 2017, Ministry of Commerce and Industry (Department of Commerce), Government of India has notified an additional area of 18.55.92 Ha as a part of JIL SEZ, thereby making total area of the Special Economic Zone as 125.72.07 Ha in Vilayat and Vorasamni village in Taluka Vagra, District Bharuch in the State of Gujarat. JIL SEZ has received environmental clearance on 3<sup>rd</sup> July 2008 by State level expert appraisal committee, Government of Gujarat.



**LEGEND**

- FACILITIES AVAILABLE
- PARKING
- ROAD
- GREEN AREA
- VACANT AREA

• **Please upload map of Jubilent Infrastructure Limited**

## 2. E-Bidding Process Fees

2.1. All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of Rupees 500 / MW per requisition for the total capacity sought by the Utility for that particular requisition for which the bidder is willing to bid (in single bid or cumulative sum of total of multiple bids), to PFC Consulting Limited (PFCCL). The requisite fee plus applicable taxes shall be deposited through the portal by e-payment Gateway provided by MSTC Ltd. After the completion of the bidding process, only successful bidder(s) will have to pay these charges for the quantum allocated to each bidder. The balance amount will be refunded by PFCCL within seven (7) working days without any interest. The fee deposited by non-selected bidder(s) will also be refunded by PFCCL within seven (7) working days of completion of the event without any interest. It is specifically clarify that Procurer will not be liable for delay/denial in/of fee by PFCCL to Bidders in any manner whatsoever.

## 3. Requirement

### 3.1 Power Requirement and duration:

Procurer is having following base load requirement on Round the Clock (RTC) basis at State Transmission Periphery of Gujarat (STU):

Requisition	Period	Time Slot	Quantum (in MW)	Minimum Bid Quantity (in MW)
1	August 1, 2024 -July 31, 2025	00:00 – 24:00 Hrs	4.0	4.0
2	September 1, 2024 – July 31, 2025	00:00 – 24:00 Hrs	3.0	3.0

3.2 **Delivery Point:** Shall mean the State Transmission Periphery of Gujarat (Gujarat-STU).

3.3 **Open Access Responsibility:** Successful Bidder(s) shall be responsible for applying for Open Access as per the latest open access guidelines in vogue.

3.4 **Submission of Bid:** Bidders shall be required to submit separate non-financial technical Bid and Financial Bids I.e. Initial Price Offer (IPO) as per Table above.

#### **4. Qualification Criteria for Bidder**

The Bid shall be opened subject to the following conditions and verification of bid / documents submitted by the bidder:

- 4.1. All generators, State Utilities, CPP, Distribution Licensee, SEBs, and Traders are qualified to participate in the bid process.
- 4.2. Earnest Money Deposit (EMD)/ Bank Guarantee (BG) of sufficient amount towards Earnest Money in the requisite format.
- 4.3. Validity of offer as specified in the RFP Documents.
- 4.4. In case a bidder is a trading licensee, it has to submit the details of the generating station from which the supply is intended and the power purchase agreement / Letter of Authorization signed between such trading licensee and the Generating station / Utility for supply of power.

#### **5. Tariff Structure**

- 5.1. The Bidder shall quote the single tariff at the Delivery Point up to three (3) decimals which shall include capacity charge, energy charge, trading margin (in case of Bidder being a Trader), applicable ISTS (Inter-state Transmission State) charges and all other Open Access charges applicable up to the Delivery Point and all taxes, duties, cess, etc. imposed by Central Govt. / State Govt. Local Bodies. Tariffs shall be designated in Indian Rupees Only.
- 5.2. The price quoted 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 and other Open Access Charges applicable to the Bidder after submission of bid.
- 5.3. The tariff should be constant and there shall be no escalation during the contractual period.
- 5.4. For avoidance of doubt, Inter-state open access charges, transmission charges and losses along with ISTS (Inter-state Transmission State) charges and losses along with Application/Concurrence Fees and Operating Charges up to the Delivery Point are on Bidder's account and intra-state open access transmission charges and losses beyond the Delivery Point are on Procurer's account.

- 5.5. Bidder(s) is/are required to ensure availability of necessary infrastructure/ground work, before participating in the Bid.
- 5.6. 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 etc., shall be to the account of Bidders.
- 5.7. The party seeking revision in schedule would bear the open access charges retained by RLDC/SLDC/CTU/STU for the entire path.
- 5.8. The bidder shall be fully responsible for timely filing of Open Access application for the contracted quantum of power from each Source before nodal RLDC/SLDC/CTU/STU and coordinate with relevant RLDC/SLDC so as to get the timely booking of open access corridor.

## **6. Bidding Process**

- 6.1. Procurer has issued an RFP for procurement of power on short-term basis as per the details mentioned in clause 3 above and RFP has been uploaded in the DEEP e-bidding portal.
- 6.2. Procurer has published and RFP notice in two national newspapers namely **Financial Express & Sandesh** on dated 20 June, 2024 and uploaded the same in its website ([www.jubilantingreva.com/sez](http://www.jubilantingreva.com/sez)) for wide publicity.

## **7. Earnest Money Deposit (EMD) / Bank Guarantee (BG)**

- 7.1. The bidders are required to submit EMD in favor of Procurer for the maximum capacity which they wish to offer (in single bid or sum total of multiple bids) @ Rs. 30000/- per MW per month on RTC (30 days, 24 hours) basis and same shall be reduced on pro-rata basis in case bids are invited on hourly basis, in the form of Bank Guarantee / eBank Guarantee issued by any Nationalized/Scheduled Bank or Electronically Transfer through payment gateway provided by MSTC Ltd. in the portal, demand draft issued by Nationalized or Scheduled Bank.
- 7.2. For Example: For a requirement of 1 MW for 15 days for 4 hours, the EMD shall be Rs. 30,000 x (15 days / 30 days) x (4 hrs. / 24 hrs.) = Rs. 2500/-.
- 7.3. Bidder submitting Bank Guarantee shall strictly adhere with the format as specified in the Annexure-I of this bid document. Any deviation from the annexed format is liable for rejection.

- 7.4. The original EMD needs to be submitted before the opening of the Non-Financial Technical Bid.
- 7.5. The EMD shall be forfeited:
  - i. If bidder withdraws bid during Bid Validity Period except as provided in these guidelines.
  - ii. For non-submission of Contract Performance Guarantee by Successful Bidder(s).
- 7.6. The EMD shall be refunded to the unsuccessful Bidders within 10 days of expiry of Bid validity period without any interest.
- 7.7. The EMD of the successful Bidder(s) shall be refunded without interest after furnishing the Contract Performance Guarantee (CPG).

## **8. Bid Submission**

- 8.1. Tenders are to be submitted online through the DEEP e-Bidding portal. All the documents uploaded by the Procurer forms an integral part of the contract. Bidders are required to upload all the documents as asked for in the RFP, through the above website within the stipulated date and time as given in the RFP. The Bidder shall carefully go through the RFP and prepare the required documents and upload the scanned documents in Portable Document Format (PDF) to the portal in the designated locations of Technical Bid.
- 8.2. The documents uploaded shall be digitally signed using the Digital Signature Certificate (DSC). Bidders should take note of all the addendum/corrigendum related to the RFP and upload the latest documents as part of the Bid.
- 8.3. The process of e-bidding shall be conducted online, in accordance with the provisions laid herein. Each e-Bidding event shall comprise of two parts i.e. e- Tender and e-Reverse Auction. To participate in the event each Bidder will have to specify the source(s) of power for that particular bid. Each bid will have only one price per requisition accompanied by total quantum of power, the Bidder intends to supply and minimum threshold quantum acceptable to the Bidder. However, the Bidder shall have the option to choose the requisition of an event in which it intends to participate. Each of the bid will have to be signed by the Digital Signature of the Bidder.
- 8.4. Bidders shall be required to submit separate non-financial technical Bid and Financial Bids
  - i. e. Initial Price Offer (IPO) through e-Bidding portal. The Bidder will have the option to indicate their minimum threshold quantity and the same would be considered for allocation of power to the Bidder(s). The non-financial Bids shall contain the acceptance



of general terms and conditions without any deviation and information about the sources from which the Bidder shall supply the power. Bidders shall also be required to furnish necessary EMD/Bank Guarantee along with the Bids. The Bidders can revise their IPOs before date and time of submission of RFP. Bidder submitting Bank Guarantee shall strictly adhere to the format annexed with this RFP, any deviation thereof is liable for rejection.

## **9. Opening and Bid Evaluation**

- 9.1. To ensure competitiveness, the minimum number of Bidders should be at two for each requisition. If the number of Bidders responding to the RFP is less than two, and Procurer still wants to continue with the selection process, the selection of that, single Bidder maybe done with the consent of the Appropriate Commission.
- 9.2. Procurer has constituted a Standing Committee for evaluation of the Bids.
- 9.3. The IPO shall be strictly as per the format prescribed in the RFP and shall be unconditional. The Conditional price bid shall be summarily rejected.
- 9.4. In the event, if two or more Bidders quote the same amount of Tariff during IPO and e-Reverse Auction stage, the time of submission of bid will be deciding factor for their ranking.
- 9.5. Technical proposals will be opened by the Procurer or its authorized representative electronically from the website stated above, using their Digital Signature Certificate.
- 9.6. Technical proposals for those tenders whose original copies of Bank Guarantee / eBank Guarantee issued by any Nationalized/Scheduled Bank or payment proof of Electronically Transfer through payment gateway provided by MSTC Ltd. in the portal have been received will only be opened. Proposals corresponding to which original copy of Bank Guarantee / eBank Guarantee issued by any Nationalized/Scheduled Bank or payment proof of Electronically Transfer through payment gateway provided by MSTC Ltd. in the portal have not been received, will not be opened and will stand rejected.
- 9.7. Decrypted (transformed into readable formats) documents of the Statutory and Non-Statutory Covers will be downloaded for the purpose of evaluation.
- 9.8. Procurer or its authorized representative can seek clarifications/documents required in connection with technical bid. After acceptance of the non-financial technical Bids, the Financial Bids, Initial Price offer (IPO) shall be opened as per the procedures specified in the Bid document.

## **10. Elimination of Bidders**

The elimination of the Bidders shall be done by the following method:

- 10.1. After the opening of Initial Price Offers, the system will rank the Bidder according to their price bids. The Bidder with the highest price bid in IPO stage will be called the H1 Bidder. The system will then analyze all the quantities offered by the Bidders in the IPO stage. If total quoted quantity is greater than twice the Requisitioned Quantity, the Highest Bidder (H1) will be eliminated provided that the total quoted quantity after elimination is not less than, or equal to twice the Requisitioned Quantity.
- 10.2. The elimination process will be done for each of the requisition separately. One event may have more than one requisition.

## **11. E-Reverse Auction (E-RA)**

- 11.1. The shortlisted Bidder after elimination will be intimated individually by system generated emails only.
- 11.2. The Reverse auction should start within 120 minutes of opening of Initial Price Offers and shall continue for a period of next 120 minutes. During the Reverse Auction the Bidders will have the option of reducing the tariff quoted by them in decrements of one paisa or multiples thereof and to increase the quantum quoted by them by 1 MW or multiples thereof. During the Reverse Auction the prevailing Lowest Tariff would be visible to all the Bidders.
- 11.3. Provided that during the last 10 (ten) minutes before the scheduled close time of e-Reverse auction, if a price bid is received which is lower than the lowest prevailing price bid recorded in the system during e-Reverse auction, the close time of e-Reverse auction will be automatically extended by 10 (ten) minutes from the time of the last price bid received. The process of auto extension will continue till there is a period of 10 (ten) minutes during which no price bid is received which is lower than the prevailing lowest price bid.
- 11.4. The bidders will have the option to increase the quantum of power up to corresponding to the value of EMD submitted along with IPO, but decrease the Tariff during the e-Reverse Auction process.

## **12. Issuance of Letter of Award (LOA)**

- 12.1. The Bidder after the e-RA process will be ranked in accordance with the tariff offered in ascending order. The list would also include the name, quantum offered and tariff quoted by those qualified Bidder(s) who have not changed the quantum of power and tariff from IPO stage to e-RA stage. The Bidder(s), in order of their rankings, offering the quantum of

power up to the requisitioned capacity would be the Successful Bidder(s). The Procurer shall procure power from the Successful Bidders in the order of their rankings decided on the basis of tariff quoted by them until the entire Requisitioned Capacity is met.

- 12.2. The Procurers shall have the right to issue Letter of Award (LoA) to the Successful Bidder(s) [Selected Bidder(s)] in the same order to fulfil its requirement, which can be lower than the Requisitioned Capacity but not less than the quantum of Lowest Bidder. In the event Procurer rejects or annuls all the Bids, it may go for fresh Bids hereunder. In case the Procurer fails to issue the LoA within a period of 15 days from the close of e-Reverse Auction, the Successful Bidder(s) shall have the option to exit without forfeiting the EMD.
- 12.3. In case the Selected Bidder(s) is allocated a quantity of power less than the minimum threshold quantum mentioned by it, it shall have the option to exit without forfeiting the EMD.
- 12.4. In case the LOA is issued but Selected Bidder(s) is/are not in a position to fulfil the requirement, being selected in another bidding process the EMD/CPG shall be forfeited as the case may be.
- 12.5. After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Procurer to the Selected Bidder(s) and the Selected Bidder(s) shall, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder(s) is not received by the stipulated date, the Procurer may, unless it consents for extension of time for submission thereof, forfeit the EMD of such Bidder as Damages on account of failure of the Selected Bidder(s) to acknowledge the LOA.

### **13. Contract Award and Conclusion**

- 13.1. After acknowledgement of the LOA by the Selected Bidder(s), the Procurer shall cause the Selected Bidder(s) to execute the PPA in the format mentioned in Annexure -2 within the prescribed period in the Bid document i.e., within 15 days from the close of the e-Reverse Auction. The Procurer would appropriate the EMD of such Bidder as Damages in the account of failure of the Selected Bidder(s) to execute the PPA. In case the Procurer fails to sign the PPA within the period prescribed above, the Selected Bidder(s) shall have the option to exit without forfeiting the EMD/CPG as the case may be. The execution of PPA shall be subjected to the approval of GERC.
- 13.2. The Procurer, in its own discretion, has the right to reject all Bids if the Quoted Tariffs are not aligned to the prevailing market prices.

#### **14. Validity of Tender and Offer**

14.1. Validity period of offer of Bidder shall be till the time of signing of Power Purchase Agreement (PPA).

#### **15. Conditional and Incomplete Tender**

15.1. Conditional and incomplete tenders are liable to rejection.

#### **16. Right to Accept/Reject the Bid**

16.1. Lowest valid rate of the tender cum reverse auction price should normally be accepted. Procurer reserves the right to reject any or all bids or to accept any bid, at its sole discretion, without assigning any reasons whatsoever thereof and without any liability.

#### **17. Contract Performance Guarantee (CPG)**

17.1. The Successful Bidder(s) may be required to furnish CPG within 7 days from the date of selection of Successful Bidder(s) for an amount calculated at Rs. 2 lakhs per MW per month (30 days, 24 hours) of contract period or part thereof. The CPG for the procurement of power on hourly basis shall be calculated on pro-rata basis as per the example given above for calculating EMD.

17.2. The CPG shall be in the form of BG issued by any Nationalized/Scheduled Bank and valid for the period of Contract with a claim period of 1 month after the expiry of contract period.

17.3. In the event, the CPG is not furnished within the stipulated date, the EMD submitted against the Notification shall be forfeited.

17.4. The CPG provided by the Successful Bidder(s) shall be forfeited for non-performing the contractual obligations. The CPG should be released within 30 days after completion of claim period.

17.5. The procurer would return the CPG in case of non-availability of transmission corridor during the contract period.

## **18. OPEN ACCESS**

### **18.1. Booking of Transmission Corridors:**

The successful bidder(s) shall apply for booking of the Open Access transmission corridor to nodal RLDC/SLDC/CTU/STU. Bidder(s) shall be fully responsible for the timely filing of Open Access application before the nodal agency and coordinating with the relevant RLDC/SLDC/CTU/STU 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.

### **18.2. Scheduling & 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).

## **19. Force Majeure**

Force Majeure means occurrence of any event or circumstance or combination of events and circumstances stated below that wholly or partly prevents an affected party in the performance of its obligations under PPA.

- 19.1. 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, subject to documentary evidence.
- 19.2. 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, volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.
- 19.3. 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.
- 19.4. 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.

19.5. The procurer would return the CPG in case of non-availability of transmission corridor during the contract period.

19.6. Non-grant / delay of NOC/concurrence/open access by  
SLDC/RLDC/STU/CTU/DISCOM

## **20. Power Purchase Agreement (PPA)**

20.1. Bidder and Procurer shall enter into the Power Purchase Agreement (PPA) as per Annexure-II of this Document. The terms of PAA shall prevail on terms of this document in case of any conflict between Procurer and Bidder.

## **21. Change in Law**

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

## **22. Billing**

- 22.1. 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, 23<sup>rd</sup> and last day of the month respectively. The bill shall be raised to 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/State Energy Account issued by Regional Power Committee / State Load Dispatch Centre.
- 22.2. Bidder to raise bill on weekly basis for the energy scheduled with following details; "Jubilant Infrastructure Limited 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 considered from the date of receipt of the weekly bill from the bidder through email.

## **23. Payment of liquidated damages for failure to supply the instructed quantity;**

- 23.1. Both the parties would ensure that actual scheduling does not deviate by more than 15% of the power as per the approved open access on quarterly basis.
- 23.2. In case deviation from Procurer side is more than 15% of the energy for which open access has been allocated on quarterly 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.
- 23.3. In case deviation from bidder side is more than 15% of the energy for which open access has been allocated on quarterly basis, bidder 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.

- 23.4. In case the bidder 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 bidder 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 Parties on account of sale of this contracted power. These damages shall be in addition to Liquidated Damages as per Clause 23.1, 23.2 & 23.3 above of this RFP, for failure to supply the Instructed Capacity.

## **24. Payment Terms**

- 24.1. Procurer will make the payment to Bidder within 7 days from the date of receipt of the energy bills through email. However, Bidder shall ensure submission of hard copy of the said energy bill to Mr. Pranay Shah, Designation: Asst. Director "Jubilant Infrastructure Limited", 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).
- 24.2. A late payment shall be applicable as per the PPA annexed with this RFP.
- 24.3. The Procurer(s) may provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity at the tariff indicated in PPA. LC shall be opened prior to commencement of supply of power. Procurer may substitute the letter of credit by an unconditional and irrevocable bank guarantee of the same amount.

## **25. Communication**

- 25.1. All parties shall rely on written communication only.
- 25.2. The Bid submitted by the Bidder and all correspondence and documents relating to the bid shall be written in English Language.
- 25.3. Procurer reserves the right to ask for the additional information from the Bidder through e-mail only. The e-mail ids are [Mahesh.kmandwarya@jubl.com](mailto:Mahesh.kmandwarya@jubl.com), and [ishwar.patre@jubl.com](mailto:ishwar.patre@jubl.com) and company website is <https://www.jubilantingrevia.com/sez>



## **26. Governing Law**

- 26.1. All matters arising out of or in conjunction with the Bid Document and/or the bidding process shall be governed by and construed in accordance with Indian law and the Courts in the State in which Procurer has its headquarters shall have exclusive jurisdiction.

## **27. Disclaimer**

- 27.1. Neither Procurer nor Procurer's employees shall be liable to any Bidder or any other person under any law including the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise, or be incurred, or suffered, in connection with the bid, or any other information supplied by or on behalf of Procurer or its employees. For the avoidance of doubt it is expressly clarified that this Bid Document is an offer to bid and its subject to the award of LoA/PPA by Procurer and acceptance of the LoA/PPA by the selected Bidder will be construed as acceptance of terms and Condition.

## **28. Dispute Resolution**

- 28.1. 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.
- 28.2. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.
- 28.3. Notwithstanding any legal dispute, disagreement or difference, the parties here to, continue to perform the respective obligations under power purchase agreement.

**PROFORMA OF CONTRACT PERFORMANCE BANK GUARANTEE**

1. In consideration of the Board of Directors 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, not withstanding 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

\*\*\*\*\*

**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 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)

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/2024/E1 (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 assigne 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 specify provided that if the period of default lies in two or more financial year, the base rate of late payment surcharge shall be calculated separately for the periods falling in different years.
"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 ..... and ending on .....
“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;
“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 \_\_\_\_ from Effective Date ("Term of Agreement"), unless terminated earlier by Procurer by giving 30 (thirty) days written notice to Seller, however relinquishment of open access shall be as per GERC rules/regulation/procedure.

#### **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 delivery point 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 month 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				

**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				

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 Power Committee ("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 quarterly basis.

In case deviation from Procurer side is more than 15% of the energy for which Open Access has been allocated on quarterly 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 quarterly 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 1<sup>st</sup> 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 5.6 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.

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

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**DRAFT FORMAT OF THE BANK GURANTEE FOR EMD**

(The Bank Guarantee should be executed on a non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution along with a Confirmatory Letter from the Regional office of the Bank concerned in enclosed format.)

To,  
.....  
.....

In consideration of \_\_\_\_\_ (name of Bidder to be inserted) agreeing to undertake the obligations under the terms and conditions of Bid Document No: \_\_\_\_\_ dated \_\_\_\_\_ signed by \_\_\_\_\_ (name of bidder to be inserted) having its office at \_\_\_\_\_. The \_\_\_\_\_ (Insert Guarantor Bank Name) having its registered office at \_\_\_\_\_ here in after referred to as "Guarantor Bank" hereby agrees unequivocally, irrevocably and unconditionally to pay to Jubilant Infrastructure Limited Undertaking having its office at ..... forth with on demand in writing from Board of directors, Undertaking or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees \_\_\_\_\_ Only with respect to the offered Capacity of \_\_\_\_\_ MW as per the terms and conditions of the Bid Document No. \_\_\_\_\_ dated \_\_\_\_\_.

This guarantee shall be valid and binding on the Guarantor Bank upto and including \_\_\_\_\_ (Insert date of validity of EMD) and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the Bid Document No. dated \_\_\_\_\_ signed by \_\_\_\_\_ or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ only. Our Guarantee shall remain in force until \_\_\_\_\_. Jubilant Undertaking shall be entitled to invoke this Guarantee up to \_\_\_\_\_, by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from Jubilant Undertaking, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to Jubilant Undertaking.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by \_\_\_\_\_ (name of Bidder to be inserted). The Guarantor Bank shall not require Jubilant Undertaking to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.



This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly Jubilant Undertaking shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against \_\_\_\_\_ (name of Bidder to be inserted) to make any claim against or any demand on the \_\_\_\_\_ (name of Bidder to be inserted) or to give any notice to enforce any security held by Jubilant Undertaking or to exercise, levy or enforce any distress, diligence or other process against \_\_\_\_\_ (name of Bidder to be inserted).

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to Jubilant Infrastructure Limited Undertaking and may be assigned, in whole or in part, (whether absolutely or by way of security) by Jubilant Infrastructure Limited Undertaking to any entity to whom it is entitled to assign its rights and obligations under the Bid document.

The Guarantor Bank hereby agrees and acknowledges that Jubilant Infrastructure Limited Undertaking shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ only and it shall remain in force until \_\_\_\_\_.

This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by \_\_\_\_\_ (name of Bidder to be inserted). We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if Jubilant Infrastructure Limited Undertaking serves upon us a written claim or demand.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at ..... shall have exclusive jurisdiction.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

