

## DEED OF HYPOTHECATION

**THIS DEED OF HYPOTHECATION** executed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand \_\_\_\_\_ by \_\_\_\_\_, a company within the meaning of the Companies Act, 1956 (1 of 1956) having its Registered/Head Office at \_\_\_\_\_, (hereinafter referred to as "the Borrower" (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) in favour of **Power Finance Corporation Limited**, a company incorporated under the Companies Act, 1956 and having its Registered Office at Urjanidhi, 1, Barakhamba Lane, Connaught Place, New Delhi-110 001 (hereinafter referred to as "the Corporation" (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns)

### W H E R E A S :

1. By a Memorandum of Agreement dated \_\_\_\_\_ day of \_\_\_\_\_, between the Borrower and the Corporation along with ANNEXURE thereto (hereinafter referred to as "the Memorandum of Agreement"), the Corporation have agreed to lend and advance to the Borrower and the Borrower has agreed to borrow from the Corporation on the terms and conditions contained in the Memorandum of Agreement a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) Only (hereinafter referred to as "Loan")
2. One of the conditions of the said Memorandum of Agreement is that the Loan together with interest, penal interest, premia on prepayment or on redemption, costs, charges, expenses and all other monies as stipulated in the said Memorandum of Agreement shall be secured, inter alia by - a first charge by way of hypothecation of all the Movable Assets of the Borrower's \_\_\_\_\_, as fully described in the schedule hereunder written.
3. The Corporation has called upon and required the Borrower to execute these presents which the Borrower has agreed to do in the manner hereinafter expressed :

### NOW THEREFORE THESE PRESENTS WITNESSETH that :

- 1 In pursuance of the Memorandum of Agreement and in consideration of the Corporation having lent and advanced and/or agreed to lend and advance to the Borrower the Loan for the purposes and subject to the terms and conditions set out in the Memorandum of Agreement and in consideration of the premises, the Borrower doth hereby covenant with the Corporation that it shall repay to the Corporation and shall pay all interest at the respective agreed rates, interest tax (if applicable), interest on unpaid interest, penal interest, premia on prepayment or on redemption etc. thereon and costs, charges, expenses, losses and all other moneys as stipulated and in the manner set out in the Memorandum of Agreement and shall duly observe and perform all the conditions of the Memorandum of Agreement.

2. In pursuance of the said Memorandum of Agreement and for the consideration aforesaid, all the Movable Assets comprising of all machinery, equipment, accessories, plant turbine and other various equipments etc. (including associated balance of plant equipment/items) of the Borrower's \_\_\_\_\_ (hereinafter collectively referred to as "the said Materials" short particulars whereof are given in the Schedule hereunder written) are hereby hypothecated as and by way of first charge to the Corporation as security for and be charged with the repayment to the Corporation of Principal amount of the Loan and repayment or payment of other moneys including interest, penal interest, premia on prepayment or on redemption, costs, charges and expenses and all other moneys due to the Corporation under the Memorandum of Agreement
3. In further pursuance of the said Memorandum of Agreement and for the consideration aforesaid, the Borrower doth hereby further agree, declare and covenant with the Corporation as follows :-
- i) The Borrower shall at its expense keep the said Materials in marketable and good condition and insure the same in the joint names of the Borrower and the Corporation as provided in the Memorandum of Agreement against any loss or damage by theft, fire, lightning, earthquake, explosion, riot, strike, civil commotion, storm, tempest flood, marine risk, erection risk, war risk and such other risks as the Corporation shall from time to time require with an insurance company or companies. The Borrower shall deliver to the Corporation the relevant policy or policies of insurance duly assigned to the Corporation and maintain such insurance throughout the continuance of the security of these presents and deliver to the Corporation the renewal receipts thereof and shall duly and punctually pay all premia and shall not do or suffer to be done or omit to do or be done any act which may invalidate or avoid such insurance. In default, the Corporation may but shall not be bound to keep in good condition and render marketable the said Materials and take out/renew such insurance. Any premium paid by the Corporation and any costs, charges and expenses incurred by the Corporation shall within 15 days of receipt of a notice of demand from the Corporation, be reimbursed to the Corporation together with interest thereon at the same rate as specified in the Memorandum of Agreement with quarterly/half yearly rests from the date of payment and until such reimbursement by the Borrower the same shall be debited to the Borrower's Loan account in accordance with its usual practice and be a charge on the said Materials.
  - ii) The nominee of the Corporation shall, without any notice and at the risk and expense of the Borrower be entitled at all times to enter any place where the said Materials may be and inspect, value, insure superintend the disposal of and/or take particulars of all or any part of the said Materials and check any statement, accounts, reports and information.
  - iii) In the event of any breach or default by the Borrower in the performance of its obligation hereunder or any of the terms, covenants, obligations and conditions stipulated in the Memorandum of Agreement and the related security documents and the deeds executed or that may hereafter be executed by the Borrower in favour of the Corporation or in the event of the Borrower failing to pay either the interest or any installment(s) of the principal amount of the Loan due to the Corporation or in the event of the charge and/or the security created in favour of the Corporation

having become enforceable for any reason whatsoever, the Corporation or their nominees shall, in case such breach or default is not remedied by the Borrower to the satisfaction of the Corporation, within a period of fifteen days from the date of intimation by the Corporation of such breach or default or such extended time as may be granted by the Corporation in writing, without any notice and without assigning any reason and at the risk and expenses of the borrower and if necessary as attorney and in the name of the Borrower, be entitled to take charge and/or possession, or seize, recover, receive, appoint receiver of and remove them and/or sell by public auction or by private contract, dispatch or consign for realization or otherwise dispose of or deal with all or any part of the said material and to enforce, realize, settle, compromise and deal with any rights or claims relating thereto, without being bound to exercise any of these powers or be liable for any losses in the exercise or non-exercise thereof and without prejudice to the Corporation's rights and remedies of suit or otherwise and notwithstanding that there may be pending any suit or other proceedings, the Borrower undertakes to give immediate possession to the nominee of the Corporation on demand of the said Materials and to transfer and to deliver to the Corporation all relative bills, contracts, securities and documents and the Borrower hereby agrees to accept the Corporation's account of sales and realization and sufficient proof of amounts realized and relative expenses and to pay on demand by the Corporation any shortfall or deficiency thereby shown provided however that the Corporation shall not be in any way liable or responsible for any loss, damage or depreciation that the said Materials may suffer or sustain on any account whatsoever whilst the same are in possession of the Corporation or by reason of exercise or non-exercise of rights and remedies available to the Corporation as aforesaid and that all such loss, damages or depreciation shall be wholly debited to the account of the Borrower howsoever the same may have been caused.

- (iv) The Corporation any time after the security hereby constituted has become enforceable and whether or not the Corporation shall then have entered into or taken possession of and in addition to this powers hereinbefore conferred upon the Corporation after such entry into taking possession of, may have a receiver or receivers appointed of the said Materials or any part thereof. The following provisions shall also apply such Receivers:-
- (a) Unless otherwise directed by the Corporation, such Receiver shall have and exercise all powers and authorities vested in the Corporation;
  - (b) Such Receiver shall, in the exercise of the powers, authorities and discretions, conform to the regulation and direction from time to time made and given by the Corporation;
  - (c) The Corporation may from time to time fix the remuneration of such Receiver and shall direct payment thereof out of the sale realization of the said Materials, but the Borrower alone shall be liable for the payments of such remuneration;
  - (d) The Corporation may from time to time and at any time require such Receiver to give security for the due performance of his duties as such Receiver and may fix the nature and amount of the security to be given to the Corporation but the Corporation shall not be bound to require such security in any case;
  - (e) The Corporation may pay over to such Receiver any monies constituting part of the securities to the intent that the same may be applied for the purpose hereof by

such Receiver and the Corporation may from time to time determine what funds the Receiver shall be at the liberty to keep in hand with a view to the performance of his duties as such Receivers;

- (f) Every such Receiver shall be the agent of the Borrower for all purposes and the Borrower alone shall be responsible for his acts and defaults, loss or misconduct and liable on any contract or engagement made or entered into by him and for his remuneration and the Corporation shall not incur any liabilities or responsibility therefore by reason of their making or consenting to his appointment as such Receivers;
  - (v) All the said Materials and all sale realizations and insurance proceeds thereof and all documents under this security shall always be kept distinguishable and held as the exclusive property of the Corporation specifically appropriated to this security and to be dealt with only under the directions of the Corporation, and the Borrower shall not create any charge, mortgage, lien or other encumbrance upon or over the same or any part thereof except in favour of the Corporation nor suffer any such charge, mortgage, lien or other encumbrance or any attachment or distress to affect the same or any part thereof nor do or allow anything that may prejudice this security and the Corporation shall be at liberty to incur all costs or expenses as may be necessary to preserve this security and to maintain the same undiminished and claim reimbursement thereof as mentioned in Sub-clause (i) hereof Provided that except to the extent specifically permitted by the Corporation, the Borrower shall not sell all or any of the said Materials Provided further that the Borrower shall on any and every such sale pay to the Corporation if so required by the Corporation the net proceeds of the sale or disposal in satisfaction so far as the same shall extend, of the moneys, due and payable by the Borrower to the Corporation. Provided further that the Borrower may without payment to the Corporation, if Corporation so agrees, replace the outmoded equipment by an equipment of equivalent or greater value.
  - (vi) The Borrower shall, whenever required by the Corporation give full particulars to the Corporation of all the assets of the Borrower and of the said Materials and shall furnish and verify all statements, reports, returns, certificates and information from time to time and as required by the Corporation and make, furnish and execute all necessary documents to give effect to this security.
4. This security shall be a continuing security for repayment of the Loan together with interest, penal interest, premia on prepayment or on redemption, cost, expenses, guarantee fee and all other moneys due to the Corporation under the Memorandum of Agreement and shall not affect, impair or discharge the liability of the Borrower by winding up voluntary or otherwise, or by any other company or take over of the management of the Borrower.
5. The Borrower hereby declares that the said Materials are and will at all times be the absolute property of the Borrower at the sole disposal of the Borrower and subject to the charge or charges created and/or to be created with specific permission of the Corporation, free from any prior charge trust, pledge, lien, claim or encumbrance with full power of disposition over the same.

6. The Borrower hereby appoints the Corporation as its attorney and authorises the Corporation to act for and in the name of the Borrower to do whatsoever the Borrower may be required to do under these presents and generally to use the name of the Borrower in the exercise of all or any of the powers by these presents conferred on the Corporation and the Borrower shall bear the expenses that may be incurred in this regard.
7. Nothing herein shall prejudice the rights or remedies of the Corporation in respect of any present or future security, guarantee obligation or decree for any indebtedness or liability of the Borrower to the Corporation.
8. The provisions contained herein shall be read in conjunction with the provisions of the Memorandum of Agreement and to the extent of any inconsistency or repugnance the latter shall prevail to all intents and purposes.
9. The Borrower shall have the particulars of charge registered with the Registrar of Companies (ROC) as per Section 125 of Companies Act, and shall submit a certificate from the ROC certifying the registration of charge.

**SCHEDULE ABOVE REFERRED TO(change as per case to case)**

The whole of the movable properties of the Borrower's \_\_\_\_\_ of the Borrower, consisting its movable plant & machinery, machinery spares, tools and accessories, plant turbine and other various equipments etc. including associated balance of plant equipment/items) and other movables, both present and future whether installed or not and whether now lying loose or in cases or which are not lying or stored in or about or shall hereafter from time to time during the continuance of the security of these presents be brought into or upon or be stored or be in or about the borrower's factories, premises and godowns situated at "\_\_\_\_\_" or wherever else the same may be or be held by any party to the order or disposition of the borrower or in the course of transit or on high seas or on order, or delivery, howsoever, and wheresoever in the possession of the borrower and either by way of substitution or addition.

IN WITNESS WHEREOF the Borrower hath caused its common seal to be hereunto affixed the day, month and year first hereinabove written.

**SIGNED AND DELIVERED BY**

The common seal of the within named Gujarat State Electricity Corporation Limited has been hereunto affixed pursuant to a Resolution of its Board of Directors/Board passed on the \_\_\_\_\_ in the presence of Shri. \_\_\_\_\_ and Shri. \_\_\_\_\_ Company Secretary/Secretary of the Borrower who has subscribed their signatures hereto in token thereof.

Dated this \_\_\_\_ day of \_\_\_\_\_