

PROCUREMENT OF POWER ON A SHORT-TERM BASIS THROUGH

TARIFF-BASED COMPETITIVE BIDDING PROCESS

**(As per “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” issued by
Government of India)**

EON KHARADI INFRASTRUCTURE PRIVATE LIMITED (SEZ PHASE I & II) SEZ Phase-I & II

INVITATION FOR BIDS

Tender No. EON/Power Distribution/22-23/483

Event No. EON Kharadi Infrastructure Private Limited/Short/22-23/ET/---

SN	Event	Time
1.	Publication of Request for Proposal (RFP)/ Activation of Event	10 th January 2023 11:00Hrs
2.	Submission of RFP (On line digitally signed non-financial technical bid and IPOs)	16 th January 2023 16:00Hrs
13.	Opening of Non-Financial Technical Bids	17 th January 2023 11:00Hrs
4.	Clarification if any, sought from Bidder(s)	18 th January 2023
5.	In case of no clarification, evaluation of non-financial technical bids	19 th January 2023
6.	Opening of IPOs and start of E-RA	20 th January 2023 14:00Hrs
7.	Issuance of LOA and submission of signed LOA	21 st January 2023
8.	Signing of PPA	23 rd January 2023

Bids to be submitted through	DEEP e Bidding portal
Office inviting bids & Place of submission of EMD	Name: - Pramod Bangal EON Kharadi Infrastructure Private Limited, Tech Park One, Tower E, S.No. 191/A/2A/1/2 Next to Don Bosco School, Off. Airport Road, Yerwada, Pune-411006 Email: - eon1.dl@panchshil.com /eon2.dl@panchshil.com

1. INTRODUCTION AND BACKGROUND

M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)("EON") is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Tech Park One, Tower E, S.No. 191/A/2A/1/2, Next to Don Bosco School, off. Airport Road, Yerwada, Pune-411006, Maharashtra, India.

EON, under Section 3 of the Special Economic zones (SEZ) Act, 2005 has setup sector specific Special Economic Zone for Information and Technology and Information Technology Enabled Services (IT & ITes) at Survey No.77, MIDC Knowledge Park- Kharadi, Pune namely called as **EON SEZ PHASE I** which has been notified as Developer of the SEZ by the Ministry of Commerce & Industry (Department of Commerce) vide Notification No. S.O. 1631(E) dated 28th September 2006.

EON, under Section 3 of the Special Economic zones (SEZ) Act, 2005 has setup sector specific Special Economic Zone for Information and Technology and Information Technology Enabled Services (IT & ITes) at Survey No.72, Kharadi, Pune namely called as **EON SEZ PHASE II** which has been notified as Developer of the SEZ by the Ministry of Commerce & Industry (Department of Commerce) vide Notification No. S.O. 1036(E) dated 31st March 2017.

The Ministry of commerce & Industry (Department of commerce), Government of India vide its Notification under clause (b) of sub section (1) of Section 49 of the Special Economic Zones Act, 2005 dated March 3, 2010, specified that the Developer of the SEZ is deemed to be a Distribution Licensee under the provisions of the Electricity Act, 2003. The proviso inserted in clause (b) of Section 14 of the EA2003 is as under:

"Provided that the Developer of a Special Economic Zone notified under Subsection (1) of section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a Licensee for the purpose of this cause, with effect from the date of notification of such Special Economic Zone".

Further, SEZ ACT 2005 & the proviso inserted in clause (b) of Section 14 of the EA 2003. Maharashtra Electricity Regulatory Commission after taking cognizance of the Notification issued

by Ministry of Commerce and Industry and following the due regulatory process, took on record the EON's status as a deemed Distribution Licensee for Kharadi SEZ area vide Order dated 5th June 2020 in Case no. 67 of 2020.

In view of the above, EON SEZ PHASE I is a deemed Distribution Licensee in its SEZ area at Survey No.77, MIDC Knowledge Park, Kharadi, Pune in the State of Maharashtra.

Further, SEZ ACT 2005 & the proviso inserted in clause (b) of Section 14 of the EA 2003. Maharashtra Electricity Regulatory Commission after taking cognizance of the Notification issued by Ministry of Commerce and Industry and following the due regulatory process, took on record the EON's status as a deemed Distribution Licensee for Kharadi SEZ area vide Order dated 5th June 2020 in Case no. 68 of 2020.

In view of the above, EON SEZ PHASE II is a deemed Distribution Licensee in its SEZ area at Survey No.72, Kharadi, Pune in the State of Maharashtra.

EON SEZ PHASE I and PHASE II are floating the tender through DEEP Portal for the supply of power from 1st March 2023 to 29th February 2024 for its SEZ Area.

2. E-BIDDING FEE

All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of Rupees 500 per MW per requisition for the total capacity sought by the Utility for that particular requisition for which the bidder is willing to bid, to Power Finance Corporation Consulting Limited (PFCCCL). 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 **PFCCCL** within seven (7) working days without any interest. The fee deposited by non-Selected Bidder(s) will also be refunded by PFCCCL within seven (7) working days of completion of the event without any interest

3. QUANTUM OF POWER

M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) invites the bid through e-tender for the purchase of power on a firm basis mentioned below under Short Term Open Access (STOA) arrangement for the period **1st March 2023 to 29th February 2024 for their respective SEZ,s** the Bidder(s) shall be capable of supplying power as mentioned below to **M/s EON Kharadi Infrastructure Private Limited**, for the period from **1st March 2023 to 29th February 2024**

Power Requirement for SEZ I & SEZ II

Requisition No.	SEZ's	Period	Quantum (In MW) and Timings (In hrs.)	Minimum Bid Quantity (in MW)	Delivery Point
1	SEZ PHASE I	1 st March 2023 to 29th February 2024	7 MW RTC	7 MW	Maharashtra state Periphery
2	SEZ PHASE-II	1 st March 2023 to 29th February 2024	4 MW RTC	4 MW	Maharashtra state Periphery

QUALIFICATION CRITERIA

The qualifying requirements for a Bidder to bid for this tender are as follows:

- 4.1 All Generators/ State Utilities/ CPP/Distribution Licenses/SEBs/Traders are qualified to participate in the bidding process.

If bidder is a Trader, it shall submit:

- i. valid category license or equivalent trading license issued by appropriate commission and
- ii. copy of executed Power Purchase Agreement or an equivalent arrangement for supply of power.

4. TARIFF STRUCTURE

- 4.1. 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 Point of Connection (POC) charges up to Delivery Point and all taxes, duties, cess etc. imposed by Central Govt. / State Govt. / Local bodies. Tariffs shall be designated in Indian Rupees only. The Delivery Point shall be as mentioned above.
- 4.2. For avoidance of doubt, POC injection charges and loss up to the POC interface, POC drawl charges and losses, RLDC Operating charges, RLDC application fees are on Bidder(s) account. In case the bidder/trader as applicable is supplying power through an intra-state generator, the SLDC application fees & SLDC scheduling charges shall be on the account of the bidder. If the power is being supplied on day ahead basis the additional charges, losses, application fees shall be to the account of bidder(s).
- 4.3. The tariff should be constant and there shall be no escalation during the contractual period.

- 4.4. If the power is being supplied through an alternate source, additional charges and losses if any, due to the cancellation of the existing corridor and booking of a new corridor etc., shall be to the account of Bidders during the contract period.

5. BIDDING PROCESS

5.1. **M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)** has published an RFP notice in two national newspapers namely Times of India, Pune, and Hindustan Times, Delhi.

5.2. **M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)** has issued an RFP for procurement of firm power on a short-term basis as per the details mentioned in clause 3 above and the RFP has been uploaded on the DEEP e-Bidding portal.

5.3. Bidder shall have the option to bid under both Requisition or any individual Requisition separately.

5.4. EARNEST MONEY DEPOSIT (EMD)/ BANK GUARANTEE (BG)

6.3.1 The Bidders are required to submit EMD for the maximum capacity which they wish to offer (in single bid or sum total of multiple bids) @ Rs. **30,000/-** per MW per month on RTC (30 days, 24 hours) and same shall be reduced on pro-rata basis in case bids are invited on hourly basis, in the form of Bank Guarantee /e-Bank Guarantee issued by any Nationalized/Scheduled Bank or Electronically Transfer through payment gateway provided by MSTC Ltd. in the portal, if available / Demand Draft issued by the Nationalized or Scheduled Bank.

Bidders submitting EMD in the form of Bank Guarantee shall strictly adhere with the format as specified in the **Annexure – 1** of this document as specified by EON Kharadi Infrastructure Private Limited. Bidder submitted BG with the deviations from the standard format is liable to get rejected. The EMD Calculations are mentioned below:

EON SEZ Phase-I

#	MW	No. of Months	No. of days	No. of Hours	Amount Per MW	Amount in Rs.
RTC	7	12	30	24	30000	25,20,000

EON SEZ Phase-II

#	MW	No. of Months	No. of days	No. of Hours	Amount Per MW	Amount in Rs.
RTC	4	12	30	24	30000	14,40,000

6.3.2. The original EMD needs to be submitted in hard copy before the opening of the Non-Financial Technical Bid.

6.3.3. The EMD shall be forfeited:

- a. If Bidder withdraws bid during Bid Validity Period except as provided in the Guidelines.
- b. For non-submission of Contract Performance Guarantee as specified in this RFP document, by Successful Bidder(s).

6.3.4. The EMD shall be refunded to the unsuccessful Bidders within 10 days of expiry of Bid validity period.

6.3.5. The EMD of the Successful Bidder(s) shall be refunded after furnishing the Contract Performance Guarantee (CPG).

6.4. BID SUBMISSION

6.4.1. Tenders are to be submitted online through the DEEP e-Bidding portal. All the documents uploaded by the **M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)** form 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.

6.4.2. The documents uploaded shall be digitally signed using the Digital Signature Certificate (DSC). Bidders should take note of all the addenda/corrigendum related to the RFP and upload the latest documents as part of the Bid.

6.4.3. 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.

6.4.4. Bidders shall be required to submit separate non-financial technical Bid and Financial Bids i.e. Initial Price Offer (IPO) through the 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. Bidders submitting EMD in the form of Bank Guarantee shall strictly adhere with the format as specified in the

Annexure – 1 of this document. Bidder submitted BG with the deviations from the standard format are liable to get rejected.

6.4.5 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.

7. VALIDITY OF TENDER AND OFFER

The offer against tender should remain valid for a period of **30 (Thirty) days** from the day of opening of the tender.

8. CONDITIONAL AND INCOMPLETE TENDER

Conditional and incomplete tenders are liable to rejection.

9. OPENING AND EVALUATION OF BID

- 9.1. To ensure competitiveness, the minimum number of Bidders should be at least 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 may be done with the consent of Maharashtra Electricity Regulatory Commission or any other body as per Electricity Act 2003.
- 9.2. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) shall constitute a Standing Committee for evaluation of the Bids.
- 9.3. Technical proposals will be opened by the M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) or his authorized representative electronically from the website stated above, using their Digital Signature Certificate.
- 9.4. Technical proposals for those tender whose original copies of DD/BC/BG towards EMD and who have deposited the E-Bidding Fee have been received will only be opened. Proposals corresponding to which original copy of DD/BC/BG towards tender fee & EMD has not been received, will not be opened and will stand rejected.
- 9.5. Decrypted (transformed into readable formats) documents of the Statutory and Non-statutory Covers will be downloaded for the purpose of evaluation.
- 9.6. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) 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.
- 9.7. 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.

- 9.8. 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 the deciding factor for their ranking.

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 Bidders 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 the 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 Bidders 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 without any extension (automatic or otherwise).
- 11.3. 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.

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. This 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.

The Bidders will have the option to increase the quantum of power upto 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).
- 12.2. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) 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.
- 12.3. 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 fulfill 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 M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) 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.
- 12.4. 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.
- 12.5. In case the LOA is issued but Selected Bidder(s) is/are not in a position to fulfill the requirement, being selected in another bidding process the EMD/CPG shall be forfeited as the case may be.
- 12.6. After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)to the Selected Bidder(s) and the Selected Bidder(s) shall, sign and return the duplicate copy of the LOA in acknowledgment thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder(s) is not received by the stipulated date, M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)may, unless it consents for an 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), M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)shall cause the Selected Bidder(s) to execute the PPA within the prescribed period in the Bid document i.e. within 15 days from the close of the e-Reverse Auction. The Selected Bidder(s) shall not be entitled to seek any deviation, modification or amendment in the PPA. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) would appropriate the EMD of such Bidder as Damages on account of failure of the Selected Bidder(s) to execute the PPA. In case M/s EON Kharadi Infrastructure Private

Limited (SEZ Phase I & II) 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.

13.2. PPA will be signed with issue of LoA with the selected Bidders within 15 days from conclusion of the selection process or bid validity date, whichever is earlier.

13.3. PPA shall be signed separately for the both the SEZ, as there shall be separate requisition for each SEZ.

14. RIGHT TO ACCEPT / REJECT THE BID:

14.1. Lowest valid rate of the tender cum reverse auction price should normally be accepted. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) 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.

15. CONTRACT PERFORMANCE GUARANTEE (CPG)

15.1. The Successful Bidder(s) shall furnish CPG within 7 days from the date of selection of Successful Bidder(s) for an amount calculated at **Rs. 2 Lakh** 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. The calculations are as follows:

EON SEZ Phase-I

#	MW	No. of Months	No. of days	No. of Hours	Amount Per MW	Amount in Rs.
RTC	7	12	30	24	200000	1,68,00,000

EON SEZ Phase-II

#	MW	No. of Months	No. of days	No. of Hours	Amount Per MW	Amount in Rs.
RTC	4	12	30	24	200000	96,00,000

The Procurer at its own discretion may allow the successful bidder to furnish the CPG for a part period upon request of the successful bidder.

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

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

15.4. 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 the Contract Period.

16. POWER PURCHASE AGREEMENT (PPA)

- 16.1. Bidder and procurer shall enter into the Power Purchase Agreement (PPA) separately for EON SEZ Phase-I and EON SEZ Phase-II as per **Annexure- II** of this document.

17. BILLING CYCLE

- 17.1.1. Bidders to raise bill(s) on monthly basis for the energy scheduled.

18. BILLING

- 18.1. Monthly Billing - For the supply of power during a calendar month, the seller will be raising the bills on monthly basis in duplicate on the 1st day of the next calendar month. For the avoidance of doubt due date for payment of the bills shall be considered from the date of receipt of the monthly invoice hard copy/Soft copy from the Seller.
- 18.2. Billing shall be done as per the schedule at Maharashtra state Periphery as requested by EON for which Consent/Approval is received from Maharashtra SLDC at the beginning of the month.

19. PAYMENT

- 19.1. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) shall make payment to the Selected Bidder(s) account through RTGS within 30 (thirty) days from the date of submission of the energy bills to EON Kharadi Infrastructure by hard copy / soft copy. In the event of the due date of payment being a Bank Holiday, M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) holiday, the next working day shall be considered as the due date of payment. In case of timely payment by M/s EON Kharadi Infrastructure Private Limited, adjustment for the admissible rebate shall be made while making the payment against the energy bills. In case of default in payment by the Due Date then the admitted amount shall be recovered through a Letter of Credit (LC).

The Procurer(s) shall be required to provide revolving Letter of Credit (LC) equivalent to 100% of the monthly energy corresponding to Contracted Capacity at the tariff indicated in PPA. **LC** shall be opened prior to the commencement of supply of power. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II) may substitute the letter of credit by an unconditional and irrevocable bank guarantee of the same amount i.e. equivalent to 100% of the monthly energy corresponding to Contracted Capacity at the tariff indicated in PPA.

20. REBATE ON PAYMENT

- 20.1. A rebate @ 2 % shall be applicable on payment of Energy bill within 15 (fifteen) days from the date of receipt of the hard copy/Soft Copy of the bill and at the rate of 1 % when payment is being done within 16 to 30 days of receipt of hard copy/Soft Copy of the bill.

21. LATE PAYMENT SURCHARGE

- 21.1. A late payment surcharge shall be applicable @ 12 % per annum on all the energy payments remaining outstanding for a period beyond 30 days from the date of receipt of bill. The surcharge shall be calculated on a day-to-day basis.
- 21.2. A late payment surcharge shall be applicable @ 12 % per annum on all the Open Access payment remaining outstanding for a period beyond 30 days from the date of receipt of bill. The surcharge shall be calculated on day-to-day basis.

22. PAYMENT OF LIQUIDATED DAMAGES FOR FAILURE TO SUPPLY THE INSTRUCTED CAPACITY

- 22.1. 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 monthly basis.
- 22.2. In case deviation from Procurer side is more than 15% of contracted 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.
- 22.3. In case deviation from Seller side is more than 15% of contracted 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.

23. COMMUNICATION

- 23.1. All parties shall rely of written communication only.
- 23.2. The Bid submitted by the Bidder and all correspondence and documents relating to the bid shall be written in English Language.
- 23.3. M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)reserves the right to ask for the additional information from the Bidder through e-mail / fax only. The e-mail id eon1.dl@panchshil.com /eon2.dl@panchshil.com will be used.

24. GOVERNING LAW

- 24.1. 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 M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)has its headquarters shall have exclusive jurisdiction.

25. DISCLAIMER

- 25.1. Neither M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)nor its 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 M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)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 M/s EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)and acceptance of the LoA / PPA by the selected Bidder will be construed as acceptance of terms and Condition.

26. DISPUTE RESOLUTION

- 26.1. 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.
- 26.2. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as amended from time to time.
- 26.3. Notwithstanding any legal dispute, disagreement or difference, the parties here to, continue to perform the respective obligations under power purchase agreement.

Annexure - I

Format of the Unconditional and Irrevocable Bank Guarantee for EMD

(To be on non-judicial stamp paper of appropriate value as per stamp act relevant to place of execution)

In consideration of the _____ (Insert name of the Bidder) (the “**Bidder**”) submitting the Bid inter alia offering supply of power during the period _____ (insert period) on short term basis, in response to the Request for Proposal (“**RFP**”) issued by EON Kharadi Infrastructure Private Limited (SEZ Phase I & II)(EON) vide Bid specification No: _____ date: _____ and the Bidder, being a bidder, is required to deposit EMD of the sum specified in the RFP by a nationalized/scheduled bank and as per the terms of RFP, the _____ (insert name of bank) (this “**Bank**”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby, as primary obligor, agree unequivocally, irrevocably and unconditionally to pay EON (hereinafter referred to as “**Procurer**”) at Pune forthwith on demand in writing from EON or any other Officer authorized by EON in this behalf, any amount up to and not exceeding Rs. _____ (Rupees _____), for and on behalf of the Bidder.

The guarantee shall be valid and binding on this Bank up to and including _____ (insert 30th day from the date of opening of bids) and shall not be terminated by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alterations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

The Bank hereby agrees and acknowledge that the Procurer shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit. This guarantee will be invoked in the account of EON as under:

Name of Account Holder	Eon Kharadi Infrastructure Pvt. Ltd.
Bank Name	State Bank of India
Branch Name	Industrial Finance Branch
IFS Code	SBIN0008966
Account No.	39683093669
PAN No.	AABCE5314K

This Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by the Procurer, made in any format, raised at the above-mentioned address of this Bank, in order to make the said payment to the Procurer.

This Bank shall make payment to the Procurer hereunder on first demand without restriction or conditions or demur or protest, conditions, grounds or reasons for such demand for the sum specified therein and notwithstanding any contestations, claims, demands, objection or disputes raised by the Bidder or any other person. This Bank shall not require the Procurer to justify the invocation of this

Bank Guarantee, nor shall this Bank have any recourse against the Procurer in respect of any payment made hereunder.

The Bank hereby waive the necessity of the Procurer demanding the said amount from the Bidder before presenting the Bank with the demand.

Any payment made to the Procurer hereunder shall be made free and clear of, and without deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and whomsoever imposed.

This Bank represents that this Bank Guarantee has been establish in such form and with such content that it is fully enforceable in accordance with its terms as against this Bank in the manner provided herein.

This Bank Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of this Bank.

This Bank Guarantee shall be a primary obligation of this Bank and accordingly the Procurer shall not be obliged before enforcing this Bank Guarantee to take any action in any court or arbitral proceedings against Bidder, to take any claim against or any demand on Bidder or to give any notice to the Bidder to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

We hereby waive notice of acceptance of this Bank Guarantee and notice of any liability to which it may apply. Except with respect to the written demand for payment referred to above, we waive presentment, demand of payment, protest, notices of any kind and any right to require that resort be made to the Bidder or any other security.

This Bank acknowledges that this Bank Guarantee is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by Procurer to any entity to whom the Procurer is entitled to assign its rights and obligations.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. _____ (Rupees _____), and it shall remain in force until _____ (insert 30th day from the date of opening of bids) with an additional claim period of one month thereafter, provided that any claim or liability arising prior to the date thereof shall not be adversely affected in any way, however, such limitation of liability shall not apply in respect of any and all costs, charges, and expenses that may be incurred by the Procurer in enforcing this Bank Guarantee and any losses or damages that may be suffered by the Procurer due to any delayed payment, non-payment or inadequate payment by us.

For the avoidance of doubts, we hereby acknowledge and declare, that all costs and charges in relation to the provision of this Bank Guarantee by us shall be borne by the Bidder alone.

We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand and we undertake not to revoke this Bank Guarantee during its currency except with the previous consent of the Procurer in writing.

Furthermore, we agree that our obligations under this Bank Guarantee are irrevocable, absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, and without limitation any other act, omission, event or circumstance which would or may but for this provision operate to prejudice, affect or discharge this Bank Guarantee or our obligations hereunder.

This Bank Guarantee shall be interpreted in accordance with the laws in India. Further, we confirm that this Bank Guarantee is subject to exclusive jurisdiction of courts at Mumbai only. Terms used in this Bank Guarantee but not defined herein shall have the meaning ascribed to such term in the RFP.

This Bank Guarantee shall be valid up to _____ (insert 30th day from the date of opening of bids) with an additional claim period of one month thereafter.

Signature _____

Name _____

Power of Attorney No. _____

For

_____ (Insert name of Bank)

Banker's Stamp and full Address.

Dated this _____ day of _____

POWER PURCHASE AGREEMENT

Between

EON Kharadi Infrastructure Private Limited (-----)

And

XXXXXXXXXX XXXX XXXXXXXX

(Separate PPA will be signed for EON SEZ-I & II)

This Power Purchase Agreement (hereinafter referred to as Agreement or PPA) is entered on the ____ Day of ____ 2023 between **EON Kharadi Infrastructure Private Limited (-----)** incorporated under Companies Act 1956 and is a deemed Power Distribution Licensee being the developer of the Specific Special Economic Zone for Information and Technology and Information Technology Enabled Services (IT & ITes) at Survey No. 77, MIDC Knowledge park, Kharadi, Pune (EON SEZ PHASE I OR II) in the State of Maharashtra (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

XXXX XXX XXXXXXX a limited company incorporated under the Companies Act, 1956 (hereinafter referred to as "**Seller**") and having its registered office at _____ which expression, unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns.

Whereas

- A. In accordance with revised guidelines for short term procurement of power notified by the Ministry of Power vide resolution dated 30-03-2016 and further amendments dated 21.02.2022, 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 _____ for procurement of power for short term for meeting the Procurer's power requirements for the period from **1st march 2023 to 29th February 2024**
- B. Pursuant to the said bidding process, _____ has been selected by the Procurer, as the Seller for sale and supply of Electricity to the Procurer, for the Aggregate

Contracted Capacity (as described hereunder) in accordance with the terms of this Agreement.

- C. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up to the Contracted Capacity (*defined below*) at the Delivery Point (*defined below*) by the Seller to the Procurer.

Now in consideration of the mutual considerations, promises and covenants, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. QUANTUM AND RATE

Power Requirement for SEZ I & SEZ II

Requisition No.	SEZ's	Period	Quantum (In jan) and Timings (In hrs.)	Minimum Bid Quantity (in MW)	Delivery Point
1	SEZ PHASE I	1 st March 2023 to 29th February 2024	7 MW RTC	7 MW	Maharashtra state Periphery
2	SEZ PHASE II	1 st March 2023 to 29th February 2024	4 MW RTC	4 MW	Maharashtra state Periphery

- 1.1 Subject to provisions of this Agreement, the entire contracted capacity stated above (**Contracted Capacity**) shall be for the exclusive benefit of the Procurer and the Procurer shall have the exclusive right to purchase the entire Contracted Capacity from the Seller and the Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity.

2. DELIVERY POINT

- 2.1 The delivery Point is the Maharashtra state Periphery

3. OPEN ACCESS

- 3.1 Transmission Charges, all open access charges i.e. CTU charges, RLDC/SLDC Charges, open access application fee including SLDC Consent/Application fee, any other charges and transmission losses up to delivery point (including the delivery point), if any, shall be borne by the Seller and the same beyond the delivery point shall be borne by the procurer.
- 3.2 However it may be clarified that the point of connection charges on account of injection charges and losses, withdrawal charges and losses, RLDC/SLDC charges etc. or any other charges related to open access / scheduling of power and transmission losses on account of

new transmission pricing methodology up to the delivery point (including delivery point) shall be borne by the seller.

- 3.3 The Seller shall be responsible for making application under short term open access for the entire Contracted Capacity within applicable timelines as approved by MERC/CERC failing which the EMD provided by the Seller shall stand forfeited.
- 3.4 The Seller shall be responsible to seek necessary open access approvals from the competent authority, for scheduling of Contracted Capacity up to the delivery point and also beyond delivery point, wherever necessary, at its own cost, risk and consequence and ensure the commencement of supply from Scheduled Delivery Date.
- 3.5 Supply from Alternate Sources: If at any time the Seller is unable to supply the Contracted Capacity power to the Procurer from the Delivery Point except due to a Force Majeure Event, specified under clause 10 below, the Seller shall source and supply the deficit power from any alternative source to meet its obligations under this Agreement, subject to obtaining all requisite regulatory approvals in connection with same prior to commencement of the delivery of such deficit capacity. However, all such deficit power shall be supplied at the same tariff and charges as provided hereunder and any open access charges and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Open Access Charges from Delivery Point to Procurer periphery, the Seller would be liable to bear such additional charges. Also, if the power is being supplied through alternate source, any additional charges and losses if any, due to cancellation of existing corridor and booking of new corridor etc., shall be to the account of the Seller. The seller shall provide the procurer prior written intimation of any quantities of power supply through alternate source, along with reasons such procurement from such alternate source and the estimated time frame when the supply shall be restored from the source originally designated by the seller. Failure to do so of such arrangement shall not be considered as force majeure during the contract period.

4. COMMENCEMENT, SCHEDULING AND ENERGY ACCOUNTING

- 4.1 The Seller shall be responsible to commence supply of firm power as per Point No.1 in accordance with the provisions of this Agreement. The scheduling and dispatch of power shall be as per relevant provision of IEGC/SEGC and as per relevant orders /regulations of CERC/MERC. Any variation between schedule and actual power injection shall be to the account of the seller. The generator will also ensure that injection of power is as per schedule of power to the Procurer.
- 4.2 The period of contract shall 1st March 2023 to 29th February 2024. Open Access grants to be sought from STU/SLDC or any other concerned authority by the Seller himself.
- 4.3 Energy delivery measurement and accounting will be in accordance with the norms stated by **CTU/STU/RLDC/SLDC**. Monthly Billing shall be done as per the schedule at Delivery Point for which Consent/Approval is received from Maharashtra SLDC or WRLDC at the beginning of the month.

5. BILLING AND PAYMENT

- 5.1 The Seller will raise Monthly bill (based on the monthly approval notified/received from WRLDC/SLDC) on the 1st day of next calendar month from the end of the particular month, to the Procurer for the schedule at delivery point during the particular calendar month in accordance with the tariff stated in clause 1 above, along with complete details of the power delivered at the delivery point and /or other documents, as may be required for bill verification. The bill should be submitted in hard copy/soft copy and the receipt of the hard copy/soft copy will be considered as 1st day for further rebate.
- 5.2 The bill for liquidated damages for a month shall be raised only after end of that month.
- 5.3 The Procurer will make the payment to the seller within **30 days** from the date of submission of the energy bill in hard copy/soft copy which will be considered as due date of payment. In the event of the due date of payment being a Bank/Public Holiday, the next working day shall be considered as the due date of payment. In case of timely payment of the Procurer, adjustment for the admissible rebate as per the clause described hereinafter, shall be made while making the payment against the energy bills.
- 5.4 The procurer shall provide revolving letter of credit (LC) equivalent to **100%** of monthly power corresponding to contracted capacity (as defined in the PPA) at the tariff indicated in the PPA before actual approval of first schedule by SLDC. The letter of credit (LC) shall be opened prior to commencement of supply of power by the seller. The procurer may substitute the letter of credit by an unconditional and irrevocable bank guarantee of the same amount i.e., equivalent to 100% of the monthly energy corresponding to Contracted Capacity at the tariff indicated in PPA.

6. REBATE FOR PROMPT PAYMENT BY PROCURER

- 6.1 A rebate @ 2 % shall be applicable on payment of Energy bill within 15 (fifteen) days of the receipt of the hard copy/Soft Copy of the bill and at the rate of 1 % when payment is being done within 16 to 30 days of receipt of hard copy/Soft copy of the bill as per clause 5.1. No rebate shall be applicable on payment of Open Access Bills.

7. SURCHARGE FOR LATE PAYMENT BY PROCURER

- 7.1 A late payment surcharge shall be applicable @ 12 % per annum on all the energy payment remaining outstanding for a period beyond 30 days from the date of receipt of bill. The surcharge shall be calculated on day-to-day basis.
- 7.2 A late payment surcharge shall be applicable @ 12 % per annum on all the Open Access payment remaining outstanding for a period beyond 30 days from the date of receipt of bill. The surcharge shall be calculated on day-to-day basis.

8. CONTRACT PERFORMANCE GUARANTEE (CPG)

- 8.1 The Seller shall furnish the CPG to the Procurer within 7 days of the signing of PPA for an amount calculated at Rs. 2 lakhs per MW per month for the Contract Period for guaranteeing the commencement and continuity of the supply of the Contracted Capacity in accordance with the terms of this Agreement.

- 8.2 The CPG is in the form of Bank Guarantee issued by any Nationalized /Scheduled Bank and is valid for the entire Contract Period with a claim period of one month after expiry of the Contract Period.
- 8.3 The failure by the Seller to furnish / maintain the CPG during the entire Contract Period shall deemed to be a material breach of this Agreement by the Seller.
- 8.4 The CPG provided by the Seller shall stand forfeited, encashed and appropriated by the Procurer as liquidated damages without prejudice to its other rights under this Agreement or applicable laws, for non-performance of any contractual obligations by the Seller specified hereunder or under the applicable law, including failure to commence supply of power on the Scheduled Delivery Date.
- 8.5 The CPG shall be released 30 (thirty) days after completion of Contract Period, provided and only after the Seller has fulfilled all its obligations under this Agreement. The return or release of the CPG shall be without prejudice to other rights of the Procurer under this Agreement and/or applicable laws.
- 8.6 Consequences on Sale of Contracted Power to Third Party without consent of the Procurer**
In case the Seller fails to offer the contracted power as per the Agreement to the Procurer and sells this contracted 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 Parties on account of sale of this contracted power.

These damages shall be in addition to Liquidated Damages as per clause 9 (Payment for liquidated damages for failure to supply instructed capacity) of this Agreement.

9. PAYMENT FOR LIQUIDATED DAMAGES FOR FAILURE TO SUPPLY THE INSTRUCTED CAPACITY

- 9.1 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 monthly basis.
- 9.2 In case deviation from Procurer side is more than 15% of contracted 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.
- 9.3 In case deviation from Seller side is more than 15% of contracted 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.

10. FORCE MAJEURE

A force Majeure event (**Force Majeure Event**) shall mean the occurrence of any of the following events:

- 10.1 Any restriction imposed by RLDC/SLDC in scheduling of power due to break down of Transmission /Grid constraint shall be treated as “Force Majeure” without any liability on either side.
- 10.2 Any 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 or pandemic situation causing disruption of the system.
- 10.3 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.
- 10.4 Procurer would return the CPG in case of non-availability of transmission corridor during the contract period.
- 10.5 The Contracted Capacity will be treated as deemed reduced for the period of transmission constraints. The non/part availability of transmission corridor should be certified by concerned RLDC/SLDC.
- 10.6 It is hereby clarified and confirmed that any request by the Seller for reduction of supply of the Contracted Capacity owing to machine breakdowns or unforeseen conditions of generating companies shall under no circumstances be treated as a Force Majeure event.
- 10.7 The party whose obligations are affected by any Force Majeure event shall promptly notify the other party in writing with full particulars of such Force Majeure event, including the date of first occurrence, and also keep the other party informed of any further developments as the earliest. The affected party shall use all its efforts to mitigate or limit the effect of such event of Force Majeure and arrange and assist the other party in restoration/continuance of performance of the affected party's obligations through any alternate sources, if required, at the earliest.
- 10.8 Nothing stated herein shall affect those obligations and duties of the party claiming delay in performance due to any Force Majeure Event, which obligations and duties are not affected by any Force Majeure condition and the affected party shall continue to perform such non-affected obligations in a timely fashion and any delays in performance of such non-affected obligations shall constitute material breach of the terms of this Agreement.
- 10.9 Should any performance of the obligations of the party claiming Force Majeure be prevented, restricted, delayed or interfered with due to any of the events mentioned hereunder, for a continuous period of 2 (two) days then the other party hereto may at its discretion terminate this Agreement without any liability for breach thereof and its own discretion, engage any third party to provide the Contracted Capacity during the pendency of the Force Majeure Event.

11. COMPLIANCE

- 11.1 The Seller represents and warrants that it complies with and shall, during the term of this Agreement, comply with the provisions of the applicable laws regarding availability, dispatch and any variation between scheduled energy and actual energy at the Delivery Point shall be accounted for through unscheduled interchange as per the provisions of the applicable grid

code and Unscheduled Interchange regulations issued by Central Electricity Regulatory Commission (CERC)/ Maharashtra Electricity Regulatory Commission (MERC) from time to time.

12. RISK ALLOCATION

- 12.1 The Seller shall have to apply for short term open access on monthly basis during the entire contracted period, failing which the contracted performance guarantee (CPG) on pro rata basis shall be forfeited.

13. MUTUAL REPRESENTATIONS AND WARRANTIES

- 13.1 Each party hereto represents, warrants and covenants to the other that:
- 13.2 It has the full capacity, power and authority to enter into this Agreement and to carry on and perform its obligations hereunder; and during the continuance of this Agreement, will continue to have full capacity, power and authority to carry out and perform all its duties and obligations as contemplated herein;
- 13.3 The execution, delivery and performance of this Agreement by it does not and will not conflict with, or constitute a breach or default under, its charter documents or any agreement, contract, commitment or instrument to which it is a party;
- 13.4 There are no action(s) or proceeding(s) pending or, in so far as it knows or ought to know, threatened in writing against it before any court, administrative agency or other tribunal that:
- i. could impact upon its right, power and authority to enter into this Agreement, or to otherwise carry out its obligations hereunder;
 - Or
 - ii. might have an adverse effect on its business or condition, financial or otherwise that would impact its ability to perform its obligations under this Agreement.

14. SELLER REPRESENTATIONS AND WARRANTIES

The Seller hereby represents and warrants to the Procurer that the Seller has not provided any inaccurate or misleading information or statements in the bid responses to the RFP documents provided by the Seller to the Procurer and all the confirmations, undertakings, declarations and representations made in its bid responses to the RFP documents are true and accurate and that the Seller has all requisite permits and consents and equipment's and facilities to perform its obligations under this Agreement for the entire Contract Period.

15. TERM AND TERMINATION

- 15.1. Term: This Agreement shall commence from Scheduled delivery date or signing of PPA whichever is earlier and shall be valid for the entire Contract Period (1st March 2023 to 29th February 2024), unless terminated earlier.
- 15.2. Termination by Procurer: The Seller understands and agrees that the Procurer shall be entitled to terminate this Agreement without any prior notice to the Seller and without liability, in the event
- (a) any statements, representations or warranties provided by the Seller in its bid responses to the RFP documents or hereunder are found to be untrue, false or inaccurate at any time, or

(b) the Seller's license/permission to supply power is terminated or adversely affected such that in the opinion of the Procurer, the Seller is unable to comply with its obligations hereunder, or

(c) the Seller is restrained or prohibited or temporarily or permanently from supplying power pursuant to orders of any regulatory authority or court.

16. ARBITRATION

- 16.1. Where any dispute arises claiming any changes in or regarding determination of tariff or any tariff related matters or which partly or wholly could result in change in tariff such disputes shall be adjudicated by the Appropriate Commission.
- 16.2. All other dispute shall be resolved by arbitration conducted a sole arbitrator under the provisions Indian Arbitration and Conciliation Act 1996. The sole arbitrator shall be appointed mutually by both the parties, failing which the arbitrator will be appointed in accordance with the provisions of the Act. The venue of such Arbitration shall be Mumbai, India and the arbitration proceedings shall be conducted in English language.
- 16.3. The decision of the arbitrator shall be in writing and shall be final and binding on the parties. The parties agree that the arbitration proceedings shall be kept confidential, but that judgment on any award may be entered in, and enforced by, any court having jurisdiction. Each party shall be responsible for its own costs, however, the arbitrators shall have the authority to award costs of the arbitration, including attorney's fees, to the prevailing party.
- 16.4. Nothing herein shall prohibit either party from seeking a temporary restraining order, preliminary injunction or other provisional relief if, in its judgment, such action is necessary to avoid irreparable damage, to preserve the status quo or to prevent the dissemination of its confidential information or from bringing and pursuing legal action to specifically enforce the provisions of this clause 16.
- 16.5. Notwithstanding the existence of any disputes and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under the contract.

17. GOVERNING LAW

- 17.1 All matters arising out of or in conjunction with the PPA shall be governed by and construed in accordance with Indian law and the courts of Mumbai, Maharashtra State shall be the exclusive jurisdiction.

18. CONFIDENTIALITY

18.1 The Parties undertake to hold in confidence this Agreement and RFP documents and shall not to disclose the terms and conditions of the transaction contemplated hereby to any third parties, except to their professional advisors or their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or in case of any disclosures required to any regulatory authorities under any applicable law with prior intimation to the disclosing party.

19. ASSIGNMENT

19.1 The Parties shall not assign or transfer this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of the other party. Provided that, such consent shall not be required in the event the Procurer seeks to transfer all of its rights and obligations under this Agreement to a transferee with the prior approval of the regulatory authorities, including assignment to a transferee being either the owner or operator of all or substantially all of the distribution system of the Procurer and/or being the successor entity of the Procurer and this Agreement shall continue to remain valid and binding on such successor.

20. NOTICES

All notices to be given under this Agreement shall be in writing and in the English Language and must be delivered by hand delivery or sent by registered post, courier, e-mail or telefax to the addresses of the parties stated below:

Address of Procurer

EON Kharadi Infrastructure Private Limited
Tech Park One, Tower E,
S.No. 191/A/2A/1/2
Next to Don Bosco School,
Off. Airport Road, Yerwada,
Pune-411006
eon1.dl@panchshil.com / eon2.dl@panchshil.com

Address of Seller

XXX
XXX
XXXXXX
Email : XX.XX@XX.XXXX

21. INDEPENDENT CONTRACTORS

21.1 The relationship hereby established between the parties is solely that of independent contractors. Nothing in this Agreement shall be deemed to constitute an agency, partnership or joint venture between the parties. Neither party to this Agreement is authorized to incur any obligation and liability for and on behalf of the other and no party shall be liable for any obligation and or liability incurred by the other party.

22. NO WAIVER

22.1 Any failure or delay by a party to take any action with respect to a breach of this agreement or a default by any other party shall not constitute a waiver of the former party's right to enforce any provision of this agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any party of any breach or failure to comply with any provision of this Agreement by a party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement, unless any such waiver has been consented to by the other party in writing.

23. AMENDMENTS

23.1 This Agreement may only be amended or supplemented by a written agreement between the Parties after obtaining the biale of the Maharashtra State Electricity Regulatory Commission, where necessary.

24. ENTIRE AGREEMENT

24.1 This Agreement, together with the RFP, shall constitute the entire understanding and agreement between the parties and supersedes all previous agreements, discussions, negotiations, letters, proposals and promises (including, without limitation, communications previously exchanged between the parties and/or oral discussions between the parties) between the parties hereto with respect to the subject matter hereof, whether written or oral, all of which shall not have any further force or effect.

25. SEVERABILITY

25.1 If any Clause or paragraph, or part thereof, of this Agreement is rendered invalid, ruled illegal by any court of competent jurisdiction or unenforceable under present or future laws, then it is the intention of the parties that the remainder of the Agreement shall not be affected thereby.

26. AUTHORIZED SIGNATORIES

26.1 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.

For and on behalf of Seller

For and on behalf of the Procurer

Name of the Authorized Signatory

Name of the Authorized Signatory

Designation

Designation