

## **Annexure 1: Distribution Franchisee Agreement**

### **DISTRIBUTION FRANCHISEE AGREEMENT FOR INPUT BASE FRANCHISEE (without Capital Investment) AT [AREA NAME] DIVISION OF [Utility Name]**

This Agreement made at Burla this \_\_\_ th day of [Month], [Year] between [Utility Name] , a company registered under the Companies Act, 1956 having its registered office at Plot - N-1/22, Nayapalli, Bhubaneswar, Orissa – 751015 hereinafter referred to as DISCOM (which expression unless repugnant to the context or meaning thereof shall include its successors and assigns) of the ONE PART

And

[Name of the Franchisee] a company registered under the Companies Act, 1956 having its registered office at ..... Hereinafter referred to as “Distribution Franchisee (DF)” (which expression unless repugnant to the context or meaning thereof shall include its successors and permitted assigns) of the OTHER PART.

WHEREAS:

- A. DISCOM is a Distribution Licensee under the provisions of the Electricity Act, 2003 (the "Act") having license to supply electricity in [Area name] Division along with other areas in the State of Orissa.
- B. Under the provisions of the Act, DISCOM is entitled to distribute electricity to a specified area within its licensed area of supply through another person referred to as Distribution Franchisee.
- C. For the purpose of sale and supply of electricity in the [Area name] Division of the DISCOM as more particularly described hereinafter, DISCOM selected \_\_\_\_\_ Limited through the competitive bidding process.
- D. DISCOM issued a Letter of Intent No.....dated .....to \_\_\_\_\_ the said M/s.....Limited and the same had been accepted by M/s. \_\_\_\_\_ Ltd.
- E. The parties have agreed to record the terms and conditions for sale, purchase and distribution of the electricity and services to the consumers within the Franchise Area by executing this "Distribution Franchisee Agreement" (DFA).
- F. The parties are fully aware that this Agreement is for sale of electricity and services to the consumers for distribution of electricity in Franchise Area through the Distribution Franchisee as contemplated under the Electricity Act 2003.

NOW, THEREFORE, IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS, PREMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

## **ARTICLE 1: DEFINITION OF TERMS:**

### **Definition of Terms**

For the purpose of this Distribution Franchisee Agreement (including all its annexures), the following terms, phrases and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word 'shall' is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is written in capital letters.

### **Agreement Representative**

Shall mean the persons nominated by the Parties as set forth in Article- 19.3 of this agreement.

### **Average Billing Rate (ABR):**

ABR shall mean the sum product of total billed units and approved tariff in each Consumer category divided by total billed units in all Consumer categories in the franchised area.

### **Average Revenue Realisation**

Shall mean the total revenue collected per unit of energy supplied by DISCOM at Input Points of the franchised area on annualized basis. The same shall be computed as:

Average Revenue Realisation in Rupees= Total Revenue Collected in Rupees / Total Energy Input in kWh.

### **Base Year**

Shall mean the Financial Year 2010 - 11 i.e. 1<sup>st</sup> April 2010 – 31<sup>st</sup> March 2011.

### **BST rate**

Shall mean the Bulk supply purchase rate plus transmission charges plus wheeling charges etc.

### **BSP rate**

Shall mean the rate at which DISCOM buys energy from GRIDCO as approved by OERC.

### **Collection Efficiency**

Shall mean the ratio of revenue actually realized from consumers (including the subsidy amount, if any) and energy amount billed to Consumers (including the subsidy amount, if any), in percentage terms for a particular period and shall be calculated as below:

Collection Efficiency = (Total Revenue collected from Consumers in rupees /Energy Billed to Consumers in rupees)\*100

**Complaint**

Means any written or electronic correspondence by a Consumer expressing dissatisfaction with the products services, or customer service of the Distribution Franchisee.

**Consumer**

Shall mean as defined under the Electricity Act, 2003.

**Contract Year**

Shall mean period of Twelve (12) year beginning from the Effective Date of this Agreement.

**DISCOM Distribution Assets**

Shall mean the assets created and employed by DISCOM in the Franchise Area, beyond the input points, for distribution of electricity including 33 KV, 11 KV and LT Lines, both overhead and underground, 33/11 KV Sub-stations, 11/0.4 KV Sub-stations, underground cables, electrical plant, control switch gear, meters etc with rated voltage 33 KV and below, service lines and other similar assets at the consumer end and other assets employed by DISCOM for distribution of electricity including all assets towards Fuse Call Centres, Billing / IT Centres, Collection Centres, Stores (except major Stores), Division/Sub-division Offices together with furniture, fixtures, IT hardware/software and communication equipments etc. It shall include vacant land owned by DISCOM identified for creation of sub-stations. DF shall not in any way sell, transfer, dispose off, alienate, mortgage or sub-let any of the aforesaid assets. No rent shall be charged by the DISCOM for the assets handed over to the franchisee.

**Distribution**

Means the supply and conveyance of electricity by means of distribution system.

**Distribution Assets**

Shall mean the assets employed by DISCOM / Distribution Franchisee in the Franchise Area for distribution of electricity.

**Distribution Losses**

Shall mean the difference between energy supplied at the Input Points of franchised area and Energy Billed to Consumers in the same area in percentage terms for a particular period and shall be computed as below:

Distribution Losses = (Energy Intake at Input Points in kWh of franchised area less Energy Billed to Consumers in same area in kWh)/ (Energy Intake at Input Points in kWh of franchised area)\*100

The above calculation includes power purchased from all the sources and supplied in franchised area.

**Distribution System**

Means the system of wires and associated equipments between the Input points of the franchised area and the point of connection to the installation of the Consumers.

**Effective Date**

Shall mean the date of handing over of the business operations of Franchise Area by DISCOM to the Distribution Franchisee pursuant to this Agreement after the conditions precedent are satisfied. Such date shall be mutually decided by DISCOM and the Distribution Franchisee.

**Expiry Date**

Shall mean the Twelveth (12) anniversary of the effective date or such extended period in terms of the provisions of DFA.

**Expiry Payment**

Shall mean the payment to be made on expiry of the Agreement by either Party to the other Party as per Article-16 of this agreement.

**Force Majeure**

Without limiting the general limitations of liability in any way arising under this Agreement neither party is responsible for failure or delay in performance of services or obligations hereby undertaken due to occurrence of any event of force Majeure (as instated under force majeure clause of this agreement), thereby, hindering the performance by the parties of any of their obligations hereunder.

**Franchise**

Means the rights granted by DISCOM to the Distribution Franchisee to act as a franchisee of DISCOM to purchase and distribute electricity in the Franchise Area and all the rights, powers and authorities available to DISCOM as a distribution licensee necessary to fulfill the obligations and responsibilities as contemplated under this Agreement and which can be conferred upon the Distribution Franchisee under the Electricity Act2003. The Franchisee Agreement shall be an Agreement for the sale of power to the Franchisee for supply of the same to the DISCOMs consumers in the franchised area and for any other services, such as right to use the existing distribution network.

**Franchise Area**

Shall mean the area as mentioned in the Article- 4.4 in respect of which the Distribution Franchisee shall act as a franchisee of DISCOM.

**Franchisee Distribution Assets**

Shall mean the assets created and employed by Distribution Franchisee in the Franchise Area for distribution of electricity.

**GoO**

Means the Government of Odisha/Orissa and any Ministry, Department, or any other Authority of the Government of Odisha/Orissa.

**GRIDCO**

GRIDCO shall mean GRIDCO limited or its successors and assigns

**Input Energy**

Shall mean sum total of energy supplied through all Input Points to the franchised area.

**Input Points**

Shall mean the 33 KV or 11KV side of 220KV and/or 132KV Substations or the interception points with the adjoining areas of the DISCOM of the franchised area as specified in Annexure 1 and shall include such other EHT/HT substations or feeders or interception points, which may feed energy to the Franchise Area at the Effective date or subsequently added during the term of the Agreement. It includes the feeders subsequently to be added during the franchisee period.

**Input Rate**

Shall mean Rupees per unit of electricity supplied by the DISCOM at the Input Points as per accepted Financial Proposal of the bidder or the rate arrived at as per formula given in Article 7 of this agreement.

**Law**

Means, in relation to this agreement, all laws in force in India and would include any statute, ordinance, regulation, notice, circular, code, rule or direction, or any interpretation of any of them by a Governmental instrumentality and also includes all applicable Rules, Regulations, Orders, Directions, Notifications by a Governmental instrumentality pursuant to or under any of them and shall include all Rules, Regulations, Decisions, Directions and Orders of [Name of the State Regulatory Commission].

**Major Incident**

Means an incident associated with the Distribution and retail supply of electricity in the Franchise Area, which results in a significant interruption of service, substantial damage to equipment, or loss of life or significant injury to human beings or Animals and shall include any other incident, which DISCOM expressly declares to be a major incident. Significant interruption

of service for this purpose shall mean interruption impacting more than 1000 Consumers continuously for a period of more than 24 hours and substantial damage to equipment shall mean damage to Distribution Assets exceeding Rs 10 Lacs in gross value.

**OERC**

Shall mean the Orissa Electricity Regulatory Commission or its successors.

**Officer-in-Charge**

Shall mean any person nominated by each of the Parties as set forth in Article-19.3 of this agreement.

**OPTCL**

Shall mean the Orissa Power Transmission Corporation Limited and its successors and assigns.

**Open Access**

Shall mean open access as defined in the Electricity Act 2003 and in the regulations framed by the state electricity regulatory commission in this regard and as amended from time to time.

**Person**

Shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.

**“Promoters”**

Shall mean those entities holding not less than 50% of the voting securities in the Bidding Company/entity, either directly or indirectly. In the event of an indirect holding in Bidding Company through a chain of entity(ies) / company(ies), the percentage of holding would be considered on proportionate terms. Any bank or financial institution would not be considered as a Promoter.

**Prudent DISCOM Practices**

Shall mean the practices, methods and standards that are generally accepted nationally from time to time by electric utilities for the purpose of ensuring the safe and efficient distribution of electricity, operation and maintenance of Distribution Assets, billing and collection of distributed power etc.

**Public Right of Way**

Shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, bridge, tunnel, parkway, waterway, easement, or similar property within the Franchise Area, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining the system. No

reference herein to a “Public Right-of-Way” shall be deemed to be a representation or guarantee by DISCOM that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and the Distribution Franchisee shall be deemed to gain only those rights to use as are vested in DISCOM and as the DISCOM may have the right and power to give.

**Rebate Date**

shall mean 48 hours from the delivery date of invoice

**SLDC**

Shall mean the State load dispatch centre of Odisha/Orissa

**Termination Payment**

Shall mean the payment to be made on Termination of the Agreement by either Party to the other Party as per Article-16 of this Agreement.

**Total Revenue Collected**

Shall mean amount collected from the consumers of the franchised area under the account of Energy charges, Customer charges, Fixed/Demand charges and PF penalty/Incentive.

**Yearly Floor Input Price**

Yearly floor input price (YFIP) is the minimum input rate below that the prospective bidder cannot quote input price for the relevant year.

**ARTICLE 2: CONDITIONS PRECEDENT & SUBSEQUENT TO THE AGREEMENT**

**ARTICLE 2.1: CONDITIONS PRECEDENT TO BE SATISFIED BY THE DISTRIBUTION FRANCHISEE & DISCOM**

**2.1.1 Submission of Payment Security Deposit**

The Distribution Franchisee shall secure the payment security deposit by providing Letter of Credit to the satisfaction of DISCOM from any nationalized bank or Scheduled Bank for an amount equivalent to two months’ estimated amount payable to DISCOM at any Bank in Bhubaneswar / Burla by Distribution Franchisee based on energy input at Input Points in Franchise Area and Input Energy Rate quoted by the Distribution Franchisee alongwith two months average collection of all other applicable charges in addition to Input charges as per Article 7 during the base year for first year of Franchisee term and subsequent year thereafter at the beginning of each year. DISCOM and

Distribution Franchisee shall also sign a Default Escrow Agreement for the purpose of collateral arrangement. This payment security mechanism shall be governed as per conditions stipulated in Article-11 of this Agreement.

The Earnest Money Deposit shall be refunded by DISCOM on submission of Security Deposit by the Franchisee.

### **2.1.2 Completion of Audit of Various Parameters**

The Joint Audit Team of DISCOM and the Distribution Franchisee shall complete an audit of the parameters listed below:

- 2.1.2.1 Past energy input and amount collected;
- 2.1.2.2 Opening level of Inventory;
- 2.1.2.3 Ongoing Contracts as on Effective Date; and

### **2.1.3 Calibration of Meters**

The authorized representatives of DISCOM and the Distribution Franchisee shall conduct a joint Calibration of the interface meters (Main and or Check meters) at the Input points. Where the meters are installed at 132 kV or 220 kV grid substations in the possession of OPTCL the calibration done by the OPTCL shall be acceptable to DISCOM and DF. Check meters shall be installed at all the interface metering points, if not available. All the meters including check meters shall have AMR facility. In case of non functioning or defective main meter, the readings of the check meter shall be used for billing purpose.

**2.1.4** Methodology to compute Distribution Losses and Collection Efficiency for each year during the term of this Agreement shall be jointly finalized.

### **2.1.5 Authorisation to Franchisee to Represent**

- (a) Distribution Franchisee being responsible shall make all out efforts to prevent the unauthorized use and pilferage of electricity in Franchise Area and the franchisee shall also associate with the DISCOMs authorized officer for handling such cases Under Section 126, Section 135(1A) and Section 135 (2) of the Electricity Act 2003.
- (b) Sufficient number of officers of the Distribution Franchisee should be authorized for representing before the OERC, Consumer Grievance Redressal Forums, Ombudsman, Consumer Courts, etc.

- (c) The Franchisee should also be allowed to represent to the DISCOM, OPTCL and SLDC for
  - i. augmenting the transmission capacity matching with the growth in distribution network
  - ii. metering of input points including calibration of meters wherever the meters are installed at the grid substation under the possession of OPTCL.
  - iii. matters relating to load dispatch and grid discipline
  - iv. Implementation of Intra State ABT

**2.1.6** All the conditions precedent stated herein above shall be satisfied within 60 (sixty) days of signing of this Agreement or such further period as may be extended by the parties mutually. If, the Distribution Franchisee fails to satisfy Article 2.1 above, within the stipulated duration, DISCOM shall be entitled to terminate this Agreement and forfeit the earnest money deposit of the Distribution Franchisee at its discretion.

## **ARTICLE 2.2: CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE DISTRIBUTION FRANCHISEE AND DISCOM**

### **2.2.1 Arrears Determination:**

The Joint Audit Team of DISCOM and the Distribution Franchisee shall complete an audit of:

- 2.2.1.1 Opening level of arrears from the consumers which are connected to the distribution network two months prior to the effective date;
- 2.2.1.2 Segregation into permanently disconnected and current live arrears as defined in this agreement;
- 2.2.1.3 Credit Balance from Consumers; herein it shall mean the outstanding credit balance on consumer name on account of advance payment made by consumer or otherwise prior to effective date. Such amount shall not be considered under pre franchisee arrear computation

**2.2.2** DISCOM shall identify the Consumers for which Service Connection Charges (SCC) have been received by it, but connections have not been provided. The DF shall be required to take necessary action for release of all those connections which have been applied for but not released as on the date of hand over. For this purpose, either the Service Connection Charges already deposited by the consumer shall be transferred to the DF or the installation material for such connections shall be issued by DISCOM to the Distribution Franchisee and further supervision charges received from the Consumers, if any, towards such connections shall be remitted to the Distribution Franchisee.

**2.2.3** All the conditions subsequent stated above shall be satisfied within thirty (30) days except for condition mentioned in Article 2.2.1.1 which shall be completed within six months time, from the Effective Date or such further time as may be mutually extended by the Parties.

### **ARTICLE 3: TERM OF AGREEMENT**

#### **3.1 Term of Agreement**

The term of the Distribution Franchise shall be for a period of Twelve (12) years from the Effective Date which shall be extendable by 2 years with mutual consent.

#### **3.2 Early Termination**

This agreement can be terminated before the expiration of the Franchisee Period as per the provisions of Article-16 and Article-3.3 of this Agreement.

#### **3.3 Event of Abandonment**

If the Distribution Franchisee ceases to operate all and/or any substantial part of the Distribution System for a period of forty-eight (48) consecutive hours without the prior written consent of DISCOM, then DISCOM or its designates shall be entitled to immediately enter any and/or all of the site(s) and operate the Distribution System, provided however that:

An event of abandonment shall not have been set to occur, if the cessation of operation has resulted from -

- (i) an event of Force Majeure; or
- (ii) a scheduled outage; or

It is however expressly agreed that if the Distribution Franchisee is proceeding with diligence and good faith to overcome or remedy such event and such event is overcome or remedied within a further period of forty-eight (48) hours, then such an event shall not be treated as an event of abandonment.

It is hereby expressly agreed that all third party liabilities arising out of the event of abandonment shall be borne by the Distribution Franchisee alone. The Distribution Franchisee shall indemnify and hold DISCOM harmless against the same as provided in Articles 14.1.2. The Distribution Franchisee shall compensate DISCOM for the losses suffered by DISCOM, if any, as provided in Article 14.1.3.

#### **3.4 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 post its expiry or termination.

#### **ARTICLE 4: GRANT OF DISTRIBUTION FRANCHISE**

##### **4.1 Grant of Franchise**

Subject to the terms and conditions of this Agreement and the Act, DISCOM agrees to sell/supply electricity to the Distribution Franchisee at annual Input Energy Rates for further distribution in the Franchise Area and the Distribution Franchisee hereby agrees that it shall perform all the obligations and accept all the responsibilities of DISCOM as the Distribution Licensee for the Franchise Area as stipulated in the Laws of the land, as if they were to apply to the Distribution Licensee and other activities as stipulated in this Agreement. In consideration of the above, the Distribution Franchisee shall have "Right to Use" the DISCOM Distribution Assets and all other rights, powers and authorities available to DISCOM as a Distribution Licensee to perform its obligation under this Agreement. Distribution Franchisee however shall not be the owner of DISCOM Distribution Assets.

##### **4.2 Legal Status of Distribution Franchisee**

The Distribution Franchisee shall be a franchisee of the DISCOM as defined under the Act and it shall not be a licensee under Section 14 of the Act.

##### **4.3 Exclusivity**

The Distribution Franchisee will be the exclusive franchisee of DISCOM in the Franchise Area. The Distribution Franchisee shall not be entitled to assign or transfer in any manner its rights and obligations under this Agreement to its affiliate or any other third party without the prior approval of DISCOM.

It is however clarified that the Distribution Franchisee alone shall be liable and responsible to DISCOM for the due performance of this Agreement and any default / breach of any of the terms and conditions of this Agreement by any such sub-contractor shall be deemed to be a default / breach by the Distribution Franchisee.

##### **4.4 Franchise Area**

The Franchise Area at present contains input points as detailed in Annexure - 1. In case the details provided in the Annexure-1 is different from the Joint Audit report, the conclusions of the Joint Audit report shall be final and Annexure-1 shall stand amended accordingly. Notwithstanding this Joint Audit Report, the Input Energy Rates quoted by the Distribution Franchisee with the Financial Proposal for the contract period shall remain unchanged.

#### **4.5 Regulatory Interface**

Both parties agree to subject themselves to the Regulatory Interface with OERC for approval of Planned Investments as specified in this Agreement as specified in this agreement, as may be required in any Financial Year.

#### **4.6 Effect of Acceptance**

By accepting the Franchisee and executing this Distribution Franchisee Agreement, the Distribution Franchisee accepts and agrees to comply with the provisions of this Distribution Franchisee Agreement and the Electricity Act 2003 and regulations framed thereunder.

#### **4.7 Directions**

Distribution Franchisee shall comply with DISCOM directives issued for compliance of the Laws, Regulations, Orders and Directives of OERC. However, the Distribution Franchisee shall have option of following alternative methods for complying with the applicable Laws, Regulations, Orders and Directives of OERC with prior intimation to DISCOM.

#### **4.8 Intent**

It is the intent of both the parties that each party shall enjoy all rights and be subject to all obligations of this Distribution Franchise Agreement for the entire term of the Agreement and to the extent any provisions have continuing effect, after its expiration.

#### **4.9 Intra state ABT compliance**

Distribution Franchisee shall comply with the directions of DISCOM and SLDC for the implementation of intrastate ABT and will be subject to levy of Unscheduled Interchange charges (UI) as applicable from time to time.

### **ARTICLE 5: ACTIVITIES OF DISTRIBUTION FRANCHISEE**

#### **5.1 'Right of Use' to DISCOM Distribution Assets**

5.1.1 The Distribution Franchisee shall be entitled to use the DISCOM Distribution Assets to perform its obligation under this Agreement. DISCOM shall, however, continue to be the owner of such assets.

5.1.2 The Opening Asset Register of the Franchise Area shall be verified and signed by both the parties in compliance to the provisions of Article 2.2.1.1.

- 5.1.3 Distribution Franchisee shall use and maintain such assets at its own cost to keep them in good working condition as per Prudent DISCOM Practices.
- 5.1.4 Distribution Franchisee shall not dispose off or alienate or in any way encumber such assets without prior written approval of DISCOM
- 5.1.5 If any such asset is scrapped, the same shall be deposited at the designated store of the DISCOM by the Distribution Franchisee at its cost. DISCOM shall duly identify the scrap against its Asset register and update the Asset Register.
- 5.1.6 On termination/ expiry of this agreement, the Distribution Franchisee shall, without demur, hand over physical possession/custody of DISCOM Distribution Assets in same condition, subject to normal wear and tear as per Article 5.1.5 of this agreement.
- 5.1.7 Any shortfall in the quantity of DISCOM Distribution Assets verified and recorded in the joint audit report shall be recovered from the Distribution Franchisee at the cost of replacement of such asset. The Distribution Franchisee will have the option to replace such missing or lost equipment (shortfall) with comparable equipment.
- 5.1.8 If the Distribution Franchisee uses DISCOM assets that have not been transferred as a part of DISCOM Distribution Assets, separate charges, as specified by DISCOM, for the use of the same shall be payable to DISCOM.

## **5.2 Inventory of O&M Spares**

- 5.2.1 DISCOM will hand over the inventory of O&M spares available in the Franchise Area as is there basis to the Distribution Franchisee on the Effective Date of this Agreement. Further, for the period of first three months from Effective Date DISCOM may arrange to issue O&M spares to the Distribution Franchisee at its request, subject to availability, and at rates decided by DISCOM.
- 5.2.2 Upon termination/expiration of this Agreement, Distribution Franchisee shall return the inventory of O&M spares to DISCOM in the same form and quantity as specified in Article 5.2.1. In case of non availability of similar specification of material, Distribution franchisee shall submit the material with specification as accepted by DISCOM.
- 5.2.3 Distribution Franchisee shall compensate DISCOM for the difference between the inventory levels in quantity terms on Effective Date and that on date of termination/expiration, to eliminate any risk with respect to inflation.

5.2.4 DISCOM shall compensate the Distribution Franchisee for the inventory of O&M spares at termination / Expiry of Agreement at latest price ledger of the DISCOM for the particular item acquisition price as may be applicable provided that, the maximum inventory that shall be taken over by DISCOM shall not be more than the minimum inventory norms of DISCOM from time to time.

### **5.3 Supply of Energy**

5.3.1 DISCOM shall supply energy at Input Points as per Annexure 3. However, this supply may vary subject to SLDC Directives on load shedding. Without prejudice to the foregoing, DISCOM shall not discriminate in the supply of power between the Franchise Area and its other Distribution areas

5.3.2 In case DISCOM is unable to provide sufficient energy to meet the requirement of the franchise area, the franchisee may request DISCOM to source energy that is in deficit from the open market. As regards the mechanism, while the franchisee will identify and procure power from diverse sources, the agreements for purchase of power shall be executed by the DISCOM as the principal Party. DISCOM will have to comply with Section 86(1)(b) of the Electricity Act, 2003 by making necessary applications to OERC for scrutiny and approval even if the power is procured specifically for the Franchisee area. DISCOM shall be responsible for justifying the need for power, its price, its contractual arrangement under power purchase agreements, for scrutiny and approval of OERC. The DF will identify the additional sources of power purchase and the rate for the same, and DISCOM will enter into Power Purchase Agreements (PPAs) with contracted parties for power purchase. DISCOM will enter into tri-partite PPAs with the Franchisee as one of the Parties to the PPA. Such electricity purchase (including price) and power procurement process of the DISCOM will be subject to regulation by OERC under the provisions of Section 86(1)(b) of the Electricity Act 2003 and approval from Board of Directors (BoD) of DISCOM. The required quantum of additional power shall be allocated to the franchisee area. Upon termination or expiry of this agreement during the franchisee period, such procured power under the said PPA shall be fully assigned to DISCOM for usage not limited to supply in the franchisee area only.

5.3.3 DISCOM shall also assist the Franchisee in obtaining information from OPTCL about the transmission capacity for power purchase.

5.3.4 Such scheme will be implemented only after approval of OERC. DISCOM will have no responsibility or liability if such scheme is not approved/ rejected by OERC.

- 5.3.5 In case of procurement of power from sources other than DISCOM, the wheeling charges shall be payable by Distribution Franchisee for using the network other than that of the distribution network of the DISCOM for distribution of power in the Franchise Area and shall be levied on the franchisee as per regulations.
- 5.3.6 The Distribution Franchisee shall not sell the Input Energy to anyone outside the Franchise Area.
- 5.3.7 The Distribution Franchisee shall strictly adhere to the planned load shedding schedule of DISCOM based on directives issued by SLDC.
- 5.3.8 The Distribution Franchisee shall also follow the instructions of OPTCL / State Load Dispatch Centre for grid discipline/Planned shutdown.

#### **5.4 Liabilities and Obligations**

The Distribution Franchisee shall accept all liabilities and perform all obligations of the distribution licensee in the Franchise Area as a franchisee of DISCOM, in compliance with the Law, Regulations and Directives of OERC issued from time to time as if they were to apply to licensee and directives of DISCOM for compliance of laws, regulations, orders and directives of DISCOM. The broad scope of work would be as follows:

- 5.4.1 Undertake distribution & supply of power to the Consumers of DISCOM in the Franchise Area adhering to the OERC Licensee regulation and standards of performance regulation,2004.
- 5.4.2 Undertake all Operation & Maintenance related activities in Franchise Area.

#### **5.4.3 Treatment of Ongoing Contracts**

- 5.4.3.1 Distribution Franchisee (DF) shall be responsible for administering and maintaining the ongoing contracts entered into by DISCOM
- 5.4.3.2 DF may carry out amendment in contracts, if need be, except for capital works in progress subject to contractual obligations between DISCOM and the respective Contractor. The DF shall keep DISCOM completely indemnified in this regard.
- 5.4.3.3 DF may take up and complete the work in progress for Capital Investment in case the DISCOM so desires and deduct the investments from the input energy amount payable to the DISCOM.

5.4.3.4 Any legal liability or any other such liability on completed contracts shall be borne by DISCOM and DF shall be completely indemnified in this regard.

## **5.5 Technical Duties and Responsibilities of the Distribution Franchisee**

The broad duties and responsibilities would include, but not limited to, the following activities:

### **5.5.1 Load Forecast**

The Distribution Franchisee shall carry out demand estimation / load forecast of the Franchise Area periodically and apprise the same to DISCOM

### **5.5.2 Energy Audit**

The Distribution Franchisee shall carry out energy audit on a monthly basis and submit a report of the same to DISCOM.

### **5.5.3 Operation, Repair & Maintenance and Up gradation**

**The Distribution Franchisee shall at its own cost perform:**

- 5.5.3.1 Operation and maintenance of Distribution Assets from the start of input feeders of Franchise Area
- 5.5.3.2 Operation and maintenance of sub-stations and transformer stations
- 5.5.3.3 Installation and replacement of metering devices and carry out meter reading of all feeders and distribution transformers
- 5.5.3.4 Repair, maintain and replace failed distribution transformers as per the applicable Supply Code and Standards of Performance notified by OERC
- 5.5.3.5 Maintain a minimum level of rolling stock of transformers and other necessary material
- 5.5.3.6 Upgrade, renovate and maintain the existing distribution network/ systems/ IT assets and systems as per Prudent DISCOM Practices and the standards that may be prescribed by OERC.
- 5.5.3.7 For carrying out day-to-day maintenance work, if shutdown is required from EHT station on any feeder, the Distribution Franchisee shall apply for proper permit from the concerned OPTCL-EHT substation. Such permit shall be returned to concerned EHT substation immediately after the work is completed. The Distribution Franchisee shall also intimate schedule of planned outages to the concerned EHT substation and maintain day-to-day coordination for smooth operation of transmission network
- 5.5.3.8 Maintain a minimum power factor of 0.90 at the input points or as applicable under the Regulation of OERC from time to time.

#### **5.5.4 Compliance with standards**

5.5.4.1 The Distribution Franchisee shall take all reasonable steps to ensure that all Consumers within the Franchise Area receive a safe and reliable supply of electricity as defined by OERC.

5.5.4.2 The Distribution Franchisee shall be responsible for complying with all Act & Rules related to Electricity in the country, OERC Standards, Regulations and other Directives as issued and modified from time to time and as applicable to any distribution licensee. Any penalty imposed on DISCOM by OERC or any other Government Authority on account of failure of the Distribution Franchisee in compliance shall be borne by the Distribution Franchisee.

5.5.4.3 The Distribution Franchisee shall conduct its franchised business in the manner, which it considers to be best calculated to achieve the Overall Performance Standards for provision of Supply of services and the promotion of the efficient use of electricity by Consumers pursuant to Electricity Act 2003.

#### **5.5.5 Consumer Service**

##### **(A) Electricity Supply Code**

The Distribution Franchisee shall:

- a) Comply with Electricity Supply Code and other conditions of supply as approved and modified by OERC from time to time. Any penalty imposed on DISCOM by OERC for non-compliance shall be borne by the Distribution Franchisee;
- b) Bring to the notice of the Consumers the existence of the Supply Code (and conditions of supply) as approved and modified by OERC from time to time, including its substantive revision and their right to inspect or obtain a copy in its latest form;
- c) Make available a copy of the Supply Code (and conditions of supply) as approved and modified by OERC from time to time revised from time to time, for inspection by the public during normal working hours; and
- d) Provide free of charge a copy of the Supply Code (and conditions of supply) as revised from time to time to each new Consumer, and to any other person who requests it at a price not exceeding the cost of duplicating it.

##### **(B) Consumer Complaint Handling**

The Distribution Franchisee shall comply with the complaint handling procedure approved by OERC. The Distribution Franchisee shall:

- a) Establish within a period of six month from the Effective Date, at least one Consumer Service Centre as per minimum specifications placed at Annexure-3 for Consumer Complaints and redressal system.
- b) Redress commercial and billing Complaints.
- c) Make available, on demand, a copy of the complaint handling procedure, revised from time to time, for inspection by the public at each of the relevant premises during normal working hours; and
- d) Provide free of charge a copy of the procedure revised from time to time to each new Consumer, and to any other person who requests for it at a price not exceeding the cost of duplicating it.
- e) To comply with the Orders and Directions, if given by any court or a forum under Consumer Protection Act 1986 or Consumer Grievance Redressal Forum under the OERC(Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2003.

**(C) Consumer Services**

The Distribution Franchisee, on request of the Consumer, to the extent that is reasonably available to the Distribution Franchisee, shall provide:

- a) Information on all services provided by the Distribution Franchisee including information on the charges, which may be available to the Consumers;
- b) Information on meter readings for the electricity services provided to the Consumer premises by the Distribution Franchisee in the Franchise Area; and
- c) Information on the status of the Consumer's account with the Distribution Franchisee.
- d) Any other information as per law or regulation, in this regard, applicable to licensee.

**5.5.6 Obligation to Connect Consumers**

Subject to the provisions of this Agreement, the Distribution Franchisee shall have the following obligations:

- a) Subject to the provisions of the Electricity Act 2003, the Distribution Franchisee shall, on the application of the owner or occupier of any premises within the Franchise Area, give supply of electricity to such premises as per Distribution Code issued by OERC.
- b) Subject to the provisions of the Electricity Act 2003 and compliance of relevant regulations, the Distribution Franchisee may refuse to supply, or may disconnect the supply of electricity to any premises.

- c) The Distribution Franchisee shall retain the Service Connection Charges (SCC) collected from the Consumers for giving new connections levied as prescribed by OERC.
- d) The Distribution Franchisee shall collect the Security Deposit and System Loading Charges from the Consumers for giving new connections, which shall be transferred to DISCOM.
- e) The applicable interest on these deposits shall be borne by DISCOM and shall be transferred to the Distribution Franchisee for passing on to the respective consumers to meet its obligations as per applicable Distribution code.
- f) The adjustment against arrears on account of Consumers who are permanently disconnected by the Distribution Franchisee after the Effective Date shall be allowed from the Security Deposit of the respective Consumer after following applicable regulations. However, in case of Permanently Disconnected Consumers existing on the Effective Date, DISCOM shall have the first right on the security deposit.
- g) The Distribution Franchisee shall not grant new connections to the premises having arrears as on Effective Date without the written consent of DISCOM unless arrears have been recovered from them and remitted to DISCOM. DISCOM shall take responsibility for such cases and defend the legal cases, at its own cost, arising out of such an action by the Distribution Franchisee.

## **5.6 Commercial Duties and Responsibilities of the Distribution Franchisee**

The Distribution Franchisee shall perform in the Franchise Area:

- 5.6.1 Meter reading and billing to the Consumers as per the retail tariffs approved by OERC from time to time.
- 5.6.2 Collections from the Consumers as per the billing.
- 5.6.3 Collection of arrears on behalf of DISCOM
- 5.6.4 Make timely payments to DISCOM as per the terms and conditions of this Agreement.
- 5.6.5 Replace defective meters with new meters.
- 5.6.6 Maintain Consumer database and billing records as per DISCOMs proforma and provide to DISCOM every month for updation and preparation of consolidated MIS for own use or onward submission to OERC.
- 5.6.7 Initiate necessary action, in accordance with the procedure for anti theft, disconnection and control of commercial losses as defined in Electricity Act 2003 and applicable DISCOM Regulations and Directives.
- 5.6.8 Discharge all duties and responsibilities of DISCOM as the distribution licensee as required by the License Regulations of the OERC except such of the conditions, which cannot be complied with by the Distribution Franchisee alone.

5.6.9 Undertake any other activity as may be notified from time to time by OERC to the distribution licensee.

## **5.7 Performance Improvement Targets**

5.7.1 The Distribution Franchisee shall achieve a loss reduction trajectory as prescribed below:

5.7.1.1 If distribution losses are higher than 25% - reduction by 5% per annum till 25% loss level is achieved.

5.7.1.2 If distribution losses are up to or less than 25% - reduction by 3% per annum till 19% loss level is achieved

5.7.1.3 If distribution losses are up to or less than 19% - reduction by 2% per annum till 15% loss level is achieved

5.7.1.4 If distribution losses are up to or less than 15% - reduction by 1% per annum till 12% loss level is achieved

5.7.2 The targets will change from one slab to another on shifting of the distribution losses from one slab to another.

5.7.3 The franchisee shall put in its best effort to achieve the loss reduction trajectory. In case franchisee fails in achieving the loss reduction trajectory as envisaged in this agreement, the input corresponding to the increase in distribution losses from the agreed distribution losses shall be billed to the franchisee at the differential rate of purchase price of DISCOM and input rate of franchisee in addition to invoice raised under Article 7 of this agreement which will become payable by the franchisee alongwith the ensuing monthly invoice.

5.7.4 Further, should there be an increase beyond the Allowed Estimated Annual Energy Input (MU's) indicated in Annexure 3 of DFA / Exhibit 5 of RFP based upon loss reduction trajectory, the additional Input drawn will be charged to the Franchisee at the prevailing BST rate" and will be in addition to invoice raised under Article 7 of this agreement which will become payable by the franchisee alongwith the ensuing monthly invoice.

## **5.8 Duties and Responsibilities of DISCOM**

The broad duties and responsibilities of DISCOM would include the following activities:

5.8.1 DISCOM shall ensure the supply of power to Distribution Franchisee of acceptable quality standards as per Article 5.4.

- 5.8.2 DISCOM shall communicate to Distribution Franchisee any shortfall or inability to supply, the power requirements of the Distribution Franchisee.
- 5.8.3 DISCOM shall carry out meter reading jointly with Distribution Franchisee on a monthly basis at Input Points of the Franchise Area or readings downloading through AMR.
- 5.8.4 DISCOM shall support the Distribution Franchisee initiatives to adopt innovative practices to bring about effectiveness and efficiency in electricity distribution business.
- 5.8.5 DISCOM will pursue for establishment of Special Courts and Energy police stations as per state government notification if any applicable in the Distribution Franchisee area.

## **ARTICLE 6: METERING AND MEASUREMENT**

### **6.1 Metering System:**

- 6.1.1 The Distribution Franchisee shall install and operate the Check Metering system in accordance with this Article 6 and confirming to Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006. In addition to the existing Main Meters at each of the Input Points, the Distribution Franchisee shall also provide a check meter at each of them subject to facility extended/allowed in case of grid metering.
- 6.1.2 Installation and timely replacement of main meters as required to directly measure energy input in the Franchise Area shall be the responsibility of DISCOM, OPTCL/Central Transmission Utilities as the case may be.
- 6.1.3 Check meters shall be installed at all the interface metering points, if not available. All the meters including check meters shall have AMR facility. In case main meters are not functioning or defective, the readings of check meter shall be used for Billing purpose.

### **6.2 Inspection and Testing of Meters**

- 6.2.1 DISCOM/OPTCL shall inspect and if necessary, recalibrate the metering system on a regular basis but in any event, at least once every six (6) months or at a shorter interval at the request of either party.
- 6.2.2 Each Meter comprising the metering system shall be sealed by DISCOM, Distribution Franchisee and OPTCL (only in case of grid metering), and shall not be opened, tested or calibrated except in the presence of all the parties.

### **6.3 Inaccuracy of Meters**

In case the difference between the readings of the main meter and the check meter for any calendar month is within 0.5%, the reading of the main meter shall be taken as final. If however, the variation exceeds  $\pm 0.5\%$ , the final value shall be arrived at as per the procedure, laid down as below.

Whenever difference between the readings of the Main meter and the Check meter for any month is more than 0.5%, the following steps shall be taken Checking of CT and VT connections:

- a) Calibration of interface meters at site with reference standard meter of accuracy class higher than the meter under test.
- b) On carrying out the re-calibration of the main meter, if it is discovered that either the percentage of inaccuracy exceeds  $\pm 0.5\%$  or that the main meter is not working, the following procedure in order of priority, whichever is feasible, for arriving at the computation of quantity of energy during the period between the last calibration and the present, shall be followed:
  - i) On the basis of the readings of the check meter if installed and functioned accurately; or
  - ii) By correcting the error if the percentage of error is ascertainable of calibration, tests or mathematical calculation; or
  - iii) By estimating the volume of energy delivered based on the meter reading on the upstream of the network i.e. energy reading of meters installed on LT side of the power transformers or HT side of the transformer.
- c) The correction to the quantity of energy injected shall apply to the following periods (hereinafter referred to as the "Correction Period"):
  - i) To any period of time during which the main meter was known to be malfunctioning or to which the parties mutually agree;
- d) If the difference exists even after such checking or testing, then the defective meter shall be replaced with a correct meter.
- e) In case of conspicuous failures like burning of meter and erratic display of metered parameters and when the error found in testing of meter is beyond the permissible limit of error provided in the relevant standard, the meter shall be immediately replaced with a correct meter.
- f) In case where both the Main meter and Check meter fail, at least one of the meters shall be immediately replaced by a correct meter.

### **6.4 Measurement**

- 6.4.1 A joint meter reading by both the parties shall be carried out on the Effective Date or the reading at 0.00 hrs shall be taken through dump reading/AMR.

- 6.4.2 A joint meter reading by both the parties shall be carried out on the last day of every calendar month at 24:00 hrs w.e.f the Effective Date by way of direct reading or through CMRI or AMR.
- 6.4.3 DISCOM shall raise invoices as mentioned in Article 7 based on input units measured by Distribution Franchisee as specified in above Article.
- 6.4.4 The Metering and Measurement System stated in this Article shall also be applicable to payments on account of Wheeled Electricity.
- 6.4.5 Until 0.2 Class meters are installed as main meters or in case the installed main meters is not functioning, defective, erratic display of parameters or burnt, the reading of check meter shall be used for billing provided the check meters are of 0.2 accuracy class.

## **ARTICLE 7: BILLING AND PAYMENT**

### **7.1 Billing**

The billing mentioned in this Article shall be done as follows:

#### **7.1.1 Monthly Invoice**

The First Invoice raised by DISCOM on the Distribution Franchisee shall correspond to the energy input between 00:00 hours of the effective date and 24:00 hrs of the last day of the same calendar month or the dates and time mutually agreed by the DISCOM and Franchisee. All subsequent invoices shall be raised on the basis of midnight data of the last day of the each calendar month; Invoice shall be computed as below:

$$MI = (RIE_M + WC_M + ED + SDN_M + P + FSA + U.I + OC + EDC) - (CARPDRM + CARCL_{RM})$$

Where,

**RIE<sub>M</sub>** = Revenue for Input Energy as per Joint Measurement/ Meter Dump data collected through MRI or Through AMR

It shall be computed as below:

$$RIE_M = EI_M * AIR_N + TSR_N$$

Where,

**EI<sub>M</sub>**= Energy input in the Franchise Area during the month, which shall be the energy purchased from DISCOM.

**AIR<sub>N</sub>**= Annualized Input Rate applicable for the nth year as per Annexure-3 of this Agreement.

**TSR<sub>N</sub>**= Tariff Sharing Ratio (TSR) applicable to the nth billing period

The computation of the Tariff Sharing Ratio is illustrated below:

$$TSR_N = 0.8 * (ABR_N - ABR_0) * \text{Total Billed units}$$

$ABR_0$  is applicable to all Consumers in Distribution Franchisee area for the Base Year

$ABR_N$  shall mean Average billing rate for the  $N^{\text{th}}$  year

$ABR_0$  shall mean Average billing rate for the base year

Provided that in case after taking into account the impact of TSR as per above mentioned formula, the per unit revenue for input energy comes out to less than floor rate of that relevant year as stipulated in Annexure III, the input bill will be raised on the basis of floor rate pertaining to that year only.

The ABR shall be computed on annual basis at the beginning of each Financial Year (1<sup>st</sup> April - 31<sup>st</sup> March) and upon revision of Retail Tariff or fuel surcharge rate, as and when ordered by OERC. In case of midyear tariff revision, the computation shall be made considering units already billed during the financial year along with estimated figures of remaining period of the Financial Year and making applicable new Tariff/fuel surcharge rate.

On availability of actual figures of ABR at the end of the year, the actual ABR shall be computed and compared with the preceding years ABR, the differential amount shall be adjusted in year end bill raised on the Franchisee.

Approved Tariff for this purpose shall mean the tariff and the applicable Fuel Surcharge Adjustment (FSA) approved by OERC as and when basis. For computation of ABR, the billing towards Demand Charges, Energy Charges, Penalty /Incentive (overdrawal and PF) excluding penalty for theft, Minimum monthly fixed charges and Customer Service charges shall be considered.

$ABR_0$  as applicable to all Consumers in Distribution Franchisee area for the Base Year

ABR	Base Year	Rs./Unit
Average Billing rate ( $ABR_{LT0}$ ) for Base year	FY 2010-11	

$WC_M$  = Wheeling Charges applicable to energy procured over and above the quantity purchased from DISCOM for the Month computed as per OERC regulations

**Electricity Duty (ED)** = shall mean the levy of Duty as defined under “The Orissa Electricity (Duty) Act 1961” as applicable from time to time on sale of electricity.

**SDN<sub>M</sub>** is the Security Deposit and System Loading Charges collected for new connections issued as additional security based upon enhanced consumption or consumption due to enhanced load by consumers during the period and for which information has been received as per Article-13.1 of this agreement.

**P** is the penalty leviable on the Distribution Franchisee for delay on account of previous payments and shall be computed @18% per annum quarterly compounded on the outstanding amount.

**Fuel Surcharge Adjustment (FSA)** = Fuel Surcharge adjustment, if any, approved by OERC to be recovered from the consumer

**Unscheduled Interchange (UI)** = Unscheduled Interchange (UI) as applicable under intrastate ABT regulation.

**Other Charges (OC)** = includes meter rent pertains to those meters which are supplied by DISCOM to consumer prior to effective date of franchisee, collection of arrear pertaining to pre franchisee period & DISCOMs share against assessment towards theft of electricity etc as defined in this agreement on actual collection basis.

**EDC (Excess Drawal Charges)** = shall mean adjustment against the increased input corresponding to the increase in distribution losses from the agreed distribution losses shall be billed to the franchisee at the differential rate of purchase price of DISCOM as set under Article 5.7.3 and Article 5.7.4

**CARPD<sub>RM</sub>** is the Credit available to the Distribution Franchisee for incentive on account of arrears from the HT/ LT permanently disconnected Consumers collected and remitted to DISCOM during this billing cycle and shall be computed as below:

$$\mathbf{CARPD_{RM} = 0.25 * ARPD_{RM}}$$

Where **ARPD<sub>RM</sub>** is the amount of arrears on account of permanently disconnected Consumers prior to the Effective Date collected and remitted by the Distribution Franchisee to DISCOM during this billing cycle.

**CARCL<sub>RM</sub>** is the Credit Available to the Distribution Franchisee for incentive on account of arrears from the HT/ LT current live Consumers collected and remitted during this billing cycle and shall be computed as below:

$$\mathbf{CARCL_{RM} = 0.15 * ARCL_{RM}}$$

Where  $ARCL_{RM}$  is the amount of arrears on account of HT/ LT current live Consumers, accrued one month prior to the Effective Date collected and remitted by the Distribution Franchisee to DISCOM during this billing cycle.

## **7.2 Payment**

Distribution Franchisee shall make the payment to DISCOM in the following manner:

- 7.2.1 Distribution Franchisee shall maintain datewise record of amount collected from Consumers against energy billed, security deposit, and taxes & duties levied as applicable and intimate to DISCOM latest by immediate next working date while depositing the amount in ESCROW account with DISCOMs.
- 7.2.2 DISCOM shall raise monthly invoices as mentioned in clause 7.1.1 and Distribution Franchisee shall make the payments within two days from the date of receipt of such invoice through RTGS.
- 7.2.3 If any of the due dates is a Bank holiday, the payment shall be remitted on the next working day in DISCOM's Bank account.
- 7.2.4 In the event that any Consumer in the Franchise Area avails Open Access under the relevant Regulations issued by OERC, the Distribution Franchisee shall retain the cross-subsidy surcharge paid, and adjustment for Distribution Losses of such Consumer. The wheeling charges for using the Distribution System shall be apportioned between DISCOM and the Distribution Franchisee on the basis of a mutually agreed formula. However additional surcharges, if any, shall be remitted to DISCOM along with the regular payments. Such cross subsidy shall be added with the billing value to derive ABR while zero units shall be added to billing units for that year.
- 7.2.5 Distribution Franchisee shall collect and remit to DISCOM, the arrears from current live Consumers accrued in last one month prior to Effective Date within three months of Effective Date in accordance with Article-8.4 of this Agreement.
- 7.2.6 Upon recovery of the arrears, Distribution Franchisee shall, provide the details of collection and make such payment to DISCOM on immediate next working date.
- 7.2.7 DISCOM shall give credit to Distribution Franchisee towards the incentive on collection of arrears after receipt of such amount and documentary details from Distribution Franchisee. This credit shall be provided in the subsequent invoice raised as per Article 7.1 of this Agreement.

- 7.2.8 The Distribution Franchisee shall also timely remit to DISCOM any other charges arising from the execution of the contract such as charges towards use of DISCOM billing facilities, testing facilities, etc. and the adjustments on account of reconciliation as per Article-9 and 10 of this Agreement.
- 7.2.9 Whenever the government extends any subsidy for limiting or lowering the tariff of a class or category of consumers, the same will be passed on to DF in the manner defined by the State Regulatory Commission or GoO on receipt of fund from GoO or from the source defined by the State Regulatory Commission, subject to prudence check on subsidy claims by the DF.
- 7.2.10 DISCOM shall give credit to the Distribution Franchisee for the outstanding credit balance of Consumers as determined in the joint audit process, upon the Distribution Franchisee providing such credit to Consumers. The credit shall be provided in the subsequent invoice raised by DISCOM and shall be subject to appropriate documentation.
- 7.2.11 The due date of Invoice shall be Five (05) days of DISCOM delivering the invoice to Distribution Franchisee. An early Payment to DISCOM within rebate date i.e. 48 hours from the date of invoice shall carry a rebate @1.5% on amount payable by Distribution Franchisee. Any delay in payment to DISCOM after due date shall attract a penal interest of 18% per annum computed on daily basis with the provision of quarterly compounded.
- 7.2.12 In case of a shortfall or default in payment by Distribution Franchisee against the payment obligation as per earlier Article 7, DISCOM may recover such amount by invocation of letter of Credit mentioned under Article 2.1.1 & 11.1 given by the Distribution Franchisee.
- 7.2.13 The money collected by the Distribution Franchisee from a consumer shall be adjusted in the following order:
- a. Against the current billing done by Distribution franchisee to the Consumer,
  - b. Distribution Franchisee arrears (which refer to arrears that arose during the term of the Franchise Agreement) and
  - c. DISCOM arrears (which refers to arrears that arose prior to the Effective date) in that order.

However, the Distribution Franchisee shall not be permitted to keep any advance amount without adjusting against all pending DISCOM arrears, if any. It is hereby clarified that if the amount paid by the consumer against a bill is more than his current bill amount and the arrears of the Distribution Franchisee, then the balance amount, after adjusting the current dues and DF arrears, shall be adjusted against the arrears of DISCOM.

7.2.14 DF shall retain 50% of any penal amount realized from a consumer pursuant to an assessment made in first three year(s) or recovery from the consumer for unauthorized use of electricity under section 126/127, theft of electricity under section 135, and due to interference with meters or works of DISCOM/DF under section 138 of the E-ACT'03. Until the recovery of penalty is made by DF, the supply shall not be restored. DF will be authorised to retain 100% of the realisation made against assessment on above grounds in the subsequent period i.e. from 4<sup>th</sup> year onwards.

## **ARTICLE 8: ARREARS**

### **8.1 Arrears have been classified in two categories:**

- a) Arrears from connected live Consumers and
- b) Arrears from Permanently Disconnected (PD) Consumers

**8.2** The connected live Consumers are those, which are currently legally connected to the distribution network of the Franchise Area whereas permanently disconnected Consumers are no longer connected with the distribution network.

**8.3** Distribution Franchisee shall maintain separate accounts for collection from arrears and collection on account of demand to Consumers for electricity supplied from the Effective Date. DISCOM shall transfer the right to collect the arrears to Distribution Franchisee on the Effective Date and the Distribution Franchisee and DISCOM shall unfailingly follow the procedure attached at Annexure 4 for collection of arrears.

**8.4** Distribution Franchisee shall be liable to collect the arrears from current live consumers accrued in last one month prior to Effective Date on account of charges for usage of electricity. These arrears shall be collected and remitted to DISCOM by Distribution Franchisee. The Distribution Franchisee shall collect and remit amount at least equivalent to the prevailing collection efficiency taking into account the collection efficiency in the corresponding month of last year.

**8.5** Distribution Franchisee shall make best effort to collect arrears other than those specified in Article 8.4 from current live Consumers on account of charges for usage of electricity. DISCOM shall offer an incentive to Distribution Franchisee towards collection of such

arrears @ 15% of the amount net of taxes and duties, meter rent and other charges recovered from Consumers. DISCOM shall not share any expenses, costs incurred by the Distribution Franchisee for such recovery.

- 8.6 Arrears on account of connected live Consumers, which are currently under any dispute or in the process of litigation as on Effective Date, shall not to be transferred to Distribution Franchisee for recovery but will be reflected in the consumer ledger for the purpose of record and to show on bill separately. The Distribution Franchisee shall recover such arrear and remit the same to DISCOM as per the established arrangement upon settlement of litigation/dispute of consumer by DISCOM.
- 8.7 Distribution Franchisee shall make best effort to collect the arrears accrued prior to Effective Date from Permanently Disconnected Consumers. DISCOM shall offer an incentive to Distribution Franchisee towards collection of such arrears @ 25% of total amount net of taxes and duties recovered from Consumers. DISCOM shall not share any expenses, costs incurred by the Distribution Franchisee for such recovery.
- 8.8 Arrears realized from the forfeiture or adjustment against security deposit from Consumers shall not be eligible for the incentives stated in this Article.
- 8.9 Upon recovery of above mentioned arrears, Distribution Franchisee shall provide the detail of collection and make such payment to DISCOM on monthly basis alongwith the MIS.
- 8.10 Upon expiry/termination, Distribution Franchisee shall transfer to DISCOM the arrears accrued during the term except the arrears accrued in last one month prior to the expiry/termination date of this agreement, benchmarked to the prevailing level of Collection Efficiency. The arrears accrued during last month shall be jointly determined and agreed by DISCOM and the Distribution Franchisee. The said arrears of last month shall be collected and remitted by DISCOM to the Distribution Franchisee within three months of Expiry/Termination Date.
- 8.11 The Distribution Franchisee shall not grant new connections to permanently disconnected Consumers without the consent of DISCOM unless arrears have been fully recovered from them and remitted to DISCOM as per terms narrated above and avail incentive. Distribution Franchisee shall provide periodic information on status of permanently disconnected Consumers. If at any stage during the agreement period such a connection comes to the notice of Distribution franchisee or DISCOM, the Distribution Franchisee shall immediately disconnect the Consumer. DISCOM and Distribution Franchisee shall jointly defend the legal cases arising out of such an action by the Distribution Franchisee. Both parties shall bear their respective associated costs.
- 8.12 Notwithstanding anything contained herein, the legal rights of DISCOM to recover the outstanding arrears from the Franchise Area shall also survive the Term of this Agreement.

## **ARTICLE 9: PROVISION FOR SUBSIDY**

In addition to the provisions stated in Article 7, the Subsidy shall be governed by the following:

- 9.1** Any subsidy offered by Government of Odisha/Orissa or Government of India or any other agency offering subsidy, as approved by OERC, which has an impact on reducing the tariff of certain category of consumers shall continue to be paid to DISCOM as the Franchisee has quoted the input energy rates net of subsidy.
- 9.2** However, if due to any new tariff after the effective date declared by the State Government/GoI and approved by OERC, the Distribution Franchisee is required to abide by the same, the subsidy on account of the same shall be retained with the DISCOM. Any loss of revenue on this account to the franchisee shall be taken care of through tariff sharing ratio mechanism through ABR.
- 9.3** The Distribution Franchisee shall facilitate DISCOM in claiming the subsidy amount on account of electricity supplied to subsidized Consumers in Franchise Area by way of assisting in furnishing information and necessary documentation.
- 9.4** The Distribution Franchisee shall supply a statement of subsidy claims with the detailed records of the Consumers eligible for subsidy after verifying the accuracy and admissibility of each Consumer included in the same.
- 9.5** An Independent Auditor, appointed by DISCOM may audit the claim for Subsidy on a quarterly basis as mentioned above. The fees for this Audit shall be paid by DISCOM. Notwithstanding the above, Distribution Franchisee shall allow the Government Auditors to verify the particulars or details provided for determining the DISCOM claim for subsidy.
- 9.6** In the event of subsidy defaults by the Government of Odisha (GoO), the Distribution Franchisee shall comply with DISCOM policy directives for such events. Such DISCOM policy directives shall be with prospective effect and shall be applicable across the DISCOM licence area including the franchise area.

## **ARTICLE 10: TREATMENT OF TAXES, DUTIES & LEVIES**

The applicable taxes, duties and levies shall be governed as below:

- 10.1** Both parties agree that the input rates are exclusive of the Electricity Duty (ED), Municipal Taxes (MT) and any other taxes/levies/duties that have been levied by the

State Government or any competent authority and the DISCOM has been directed to collect on behalf of the Government, authority. The franchisee shall deposit the amount collected from the consumers towards ED, any taxes/levies/duties stated above if applicable & approved by OERC or competent authority and MT on realized basis to DISCOM. The Distribution Franchisee shall maintain separate accounting for Electricity Duty liability as per provisions of applicable Electricity Duty Act as also for MT and other levies.

**10.2** The liability for making payment of other duties, taxes and levies other than mentioned under clause 10.1 to the Government of Odisha/Gol/Statutory Body shall rest on the Franchisee.

**10.3** Notwithstanding the above, Distribution Franchisee shall allow the Government Auditors to verify the particulars or details provided for payment of Electricity Duty, Taxes and levies. The amount determined by the Government Auditor shall be final and binding.

**10.4** Any new ruling from the State or Central Government on Taxation or introduction of new tax shall be borne by the franchisee (in case of Direct Tax) or DISCOM (in case of Indirect Tax) as the case may be.

## **ARTICLE 11: PAYMENT SECURITY DEPOSIT**

### **Payment Security Deposit**

**11.1** As provisioned in the Article-2.1.1 of this Agreement, the Distribution Franchisee shall submit and maintain valid for the term of this Agreement, a security deposit to the satisfaction of DISCOM in the form of an irrevocable and unconditional Letter of Credit from any nationalized bank or Scheduled Bank for an amount equivalent to two months' estimated amount payable to DISCOM by Distribution Franchisee based on two months average energy input at Input Points in the Franchise Area during Financial Year [Base Year] and Rates quoted by the Distribution Franchisee for first year of Franchisee term alongwith two months average collection of all other applicable charges in addition to Input charges as per Article 7 during the base year. Further, the Letter of Credit shall be provided by the bank which is appointed as Escrow Agent under the Default Escrow Agreement. The Security Deposit shall be governed in the manner described in this article.

**11.2** The Letter of Credit shall be in the format prescribed by DISCOM initially valid for a period of one year from the Effective Date.

- 11.3** The Distribution Franchisee shall renew the Letter of Credit 01 (One) month before its expiry date and furnish the same to DISCOM, failing which DISCOM shall have the right to invoke the Letter of Credit.
- 11.4** Within one month of beginning of each financial year, the amount of the Letter of Credit shall be enhanced if required based on average monthly invoice in previous year considering input energy as per Annexure-3. The DF shall also procure the additional Letter of Credit within 15 days towards the requirement for increase in the tariff and the applicable Fuel Surcharge Adjustment (FSA) approved by OERC. However, under no circumstances shall the amount of Letter of credit be revised downwards.
- 11.5** DISCOM may recover the outstanding payment after payment due date by invoking the Letter of Credit.
- 11.6** Distribution Franchisee shall, within two weeks of invocation of the Letter of Credit by DISCOM, restore the same to the level prior to invocation.
- 11.7** DISCOM may review the amount of the Letter of Credit after one year of the contract depending on the payment record of the Distribution Franchisee.

**Collateral Arrangement**

- 11.8** As an security measure to ensure compliance of Franchisee obligations under this agreement, the Franchisee and the DISCOM on or prior to the Effective Date, shall execute separate Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the DISCOM, through which the revenues of the DF shall be routed and used as per the terms of the Default Escrow Agreement. All revenue collected in the franchised area shall be deposited by DF in the Default Escrow Account within 48 hours of its receipt. Without prejudice to its other rights, DISCOM shall have the first and paramount charge over all receivables of Franchisee at all times for all the amounts becoming due from Franchisee to DISCOM under this Distribution Franchisee Agreement. Franchisee shall not create any encumbrance, charge, and lien or otherwise execute any instrument which in any way affects the first and paramount charge over the receivables in favour of DISCOM. DISCOM, however, agrees that so long as the amounts becoming due from Franchisee to DISCOM as aforesaid are paid on due dates. Franchisee shall be entitled to utilize the receivables and may deal with such receivables in such manner as Franchisee may consider appropriate and DISCOM agrees to maintain its first and paramount charge over the receivables as floating charge. The floating charge of DISCOM shall, however, crystallize into a fixed charge automatically without any further act, deed or

things to be done by franchisee or DISCOM or any other person in the event of any default on the part of franchisee to pay the amounts due to DISCOM. DISCOM and franchisee shall register the above charge of DISCOM with the Registrar of Companies.

However DISCOM may consider ceding its first charge on receivables in the “ESCROW account” in favour of Bank/FIs in order to facilitate the franchisee in availing letter of Credit for payment of Monthly Bills to DISCOM as referred in Article 7 as well as in raising loan for the Franchisee Area subject to the following conditions;

1. The Letter of Credit shall be Irrevocable and revolving LC to be opened in favour of DISCOM without recourse to the DF initially for a period of 1 (one) year and shall be renewed annually.
2. The LC amount shall cover the requisite amount as per the Franchisee Agreement.
3. In addition to LC, Bank Guarantee (BG) equivalent to 2 months estimated amount payable to DISCOM towards Input Energy and other applicable charges as per Article -7 shall be provided by DF.
4. Any other Loan besides the above mentioned LC & BG to be availed by DF against security of receivables shall be after due consent from DISCOM and the utilization of the loan in the Franchisee Area shall be submitted to DISCOM up to DISCOM’s satisfaction.
5. The consent of DISCOM for ceding first charge in favour of Bank / FI shall be to the extent of LC towards the payment of DISCOM monthly dues and loan to be utilized in the Franchisee Area; this consent shall be valid so long as the above continues to operate.
6. In the event the LC is not reinstated / renewed with appropriate value before expiry of the LC, the consent of DISCOM to cede first charge shall stand automatically withdrawn without any further act or deed or things to be done by either DISCOM / DF / Bank (Lender).
7. The above ceding of first charge shall be suitably incorporated in the Tripartite Default Escrow Agreement to be signed with DF and the Escrow Banker.

## **ARTICLE 12: DEPUTATION OF DISCOM EMPLOYEES**

The existing employees in DISCOM will be given an option to join the Distribution Franchisee on deputation.

- 12.1** 50% of employees of DISCOM from each grade shall be on deemed deputation with the Franchisee at the inception of franchisee. DISCOM will make a list of such employees

who wish to be on deputation. Thereafter, the Distribution Franchisee shall have freedom to choose from the list of willing employees. The Distribution Franchisee will have a right to accept/ reject without assigning any reason thereof. **In any case franchisee shall have to absorb minimum of 50% of Employees employed in the franchisee area from each grade while takeover of area. In case of single person in a cadre like SDO the person on the post would require to be absorbed by the franchisee on deputation.** The condition will be applicable to SDO and below level employee of the franchisee area.

- 12.2** DISCOM shall permit deputation of its employees working in the Franchise Area or selected person from other area as on the Effective Date to the Distribution Franchisee. The DF shall complete the entire selection process within 3 months of Effective Date and offer terms and conditions which are not inferior to the terms and conditions of the deputation as provided in Annexure 5 of the DFA on over all basis. The terms and conditions shall be made available to the concerned willing employees upfront. The DF shall have to follow DISCOM rules regarding contribution to PF etc.
- 12.3** The cost of employees on deputation would be borne by Distribution Franchisee. The Distribution Franchisee will at least compensate the DISCOM employee on deputation with the Franchisee towards all the benefits available to him/ her as per his/ her employment terms of DISCOM such as monthly salary, statutory contributions like provident fund etc. Distribution Franchisee will also be responsible for any liability arising on account of fringe benefit tax and any other tax applicable on benefits of DISCOM employee on deputation with the Franchisee.
- 12.4** At the end of the period of deputation which shall be initially for 2 years or the Franchisee Agreement whichever is earlier, the deputation period may be extendable mutually for further period upon approval of DISCOM, upon expiry of such period the employees on deputation will return to DISCOM.
- 12.5** Distribution Franchisee shall pay DISCOM an amount equivalent to fifteen (15) percent of the Basic salary as on the date of effective date of franchisee operations of such field staff working on deputation in the specified area towards incentive to be paid to the employees every month effective from the effective date after deducting any applicable taxes.
- 12.6** In case of any salary revision during tenure of franchisee, the incentive will be limited to not more than twenty-five percent (25%) of the present basic salary as on the date of commencement of franchisee operations.

- 12.7** All incidental expenses towards local and outstation travel while the DISCOM employees are attached to DF shall be borne by DF.
- 12.8** DISCOM shall not replace any staff attached to Distribution Franchisee in case of such employee retiring/leaving/deceased during the tenure of this agreement unless and until so defined by the Distribution Franchisee and accepted by DISCOM.
- 12.9** On the notice of DF, DISCOM shall replace the staff by a suitable person for such reasons other than those referred in Article 12.8
- 12.10** There will be no redeployment/reduction of existing staff by DISCOM in the specified area during the tenure of this agreement except for provisions in the Article 12.8
- 12.11** The Distribution Franchisee shall have the right to employ any number of personnel on any terms and conditions (Distribution Franchisee's Employees) to discharge the day-to-day functions relating to distribution of power in Franchise Area.
- 12.12** However, Distribution Franchisee's employees shall not become either permanent or contract employees of DISCOM at any point of time during and after expiry of this agreement. The Distribution Franchisee shall expressly clarify at the time of the appointment of an employee that he/she shall not have any right to claim employment with DISCOM during the subsistence or even after the expiry of this Agreement. Only the persons expressly agreeing to these conditions shall be employed by the Distribution Franchisee. DISCOM will not be responsible or liable for the claims for employment with DISCOM raised by the employees of the Distribution Franchisee and the Distribution Franchisee shall indemnify DISCOM in respect thereof.
- 12.13** DF should not recruit person(s) with less Educational / Professional qualification matching with the similar cadre of the employees of DISCOM. DF shall conduct a qualification & antecedent verification of the person(s) employed for working in specified area and delivering the services shall have a clean background. DISCOM may ask and DF shall submit the details of person(s) employed in the specified area.
- 12.14** Distribution franchisee has the right to act adhering to Industrial Act or Essential Services Maintenance Act to arrest unrest situation in order to render services to consumers in the franchisee area.

**12.15** DISCOM shall not directly or indirectly solicit, induce, hire or employ any technical or non-technical personnel employed by DF during the tenure of this Agreement. In case of breach of this Article, DF shall be entitled to damage that shall be assessed by DF including legal costs and litigations if any.

**12.16** DF shall comply with the provisions of the Minimum Wages Act,1948; Employees Provident Fund Act, 1952, Workmen’s Compensation Act,1923, and such other statutory provisions applicable to employer.

## **ARTICLE 13: REPORTING AND AUDIT**

### **13.1 Reporting**

The Distribution Franchisee shall furnish to DISCOM the following information as per schedule stated therein:

13.1.1 Distribution Franchisee shall be required to submit data regarding billing, collection, electricity duty assessment & realisation and Security Deposit and other amounts collected from consumers. Distribution Franchisee shall provide consumer-wise information in the format specified by DISCOM detailing the billing, collection and all related information on a monthly basis every month or periodically as per requirement by a mutually agreed date. In addition to above daily collection statement shall be provided to DISCOM by DF on next day of the collection date.

13.1.2 After the initial stabilization period, the above information shall be submitted as per the respective billing cycle and shall be submitted to DISCOM not later than three days after the end of the billing cycle as per Article-7.1 of this Agreement.

13.1.3 Distribution Franchisee shall be required to update the asset register and submit the same to DISCOM on a quarterly basis for the first year and thereafter on a monthly basis within 30 days after the end of respective periods.

13.1.4 Distribution Franchisee shall generate periodic Management Information System (MIS) and Monitoring Reports as required by DISCOM and OERC in the formats to be prescribed by DISCOM/OERC/Authority from time to time after execution of the Distribution Franchisee Agreement and communicate them to DISCOM.

13.1.5 Distribution Franchisee shall submit detailed inventory status reports on an annual basis or at any point of time during the franchisee period as asked by the DISCOM for all inventories within the Franchise Area.

- 13.1.6 All correspondence, records, reports, presentations and other forms of information developed by the Distribution Franchisee whether electronic or physical, and required by the Licensee to continue operations, shall become the property of DISCOM upon Expiry/termination subject to applicable permissions. DISCOM reserves, without limitation, the right to use procedures, forms and productivity enhancement methods developed under this Agreement elsewhere subject to applicable permissions. Notwithstanding the above, the Distribution Franchisee shall have the right to retain copies of information, reports, correspondence, presentations mentioned above.
- 13.1.7 Distribution Franchisee shall notify DISCOM of any Major Incident affecting any part of the Distribution System that has occurred within 24 hours of the date of such Major Incident. Distribution Franchisee shall also submit a report to DISCOM giving full details of the facts within the knowledge of the Distribution Franchisee regarding the incident and its cause.
- 13.1.8 Distribution Franchisee shall provide to the DISCOM within reasonable time such further particulars and information as may be required by DISCOM relating to the implementation of this Agreement for providing the same to the OERC or any other statutory authorities entitled to the same under the provisions of the law.

## **13.2 Audit**

- 13.2.1 Distribution Franchisee will allow for periodical audit of assets, inventories, billing data including the system, database and consumer service centers operated within the scope of the Franchise area by DISCOM. The scope of the audit shall also include the following:
- a) Auditing the average billing rate for the various consumer categories for the current period as well as overall average billing rate for the current period. (On Annual basis)
  - b) Auditing the energy input and category-wise and sub-category wise amount collected for each year of the contract along with distribution and collection losses and thereby AT&C Losses. (On Annual basis)
  - c) Auditing the revenue collected, ED and taxes collected from each category of the consumers. (On quarterly basis or as decided by Officer in Charge)
  - d) Auditing the tariff sharing computations carried out by the Discom to arrive at the revenue for input energy for the invoices raised on the Franchisee. (On Annual basis or as decided by Officer in Charge)

- e) Reviewing the asset register at the end of the quarter preceding the previous quarter and audit the quantity and value of the assets added/discarded or declared redundant during the previous quarter based on the accounts/information/data provided by the Franchisee including review of the procedure followed and reasons given for procurement/discarding the assets. (On quarterly basis or as decided by Officer in Charge)
- f) The auditor will audit the consumer category-wise opening level of arrears belonging to Discom for live and permanently disconnected consumers as on the date of take over for freezing the same and thereafter audit the consumer category-wise arrears at the end of each quarter.
- g) The auditor shall review quarterly or periodically as per requirement the inventories handed over to the Franchisee at the time of take over along with the book value thereof and thereafter review the opening and closing level of inventories and its book value at the end of each year for the term of the agreement based on the information provided by the Franchisee.

13.2.2 DISCOM may, at anytime during the subsistence of this agreement, authorize any person(s) to inspect, verify and audit the required data and records for the purpose of verifying information received from the franchisee under this provisions of this Agreement, and the Distribution Franchisee shall be obliged to extend all cooperation, assistance and facilities, as may be required, to such authorized person(s).

13.2.3 The audit of electricity duty, taxes and levies and claims for subsidy shall be carried out as mentioned in Article 9 and Article 10 of this Agreement.

13.2.4 DISCOM reserves the right to conduct the physical verification of the Distribution Assets belonging to DISCOM at any time during the term of this Agreement.

13.2.5 All the aforesaid audits/verifications shall be conducted by person(s) duly authorized for the specific purpose by the DISCOM.

13.2.6 The Distribution Franchisee shall comply with all reporting formats and data requirements prescribed by the Auditors.

### **13.2.7 SAFETY NORMS AND ACCIDENTS**

Distribution franchisee shall abide by the prevailing acts, laws, by-laws or norms related to safety of persons & equipments published by state government or central government or any statutory body in the franchised area.

## **ARTICLE 14: INDEMNIFICATION**

### **Indemnity**

14.1 The Distribution Franchisee during the term of this Agreement shall indemnify, defend and hold DISCOM harmless against:

14.1.1 Any acts of omissions/commission of Distribution Franchisee with regard to the electricity services provided by DISCOM. In such event Distribution Franchisee shall have no claim for compensation, incentive or any other claim against DISCOM.

14.1.2 Claims against DISCOM made by any third party for any act of commission or omission by Distribution Franchisee and Distribution Franchisee shall indemnify and hold DISCOM harmless and compensate all the losses so caused to DISCOM. DISCOM shall also be entitled to defend any action with third parties at the cost and expenses of Franchisee.

14.1.3 All monetary obligations or losses or implications arising out of such action of Distribution Franchisee in the nature of costs, expenses or damages. DISCOM shall have no liability in respect of loss of profit, loss of income, loss of agreement or any other losses or damages suffered or arising out of or in connection with existence of any defects whether latent or apparent in electricity network and the obligation of Distribution Franchisee to provide support services shall remain unaffected thereby.

14.1.4 Claims on all the employees of DISCOM on deputation against any loss/implication arising out of the actions of Distribution Franchisee.

14.1.5 Non-payment of all taxes, duties, and statutory /local levies arising as a result of this commercial transaction as required under Article 7.2.15 of this Agreement.

14.1.6 Non-compliance of the Laws, Regulations, Orders, License terms & conditions and Directives of OERC by the Distribution Franchisee.

14.1.7 Any penalty imposed on account of non-compliance as stated hereinabove.

14.1.8 This Indemnification shall survive the term of this Agreement.

14.2 DISCOM shall indemnify, defend and hold the Distribution Franchisee harmless against:

14.2.1 Acts of commission or omission in the Franchise Area by DISCOM prior to the Effective Date of this Agreement.

14.2.2 Third party claims on account of DISCOM Distribution Assets as on Effective Date, for a period of two months from the Effective Date provided the Distribution Franchisee has taken all reasonable care of the Distribution Assets. The aggregate amount of the liabilities to be compensated by DISCOM during the said period of two months in respect of all such claims shall be limited to Rs.50 Lakhs. However such indemnity shall be limited only to legally established claims.

14.3 **Procedure for claiming indemnity**

**Third party claims**

(a) Where either party is entitled to indemnification from the other party pursuant to Article 14.1 or Article 14.2, it shall promptly notify the other party of such claim, proceeding, action or suit referred to in Article 14.1 or Article 14.2 in respect of which it is entitled to be indemnified. Such notice shall be given within seven (07) days from Indemnified party becomes aware of such claim, proceeding, action or suit. The indemnifying party shall be liable to settle the indemnification claim within thirty [30] days of receipt of the above notice.

Provided however that, if:

- (i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 14.3(b) below; and
- (ii) the claim amount is not required to be paid/deposited to such third party pending the resolution of the dispute,

The indemnifying party shall become liable to pay the claim amount to indemnified party or to the third party, as the case may be, promptly following the resolution of the dispute, if such dispute is not settled in favour of the indemnifying party.

- (b) The Indemnified Party may in consultation with the Indemnifying Party, contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Article 14.1 or Article 14.2 and the indemnifying Party shall reimburse to the indemnified Party all reasonable costs and expenses incurred in this respect. However, the indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the indemnifying Party, which consent shall not be unreasonably withheld or delayed.

The indemnifying Party may, at its own expense, assume control of the defense of any proceedings brought against the indemnified Party, if it acknowledges its obligation to indemnify, gives prompt notice of its intention to assume control of the defense, and employs an independent legal counsel at its own cost.

#### **14.4 Indemnifiable Losses**

Where either party is entitled to Indemnifiable Losses from the indemnifying party pursuant to Article 14.1 or Article 14.2, it shall promptly notify the indemnifying party of the Indemnifiable Losses within seven (07) days. The indemnifying party shall pay the Indemnifiable Losses within [30] thirty days of receipt of the notice seeking Indemnifiable Losses by indemnified party. It is expressly agreed herein that the Indemnifiable Losses of either party shall be restricted to costs and expenses for all claims except for the Indemnifiable Losses for third party claims, wherein consequential damages shall also be included, if applicable.

### **ARTICLE 15: INSURANCE**

- 15.1** The Distribution Franchisee at its own discretion shall insure the assets purchased during the term of this Agreement. Franchisee shall bear all premiums, costs and expenses towards renewal of insurance of existing assets done by DISCOM in the franchised area during the term of this agreement.
- 15.2** The Distribution Franchisee shall also obtain and keep in effect all Insurances required under laws of India.
- 15.3** DISCOM shall provide all necessary support and information to Distribution Franchisee to file insurance claims.

### **ARTICLE 16: EVENT OF DEFAULT AND TERMINATION**

- 16.1 Distribution Franchisee Event of Default**

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure event or a breach by DISCOM its substantial obligations under this Agreement, shall constitute a Distribution Franchisee event of default:

#### **16.1.1 Critical Event of Default**

16.1.1.1 Critical Event of Default by the Distribution Franchisee shall mean failure or refusal by Distribution Franchisee to perform its following obligations under the Agreement:

- a) Failure on account of Distribution Franchisee to make payments as per Article- 7 of this Agreement;
- b) Failure to submit in time the Information Report as per Article 13.1.1, 13.1.2 and 13.1.3;
- c) Failure to maintain a security deposit, default escrow arrangement, letter of Credit as per the Article 2.1.1 & 11 of this Agreement.
- d) Failure to maintain minimum service quality due to inadequate network investments in case of DF with Investment plan under CAPEX model.
- e) Failure to achieve the target loss level of the relevant year for consecutive two years.

16.1.1.2 The other Critical Events of Default are:

- a. The Distribution Franchisee has engaged in a corrupt practice or/and fraudulent practice in competing for executing the contract.
- b. A resolution for winding up has been passed by the majority shareholders of the Distribution Franchisee.
- c. The Distribution Franchisee is declared insolvent or bankrupt.
- d. The Distribution Franchisee has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this agreement.
- e. Any representation or warranty made by the Distribution Franchisee during the term of the agreement is found to be false and misleading.
- f. Sale of Input energy in the Franchise Area to any party outside the Franchise Area.
- g. Failure to comply with non-critical events of default within the specified period.

#### **16.1.2 Non-critical Event of Default**

Non-critical Event of Default by the Distribution Franchisee shall mean failure or refusal by Distribution Franchisee to perform its following obligations under the Agreement:

- 16.1.2.1 Failure to submit periodic performance report (Billing and Collection report, updation of Assets Register on monthly basis, Energy audit report) to DISCOM after a stabilization period of two months from Effective Date.
- 16.1.2.2 Reporting inconsistencies in energy/ revenue accounting, if observed during periodic/ unscheduled inspection.
- 16.1.2.3 Failure to comply with any other material terms and conditions, as applicable under this Agreement for a consecutive period of thirty (30) days.
- 16.1.2.4 Persistent non-compliance of Standards of Performance laid down by OERC after the first Contract Year. Persistent would mean noncompliance of any of terms of Standards of Performance in all similar cases for a continuous period of three months.
- 16.1.2.5 Persistent non-compliance of OERC "Electricity Supply Code and Other Conditions of Supply" as approved and modified from time to time after the first Contract Year. Persistent would mean repeated non-compliance of any of terms of OERC "Electricity Supply Code and Other Conditions of Supply for a continuous period of three months.
- 16.1.2.6 Failure to deposit statutory payments of DISCOM deputationist employees within the stipulated period.
- 16.1.2.7 Failure on account of Distribution Franchisee to comply with all the relevant labour laws applicable to DISCOM deputationist employees.

If any of the above is in default for a period of more than 60 days, it shall become a Critical Event of Default and shall be deemed to be included in Article 16.1.1.1 of this Agreement.

- 16.1.2.8 On the occurrence of "DF event of default and termination" under any of the provisions set in this Agreement or in the opinion of DISCOM situation does not permit DF to carry out work, DISCOM shall be entitled to suspend this agreement by issuing a 15 days "Suspension Notice" to the DF and carry on the Distribution in franchised area by itself. If such event continues to exist beyond a period of three (03) months from the date of issuance of the "Suspension Notice", DISCOM shall be entitled to terminate this Agreement after the expiry of such suspension period after

issuing a termination notice to DF and this agreement shall stand terminated from the date of receipt of the termination notice to DF.

## **16.2 DISCOM Event of Default**

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Distribution Franchisee of its substantial obligations under this Agreement, shall constitute a DISCOM Event of Default:

### **a) Critical Event of Default**

DISCOM is in material breach of this Agreement and such breach has a material adverse effect on the DF and DISCOM has failed to cure such breach or take effective steps on receipt of notice from the DF for curing such Breach(s) as specified in the notice.

DISCOM repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement.

### **b) Non-Critical Event of Default**

Breach of any other material terms and conditions, as applicable under this Agreement for a consecutive period of thirty (30) days. If the default continues for a period of more than 60 days, it shall become a Critical Event of Default.

## **16.3 Termination Procedure for Event of Default by Distribution Franchisee**

16.3.1 On the occurrence of any Event of Default, or its coming to notice of DISCOM, DISCOM shall issue an Event of Default notice to the Distribution Franchisee.

16.3.2 The Distribution Franchisee shall eliminate/ mitigate consequences of such Event of Default within a period of 15 days for Event of Default cited at 16.1.1.1 and 60 days for Events of Default cited at 16.1.1.2.

16.3.3 In case the Distribution Franchisee is unable to eliminate/ mitigate the consequences of Event of Default within the period stipulated at 16.3.2 a preliminary notice of termination may be served by DISCOM to the Distribution Franchisee, elaborating the event of default by Distribution Franchisee.

16.3.4 If the default is not cured within a period of thirty days from the date of issue of the preliminary notice of termination as provided in Article 16.3.3, this Agreement may be terminated after serving the final termination notice to the Distribution Franchisee.

16.3.5 It is expressly agreed that both the parties shall continue to perform their respective obligations until the serving of final termination notice, whereupon this Agreement shall terminate on date of such notice.

16.3.6 DISCOM shall exercise its Step-in rights after serving the final termination notice. The Distribution Franchisee shall be obliged to extend transition assistance for a period of 30 days from the serving of such Final termination notice, failing which the costs and expenses incurred by DISCOM on the account of non-provision of such assistance by the Distribution Franchisee shall be recovered from the Termination payment of the Distribution Franchisee.

#### **16.4 Termination Procedure for DISCOM Event of Default**

16.4.1 On the occurrence of Event of Default by DISCOM, the Distribution Franchisee shall issue an Event of Default notice to DISCOM

16.4.2 DISCOM shall eliminate/ mitigate consequences of such Event of Default within a period of 60 days.

16.4.3 In case DISCOM is unable to eliminate/ mitigate the consequences of Event of Default, a preliminary notice of termination may be served by the Distribution Franchisee to DISCOM, elaborating the Event of Default by DISCOM

16.4.4 If the default is not cured within a period of thirty days from the date of serving of preliminary termination notice, this Agreement may be terminated after serving the final termination notice to the defaulting Party.

16.4.5 It is expressly agreed that both the parties shall continue to perform their respective obligations until the serving of final termination notice, whereupon this Agreement shall terminate on the date of such notice.

16.4.6 DISCOM shall exercise its Step-in rights after receiving the final termination notice. The Distribution Franchisee shall be obliged to extend transition assistance for a period of 30 days from the serving of such Final termination notice, failing which the costs and expenses incurred by DISCOM on the account of non-provision of such assistance by the

Distribution Franchisee shall be recovered from the Termination payment of the Distribution Franchisee.

## **16.5 Consequences of Termination**

### **16.5.1 Consequences of Termination for Distribution Franchisee Event of Default**

- a) Without prejudice to the other rights of DISCOM in case of termination, Distribution Franchisee shall pay all the dues payable to DISCOM on the date of termination. Distribution Franchisee shall pay dues to third parties only after the payment of all DISCOM dues.
- b) DISCOM has right to make good any shortfall from the Security deposit submitted in the form of Letter of Credit by Distribution Franchisee.
- c) DISCOM unconditionally reserves the right to claim from Distribution Franchisee any costs, expenses or loss that it may have incurred by reason of breach of failure on the part of Distribution Franchisee to observe and perform any of the terms and conditions of the agreement.
- d) On termination of this Agreement however occasioned, the Distribution Franchisee shall forth with deliver to DISCOM all papers including the forms used, partially used and unused receipts books, all promotional materials and documents which may have come into its possession or custody under the terms of this Agreement or otherwise.

16.5.2 Consequences of Termination for DISCOM Event of Default Without prejudice to the other rights of Distribution Franchisee in case of termination, DISCOM shall pay all the dues payable to Distribution Franchisee on the date of termination.

## **16.6 Step In Rights of DISCOM**

### **16.6.1 Step-in Rights in case of Event of Default after serving of Final Termination Notice**

- a) DISCOM or its Designate(s) shall be entitled to immediately enter any and/or all of the Site(s) and operate the Distribution System and collect revenues due from Consumers.
- b) DISCOM shall have the right to invoke the Letter of Credit (LC) against the Security Deposit furnished by the Distribution Franchisee to recover all its dues and outstanding amounts.

#### **16.6.2 Step-in Rights in the Event of Abandonment by the Distribution Franchisee**

- a) DISCOM or its Designate(s) shall be entitled to immediately enter any and/or all of the Site(s) and operate the Distribution System.
- b) DISCOM shall issue a take-over notice to the Agreement Representative and serving of such notice shall be treated as a deemed takeover of operations by DISCOM
- c) DISCOM shall invoke the letter of Credit (LC) against the security deposit furnished by the Distribution Franchisee.
- d) All Current Assets of the Distribution Franchisee in the Franchise Area shall stand transferred to DISCOM

#### **16.6.3 Step-in Rights of DISCOM in the Events of Partial Disruption of electric supply services**

In case of disruption of electric supply services in any part of the Franchise Area, leading to severe public inconvenience, DISCOM shall have a right to step-in the Franchise Area and restore electric supply services. The costs and expenses incurred for restoration by DISCOM shall be borne by the Distribution Franchisee.

#### **16.7 Exit to Agreement**

Either party during the currency of the agreement, if desire, due to any reason of its own by serving a notice of three (03) months can terminate the agreement.

#### **16.8 Mode of Expiry Payment**

16.8.1 The expiry payment to the Distribution Franchisee shall consist of the following:

- a) Arrears accrued in the last one-month prior to Expiry as per Article-8.11.

16.8.2 DISCOM shall pay/adjust the collection made in the succeeding one month from the expiry/termination of agreement against the arrears accumulated during the period of franchisee operation to the franchisee account after joint verification by both parties. The above exercise shall be completed within Three (03) months from the Expiry / Termination of agreement.

16.8.3 All the above payments shall be released after deductions on account of any outstanding amount towards DISCOM, if any.

**16.9 Mode of Termination Payment in case of DISCOM Event of Default**

16.9.1 The Termination payment to the Distribution Franchisee shall consist of the following:

- i) Arrears accrued in the last one-month prior to termination as per Article-8.11

16.9.2 DISCOM shall make payment towards arrears accrued during the term of agreement for one month prior of Expiry/Termination, benchmarked to the prevailing level of Collection Efficiency. Such amount shall be jointly determined and agreed by DISCOM and Distribution Franchisee. The said arrears of last month shall be collected and remitted by DISCOM to the Distribution Franchisee within Three (03) months of Expiry / Termination Date.

16.9.3 All the above payments shall be released after deductions on account of any outstanding amount towards DISCOM, if any

**16.10 Mode of Termination Payment in case of Distribution Franchisee Event of Default**

16.10.1 The Termination payment to the Distribution Franchisee shall consist of the following:

- a) Arrears accrued in the last one-month prior to Expiry as per Article-8.11.

16.10.2 DISCOM shall make payment towards arrears accrued during the term of agreement for one month prior of Expiry/Termination benchmarked to the prevailing level of Collection Efficiency. Such amount shall be jointly determined and agreed by DISCOM and Distribution Franchisee. The said arrears of last month shall be collected and remitted by DISCOM to the Distribution Franchisee within Three (03) months of Expiry / Termination Date.

16.10.3 All the above payments shall be released after deductions on account of any outstanding amount towards DISCOM, if any.

16.10.4 In case of termination followed by suspension of franchisee operations under Article 16.1.2.8 of this Agreement, DISCOM and distribution franchisee shall jointly verify the receivable of distribution franchisee against the period of operation prior to suspension notice. The above exercise shall be completed within Three (03) months from the Expiry/Termination of agreement.

**ARTICLE 17: GOVERNING LAW AND DISPUTE RESOLUTION**

**17.1 Governing Law**

17.1.1 This Agreement has been executed and delivered in India and its interpretations, validity and performance shall be construed and enforced in accordance with the laws of India and also the laws applicable to the Odisha/Orissa.

17.1.2 Any dispute arising out of compliance/ non-compliance of this Agreement shall be exclusively under the jurisdiction of court at Bhubaneswar/Sambalpur.

17.1.3 Disputes between the consumers in the Franchise Area and DISCOM shall be referred to the existing relevant Consumer Grievance Redressal Forums.

## **17.2 Amicable Settlement**

17.2.1 Either Party shall be entitled to raise any dispute or differences of whatever nature arising under, out of or in connection with this Agreement including its existence or validity by giving a written notice to the other Party, which shall contain:

- (i) The details of the Dispute;
- (ii) The grounds for such Dispute; and
- (iii) All documentary evidence in support of its claim.

17.2.2 The other Party shall, within thirty (30) days of receipt of dispute notice issued under Article 17.2.1, furnish:

- (i) Counter-claim and defences if any regarding the Dispute; and
- (ii) All documentary evidence in support of its defences and counter-claim.

17.2.3 Both the parties shall constitute a Permanent Dispute Resolution Body having equal representation from each of the parties. The disputes or differences arising under this Agreement shall be referred for resolution to this body, which shall communicate its decision within Forty Five (45) days.

17.2.4 In case of non-settlement of dispute by the Permanent Dispute Resolution body, such dispute or differences shall be referred for decision to a body constituted of MD, DISCOM and Head, Distribution Franchisee (by whatever name called) which shall communicate its decision within a period of 15 (fifteen) days.

17.2.5 Any dispute arising out of contract shall be referred to a sole arbitrator, appointed by the Distribution Licensee.

- 17.2.6 The language of the arbitration shall be English. The venue of Arbitration shall be at **Bhubaneswar** or at the Corporate Headquarters of the Distribution Licensee in Orissa.
- 17.2.7 The arbitration award shall be in writing. The arbitrator shall also decide on the costs of the arbitration proceedings.
- 17.2.8 The Parties agree that the award of the arbitrator shall be final and binding upon the Parties.
- 17.2.9 The entire process of arbitration should be completed within a period of Three (03) months.
- 17.2.10 Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Article 17 shall survive the termination of this Agreement.
- 17.2.11 Both the parties shall continue to perform their respective obligations during the conduct of the Dispute Settlement Procedure.
- 17.2.12 The expenses of arbitration including the fees of the Arbitrator shall be equally borne by both the parties to the agreement.

### **17.3 Disputed Payments**

- 17.3.1 An invoice raised by DISCOM in terms of Article-7 can be disputed by the Distribution Franchisee; however, the Distribution Franchisee shall remit the payment under protest against the same to DISCOM within the stipulated time. Cases of excessive billing, if any, during the last three months shall be jointly identified by the DISCOM and DF and shall be referred to the high level committee envisaged under Annexure – 4 'Procedure for recovery of arrears' in the Distribution Franchisee Agreement. Such excessive amount shall be excluded from the payment responsibility within three months
- 17.3.2 In case the dispute is resolved in the favour of the Distribution Franchisee, DISCOM shall refund the excess amount in next monthly invoice.
- 17.3.3 The information submitted by Distribution Franchisee and forming a basis for the Invoice can also be disputed by DISCOM
- 17.3.4 In case the dispute is resolved in the favour of DISCOM, the Distribution Franchisee shall refund the additional amount with next monthly invoice.

### **17.4 Severability**

If any section, provision or Article of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, or is pre-empted by central or state laws, regulations or regulatory agencies, the remainder of this Agreement shall not be affected, except as is otherwise provided in this agreement. However if the implication of such a situation is significant, both the parties may mutually decide the future course of action.

#### **ARTICLE 18: FORCE MAJEURE**

- 18.1 The Franchisee and the DISCOM shall not be liable for any claim for loss, damage or compensation whatsoever arising out of failure of supply when such failure is due either directly or indirectly to war, mutiny, civil commotion, riot, strike, lockout, fire, flood, tempest, lightning, earthquake or other force, accident or cause beyond his control.
- 18.2 In the event of restriction / regulation (planned load shedding) on power supply ordered by the Commission under Section 23 of the Act, the licensee shall be under no obligation to supply energy contracted for.
- 18.3 The franchisee shall curtail or stagger or altogether stop using electricity when so directed by the engineer or the designated authority of DISCOM if the power supply position or any other emergency in the licensee's system of supply warrants such a course.

The franchisee for the purpose of maintenance of its supply system in its area may temporarily discontinue supply of power area for such period as may be reasonably necessary for completing maintenance work with advance intimation to DISCOM.

- 18.5 In the event of a prolonged event of Force Majeure (continuing for a period of more than 30 days) a preliminary notice of termination may also be issued by either Party leading to the termination of the Agreement. The payment mechanism for this case shall be the same as described in Article-16.7 of this agreement.

#### **ARTICLE 19: MISCELLANEOUS PROVISIONS**

- 19.1 DISCOM shall refrain from unreasonably interfering with the Distribution Franchisee in exercising of its rights or the performance of or compliance with its obligations under this Agreement.

DISCOM shall make all reasonable efforts to ensure that its staff not assigned to the Franchise Area does not impede the Distribution Franchisee from exercising its rights or performing its obligations under this Agreement.

- 19.2 The Parties shall establish formal communication means for purposes of exercising their respective rights and performing or complying with their respective obligations under this Agreement. Each of the Parties shall designate an Officer-in-charge who is duly authorized to act on behalf of the respective Parties, to liaise for purposes of and carry out Agreement Management pertaining to the management of all matters related to the compliance with the requirements of this Agreement. The Officer-in-charge shall be of the rank of Head of Commerce and above from DISCOM and a rank of General Manager and above from Distribution Franchisee.
- 19.3 Both the parties shall duly appoint their respective Agreement Representatives and the Disputes or differences arising out of the execution of this Agreement shall be dealt by the authorized representation from time to time. The Agreement Representative shall be of the person authorized by Board of Company or Managing Director or CEO from both the sides.
- 19.4 Distribution Franchisee may consider the use of innovative operating systems and technical solutions for loss reduction, theft prevention, credit control, etc. If such a system is being implemented then the Distribution Franchisee will submit information about such plans, processes and procedures to DISCOM. All these systems must be in compliance with the central or state Regulatory authority and Licensee conditions. DISCOM, in consultation with the Distribution Franchisee may depute a reasonable number of its employees to be trained on such new systems and processes.
- 19.5 In the event the Distribution Franchisee undergoes merger/acquisition/amalgamation, it will duly seek approval from DISCOM for assignment of this agreement to the new entity. This would facilitate better coordination with the new entity.
- 19.6 The necessary approvals/consents under this agreement shall not be withheld or delayed unreasonably by any of the party. Any approval or consent given under this Agreement shall be valid only if given in writing.

- 19.7 The Distribution Franchisee may create second charge on the total revenue realization from sale of energy after the first and paramount charge of DISCOM over the said revenue the aforesaid revenue realization is excluding ED and miscellaneous towards the monthly invoice. Notwithstanding the foregoing, the repayment obligations in all cases shall lie with the Distribution Franchisee.
- 19.8 The language of communication between two parties shall be English only.
- 19.9 The Distribution Franchisee shall not use the DISCOM assets for any other use except for distribution of electricity and activities concerned with the subject of this Franchisee
- 19.10 DISCOM at the request of the Distribution Franchisee shall pursue with the relevant agencies for the augmentation of EHT line and transformer capacity for Franchise Area.
- 19.11 DISCOM shall mark a copy of the Directives received by it under applicable laws, Regulations and Directives of OERC, which are not in the public domain.

**19.12 Notices**

Notices to be given under this Agreement shall be in writing and in the English language. All notices must be delivered personally, by registered or certified mail or by facsimile transmission to the address given below:

**For Western Electricity Supply Company of Orissa Limited**

Officer in Charge: [Head of Commerce]

Phone:

Fax:

E-Mail:

Agreement Representative:

Phone:

Fax:

E-Mail:

**For Distribution Franchisee:**

Officer-in-charge:

**19.13 Agreement Representative:**

All notices shall be effective: (i) if sent by facsimile transmission, when sent (on receipt of confirmation of the correct number or address); (ii) if sent by registered post or certified mail, within 5 days of dispatch; and (iii) if delivered personally, on receipt by intended recipient. Provided that all notices given by facsimile transmission shall be confirmed by registered or certified mail. Each party shall forthwith notify the other party of any change in its address to which notices under this Agreement are to be delivered, mailed or facsimiled.

**19.14 Amendment:**

This Agreement may be amended only by written agreement of the Parties hereto, duly executed by an authorized representative of each of the Parties hereto.

**19.15 Non-Waiver**

The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect.

**19.16 Binding Effect**

This Agreement and the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**Annexures attached hereto form part of the Agreement.**

DISCOM and the Distribution Franchisee hereby represents and warranties that:

- a) They are not prevented under the applicable Laws and Regulations to enter into this Agreement;
- b) They have obtained the required authorizations/ permits to sign this Agreement.

IN WITNESS WHEREOF the Parties have executed these presents through their authorized representatives at [Name of the Place].

**For and on behalf of**

*DISCOM*

\_\_\_\_\_  
Signature with seal

***Witness:***

1.

2.

**For and on behalf**

*[M/s (Insert name of Distribution Franchisee)]*

\_\_\_\_\_  
Signature with seal

***Witness:***

1.

2.

<b>20.</b>	<b>List of Annexure (1-7)</b>	
A.	Annexure 1: Brief description of Franchisee Area	
B.	Annexure 2: Specifications of consumer service center	
C.	Annexure 3: Schedule of Annualized Energy Input Rates	
D.	Annexure 4 : Procedure for recovery of arrears	
E.	Annexure 5 : Deputation Rules of DISCOM	
F.	Annexure 6: Format of Performance Bank Guarantee	
G.	Annexure-7: Notification Of Electricity Duty	

**ANNEXURE-1: BRIEF DESCRIPTION OF FRANCHISE AREA**

**Table 1: Organisational Structure**

S. No.	Name of the Division	Particulars of Sub Divisions
	Refer RFP	Refer RFP
		Refer RFP
		Refer RFP
		Refer RFP
		Refer RFP

**Table 2: Distribution Infrastructure Summary**

Particulars	Units	Particular
<b>No. of EHT Sub-station</b>	<b>Nos.</b>	Refer RFP
33 kV Input Points	<b>Nos.</b>	Refer RFP
11 kV Input Points	<b>Nos.</b>	Refer RFP
33 kV Input Points (Cross Over)	<b>Nos.</b>	Refer RFP
<b>Total Input Points</b>	<b>Nos.</b>	Refer RFP
<b>33 kV Substations</b>	<b>Nos.</b>	Refer RFP
33 kV Substations Capacity	<b>MVA</b>	Refer RFP
11 kV Switching Stations	<b>Nos.</b>	Refer RFP
33 kV Feeders	<b>Nos.</b>	Refer RFP
11 kV Feeders	<b>Nos.</b>	Refer RFP
<b>33 KV Lines</b>		
Over head Line	Km	Refer RFP
Under Ground	Km	Refer RFP
<b>Total</b>	<b>Km</b>	Refer RFP
<b>11 KV Lines</b>		
Over head Line	Km	Refer RFP

Under Ground	Km	Refer RFP
<b>Total</b>	<b>Km</b>	Refer RFP
<b>L.T. Lines</b>		
Over head Lines	<b>Km</b>	Refer RFP
Under Ground	<b>Km</b>	Refer RFP
<b>Total</b>	<b>Km</b>	Refer RFP
<b>Poles</b>		
33 KV Lines	<b>Nos.</b>	Refer RFP
11 KV Lines	<b>Nos.</b>	Refer RFP
L.T. Lines	<b>Nos.</b>	Refer RFP
<b>Total</b>	<b>Nos.</b>	Refer RFP
<b>11 KV/433 V DTC</b>	<b>Capacity</b>	Refer RFP
TOTAL No. of DTR	No.	Refer RFP

**Table 3: Details of Transmission EHT Substations for input supply to [Name of the Area] City**

Name of the Division	Name of EHT/HT Sub-station	Capacity Installed (MVA)	Maximum Demand	Connected Load	No. of Input Feeders	
		(MVA)	(MVA)	(MVA)	33 KV	11 KV
Refer RFP	Refer RFP	Refer RFP	Refer RFP	Refer RFP	Refer RFP	Refer RFP

## **ANNEXURE-2: SPECIFICATIONS OF CONSUMER SERVICE CENTRE**

The Consumer Service Centre (CSC) is an initiative for providing information and service to the consumers. The CSC shall act as an interface between the customer and the Distribution Franchisee operations in the entire customer facing process. The services to be rendered by the CSC shall be as below:

Connection services – relates to customer acquisition including temporary connection, load change, category change, name/ address change and closure of connection

Billing- duplicate bill generation and billing related compliant handling

Collection Management- collection facilitation

Recording and redressal of supply related complaints

Help desk

The CSC shall be in the shape of physical infrastructure and shall be manned by persons of the Distribution Franchisee.

The channels of interface at the CSC shall be as under:

### **Help desk services**

User self-use kiosks (optional) – Touch screen kiosks to be kept at the sub divisional offices, which will guide the customer through graphical user interface. These kiosks shall also act as collection boxes, which will help in collecting the payment of the electricity bills and issue a receipt once the cheque/ cash is received.

### **Notice Boards disseminating information regarding:**

- Power outages schedule;
- Standards of Performance;
- Emergency numbers in case of accidents;
- General information regarding saving of power;
- Contact numbers of concerned officials;
- Performance graphs.

## Operations of the CSC

### New Connection process

The CSC agent shall explain to the Customer, the details of filling up of the forms and shall also inform the customer about the required documents, fees and other charges. The CSC agent shall check the adequacy of the form and document and shall issue a receipt to the consumer. The form shall be promptly forwarded for further action to connect the customer.

### Duplicate Bill

The CSC shall issue a duplicate bill to the customer upon payment of a nominal fee.

### Collection of Payments

The CSC shall be equipped to handle collection of bills from the consumers. The CSC shall collect the payment against bills and issue a prompt receipt to the consumer.

### Complaint Handling

The CSC shall register the commercial and supply related complaints of consumers and issue a complaint number to the customer. The complaints so registered shall be promptly forwarded for taking necessary action for redressal.

## SPECIFICATIONS

### Minimum Hardware

Sr. No.	Particulars	Quantity	Description
1	Personal Computers	2	Pentium IV 2.0 Ghz, 256 MB RAM, 40 GB hard disk
2	External modem	2	56 kbps
3	Line Matrix Printer	1	500 LPM
4	Printer	1	400 cps, 200 pages per hour
5	RDBMS		Oracle 9i
6	Phone Lines	2	

**Functionality of Software**

- Logging, tracking and managing complaints
- Analysis and Reporting
- Identify trends
- Recurring electrical equipment problem identification
- Time to resolve
- First contact resolution rate
- Complaint tickets issued reports and MIS reports
- Daily Collection report
- E-mail Interface
- Web based solution
- Collection management
- Complaint/ query handling-billing, new connection

**ILLUSTRATIVE LIST OF THE COMPLAINTS/ SERVICES TO BE HANDLED BY THE CSC**

Sr. No.	Service Segment	Service Details
1	New Connection Related	Request for application form
		Query on time taken for new
		Security Deposit queries
		Application status
		Expected Date of meter installation
		Capital works expected completion
		Date
		Customer number assignment
		Contract not provided
		Temporary Connection
		Other new connections request
2	Meter Related	Meter Running-fast
		Meter Running-slow/ sluggish
		Meter Stuck up
		Meter burnt
		Shifting of meter
		Other meter related requests
3	Billing Related	Billing Correction request
		Wrong Billing

Sr. No.	Service Segment	Service Details
		Duplicate billing request
		On demand bill request
		Late bill receipt
		Meter Reading-correction request
		Meter Reading not taken
		Arrears dispute
		Additional charges dispute
		Surcharge dispute
		Back billing dispute
		Other billing requests
		Reporting of theft/ malpractice
4	Disconnections and Dismantlement related	Disconnection dispute
		Disconnection request
		Temporary disconnection request
		Dismantlement dispute
		Termination request
		Other disconnection and dismantlement requests
		Reconnection requests

**ANNEXURE-3: SCHEDULE OF ANNUALISED INPUT RATES**

<b>Commencing Year from effective Date</b>	<b>Estimated Annual Energy Input (MUs)</b>	<b>Year on Year T&amp;D Loss level (%)</b>	<b>Yearly Floor Input Rates (Rs/kWh)</b>	<b>Annualised Input Rate in figures (Rs/ kWh) (Up to two decimal places)</b>	<b>Annualised Input Rate in Words (Rs/ kWh) (Up to two decimal places)</b>
1	Refer RFP	Refer RFP	Refer RFP		
2	Refer RFP	Refer RFP	Refer RFP		
3	Refer RFP	Refer RFP	Refer RFP		
4	Refer RFP	Refer RFP	Refer RFP		
5	Refer RFP	Refer RFP	Refer RFP		
6	Refer RFP	Refer RFP	Refer RFP		
7	Refer RFP	Refer RFP	Refer RFP		
8	Refer RFP	Refer RFP	Refer RFP		
9	Refer RFP	Refer RFP	Refer RFP		
10	Refer RFP	Refer RFP	Refer RFP		
11	Refer RFP	Refer RFP	Refer RFP		
12	Refer RFP	Refer RFP	Refer RFP		

**Note:** Besides the Input rate towards energy drawal, the DF shall pay Electricity duty, Meter rent, Collection of arrears pertaining to pre-franchisee period as defined in the agreement, security deposit, DISCOM's share against assessment towards theft of electricity; separately on actual collection basis to DISCOM.

**Signature & Seal**

**Designation**

**Date:**

**Place:**

#### **ANNEXURE-4: PROCEDURE FOR RECOVERY OF ARREARS**

- 1) A high level committee comprising independent external legal, financial and technical experts shall be constituted by DISCOM for this purpose. The legal expert of the committee shall be the Chairman.
  
- 2) The broad scope of work of the committee would be as under:
  - a. Recommending the validity and quantum of arrears.
  - b. Recommending waiver of interest and/ or principal of the arrears depending on the merits of the case and applicable DISCOM policies.
  - c. Recommending suitable installments for payment of finally settled amount
  - d. The arrears shall be divided into three broad areas:
    - i. Arrears for theft assessments
    - ii. Arrears for energy billed
      - Based on actual meter reading
      - Based on assessment
    - iii. Arrears for miscellaneous charges, security deposits, etc.
  - e. The Committee shall follow a methodology for the above arrears with the approval of DISCOM.
  
- 3) The broad process to be followed would be as under:
  - a. The Consumers shall be notified of the formation and the working of the committee through mass media.
  - b. Notices would be sent to Consumers with arrears
  - c. If the customer has not heeded the notice or paid his dues, he would then be called by the Committee for settlement of his case
  - d. If he does not appear before the Committee then the Committee shall take ex-parte decision as per merit of the case.
  - e. In case of disputed dues of billing, actual meter reading or actual assessment depending on load would be carried out and a fresh demand notice be served on the Consumer.
  - f. After a particular Consumer's arrears have been mutually finalized and recommended by the committee, a schedule of payment would be drawn up.
  - g. Such a payment schedule with reasons and recommendations shall be put for the approval of the competent authority to be nominated by DISCOM.

- h. Upon final decision of the competent authority for each defaulting Consumer, the Distribution Franchisee shall follow the due process of disconnection as stipulated by Electricity Act 2003.
- 4) The Distribution Franchisee shall continue to show the old arrears of [Name of the DISCOM in the Consumers' bill so as to effectively continue the claim of DISCOM on these arrears.
  - 5) The Distribution Franchisee shall make available suitable office and secretarial help to the committee at the Franchise Area.
  - 6) The expenses incurred for the high level committee in this respect shall be borne by DISCOM.

## **ANNEXURE-5: DEPUTATION RULES OF DISCOM**

### **Deputation**

- a. The competent authority may, in the interest of the business of the company depute any officer from time to time from the service to work in posts or functions under subsidiary, associated or related companies engaged in electricity industry in the State of Orissa or elsewhere (including assignments abroad) or under the State or Central Government or Government Corporations or bodies for a prescribed period or periods and the officer shall be obliged to serve in such posts or functions.
  
- b. The duration of deputation will be two years at the first instance and extendible upto maximum of seven years at any one instance. The terms and conditions applicable to such deputation shall be laid down by the Board or the Committee of the Board from time to time.

c.

**A. ANNEXURE-6: BANK GUARANTEE**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country)

In consideration of the (insert name of the Selected Bidder) (hereinafter referred to as "Distribution Franchisee or DF) agreeing to undertake the obligations under the Distribution Franchisee Agreement (DFA) dated\_\_\_\_\_ and the other RFP Project Documents and (Name of the Discom), agreeing to execute the DFA to execute and the other RFP Project Documents, inter alia with the DF, regarding sale, purchase and distribute power and services as a DF in the Franchise Area i.e. \_\_\_\_\_ **Division** Area under the \_\_\_\_\_ District, the (Name of the Bank) (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to (Name of the Discom) at (Place) forthwith on demand in writing from (Name of the Discom) or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees \_\_\_\_\_ only, on behalf of M/s (Name of the DF)

This guarantee shall be valid and binding on this Bank up to and including \_\_\_\_\_ and shall not be terminable 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 alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective DFA.

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only). Our Guarantee shall remain in force until \_\_\_\_\_. The (Name of the Discom) shall be entitled to invoke this Guarantee till (insert a date which is 30 days after the date in the preceding sentence).

The Guarantor Bank hereby agrees and acknowledges that the (Name of the Discom) shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by (Name of the Discom)/Authorized Representative and [Insert name of the DF] and/or any other person. The Guarantor Bank shall not require the (Name of the Discom) to justify the invocation of this BANK

GUARANTEE, nor shall the Guarantor Bank have any recourse against the (Name of the Discom) in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India.

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 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 the (Name of the Discom) shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the [Insert name of DF] , to make any claim against or any demand on [Insert name of DF] or to give any notice to [Insert name of DF] or to enforce any security held by the (Name of the Discom) or to exercise, levy or enforce any distress, diligence or other process against [Insert name of DF].

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only) and it shall remain in force until \_\_\_\_\_ [Date to be inserted on the basis of Contract Period i.e. 12 Years) with an additional claim period of thirty (30) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the (Name of the Discom) serves upon us a written claim or demand.

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Power of Attorney No. \_\_\_\_\_

For  
\_\_\_\_\_ [Insert Name of the Bank] \_\_

Banker's Stamp and Full Address.  
Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_

## B. ANNEXURE-7: NOTIFICATION OF ELECTRICITY DUTY

### **The Orissa Electricity (Duty) Act, 1961**

*[Published vide Orissa Gazette Ext. No. 726 Dated.14.10.1961 -O.A. 14 of 1961.]*

#### **AN ACT TO LEVY A DUTY ON THE CONSUMPTION OF ELECTRICAL ENERGY ON THE STATE OF ORISSA**

Be it enacted by the legislature of the State of Orissa in the Twelfth Year of the Republic of India as follows:

**Statement of Objects and Reasons** - Additional resources have to be found by the State Government to maintain and further expand the development activities during the Third Five-Year Plan. For this purpose the possible sources of taxation have been investigated by the State Taxation Enquiry Committee and they have recommended that the rate of electricity prevalent in the State can admit of a levy of electricity duty on the energy consumed. They had suggested different rates for different categories to loads. After careful consideration of the recommendations of the committee the State Government propose to levy duty at the rate of 15 per cent on the rates applicable to different categories of consumption.

**The bill seeks to achieve the aforesaid purpose.**

#### **1. Short title, extent and commencement –**

- (1) This Act may be called the Orissa Electricity (Duty) Act, 1961.
- (2) It shall extend to the whole of the State of Orissa.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

#### **2. Definitions** - In this Act, unless there is anything repugnant in the subject or

- (a) **“appointed authority”** means
  - (i) in the case of electricity undertaking engaged in the business of supplying energy owned or managed by the Central Government or a Board, such officer or authority as the State Government may, with the concurrence of the Central Government or the Board, as the case may be, appoint in this behalf; and
  - (ii) in any other case such officer or authority as the State Government may appoint in this behalf;
- (b) **“Board”** means a Board constituted under Chapter III of the Electricity (Supply) Act, 1948 ;
- (b) **“consumer”** means a person, other than a licensee, who is supplied with energy
  - (i) by a licensee,
  - (ii) by a Board, or
  - (iii) by the State Government or Central Government, and includes a consumer belonging to any of the classes specified in [For Statement of Objects and Reasons see Orissa Gazette Ext. No.647 . “19.9.1961; and for Report of the Select Committee, see Orissa Gazette Ext. No. 683 of 1961. Came into force w.e.f. 16.10.1961 vide Orissa Gazette Ext. No. 727/1961.][\* \* \*] Section 3;
- (d) **“energy”** means electrical energy;
- (e) **“licensee”** means any person licensed under Part” of the Indian Electricity Act, 1910, to supply energy [Omitted vide Orissa Act No.9 of 1986.][\* \* \*];

- (e-1) **“maximum demand”** shall have the same meaning as assigned under the Electricity (Supply) Act, 1948;
- (f) **“prescribed”** means prescribed by rules made under this Act; [Substituted *ibid.*] [
- (g) **“unit”** means 1 kilowatt hour of energy.

**3. Electricity duty on energy supplied to consumers-** [Substituted vide Orissa Gazette Ext. No. 589/22.4.1992-Notfn. No. 6375-Legis./ 22.4.1992.]

- (1) There shall be levied and paid to the State Government with effect from the 1st day of April, 1992, a duty (hereinafter referred to as the electricity duty), at such rate, not exceeding twenty-five paise per unit as the State Government may, by notification from time to time, specify on the energy consumed by
- (a) a consumer;
- (b) a consumer in respect of energy supplied to him, free of cost, by a licensee or Board, or by any person or licensee other than the Board who generates such energy;
- (c) a licensee or Board in its own premises;
- (d) any person, not being a licensee or Board, who generates such energy for his own use or consumption: Provided that
- (i) different rates of electricity duty may be levied for different categories of consumer or consumption; and
- (ii) where energy consumed is billed by the Board on the basis of evaluated energy consumption
- (a) on minimum charges,
- (b) in case of defective meters, and
- (c) in case of unmetered supply, there shall be paid electricity duty on the same number of units as is arrived at by the Board for the purpose of Payment of energy charges and at the rate applicable to the category to which the consumer belongs as specified by ,Notification issued under Sub-section (1).
- (2) All Notifications that may be issued by the State Government from time to time under Sub-section (1) shall, as soon as may be after they are issued, be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions and if during the said period the State Legislature makes modifications, if any, therein, the notifications shall thereafter have effect only in such modified form, so however, that such modifications shall be without prejudice to the validity of any electricity duty levied or collected under the Notifications.
- (3) There shall also be levied for and paid to the State Government a duty [Substituted vide Orissa Act No. 19 of 1992.] [at the rate applicable to the category to which the consumer belongs as specified by Notification issued under Sub-section (1)] on the energy imported from outside the State and supplied by the Board or a licensee to a consumer by any special arrangement.
- (4) Notwithstanding anything continued in the foregoing Sub-sections, no duty shall be levied or paid in respect of energy generated by a plant having a capacity not exceeding ten KVA.
- (5) The State Government may, by notification, subject to such Condition, as they may impose, exempt any industry which has started production at any time after the 31<sup>st</sup> day of July. 1980 from payment of electricity duty to such extent and for such period as may be specified in the notification.]

**4. Consumers to pay electricity duty -** [Substituted vide Orissa Act No.9 of 1986,] [The amount of electricity duty levied under Section 3 on the energy consumer or any other person shall be payable by and be collected and recovered from the consumer or such person in the manner hereinafter provided.]

**5. Collection of electricity duty –**

(1) The electricity duty shall be collected from the consumer and paid to the State Government

(a) where the energy is supplied by the licensee;

(b) where the energy is supplied by or on behalf of the State Government or the Central Government or Board, by the appointing authority concerned; and - .

(c) where the energy is generated by a person other than a licensee or the Board, by such person:

Provided that the licensee or the appointed authority shall not be liable to pay duty in respect of energy supplied by it for which it has not been able to recover its dues:

Provided further that where the amount of electricity duty collected by a licensee from a consumer or the amount of such duty payable by the person specified in Clause (c) is not paid to the State Government with the prescribed period the licensee or such person shall be liable to pay interest at the rate of [Substituted vide Orissa Act No.9 of 1986,][eighteen per cent] per annum on the amount of the electricity duty remaining so unpaid until the payment thereof is made.

(2) The duty and the interest, if any, so payable shall be a first charge on the amount recoverable by the licensee or appointed authority for the energy supplied by him and shall be a debt due by him to the State Government.

(3) Where any consumer fails or neglects to pay at the prescribed time and in the prescribed manner, the amount of electricity duty due from him, the licensee or the appointed authority, as the case may be, entitled to collect such dues may, without prejudice to the right of the State Government to recover the amount under Section 10, exercise the powers conferred on a licensee under Sub-section (1) of Section 24 of the Indian Electricity Act, 1910 as if the duty was a charge or sum due in respect of energy supplied to such consumer.

**6. Records and returns –**

(1) If the State Government so direct by a general or special order a licensee or any appointed authority or the person generating energy for his own use or. Consumption shall maintain such record in such manner and form as may be prescribed showing

(i) the unit of energy generated or received by it for supply to the consumers;

(ii) the unit of energy supplied to the consumers or consumed by him;

(iii) the amount of duty payable thereon and the duty recovered or paid by him under Section 5;

(iv) the amount of interest, if any, paid by the licensee under Section 5; and

(v) such other particulars as may be prescribed:

(2) Every licensee and every appointed authority and every person generating energy for his own use or consumption, who has been directed under Sub-section (1) to maintain a record shall submit such returns in such form and manner as may be prescribed.

- (3) The amount of energy shall, for purposes of Clauses (i) and (ii) of Subsection (1), be ascertained in such manner as may be prescribed.

#### **7. Inspecting officers –**

- (1) The State Government may, by notification in the Official Gazette, appoint any person as they think fit having the prescribed qualifications to be Inspector for the purposes of this Act.
- (2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

#### **8. Disputes between the licensee and the consumer –**

- (1) [Substituted vide Orissa Act No. 9 of 1986.][The Chief Electrical Officer] or such other officer not below the rank of an Assistant Engineer or an Assistant Electrical Inspector as may be authorised by the State Government in that behalf shall have the power to decide all disputes relating to the liability for payment of the electricity duty-or exemption therefrom.
- (2) Subject to the decision in appeal before such authority as may be constituted by the State Government in that behalf by a notified order, preferred within three months from the date of the order under Sub-section (1) such order shall be final.

#### **9. Power of Inspectors –**

- (1) Subject to the provisions of any rules made by the State Government in this behalf an Inspector may
- (i) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity duty leviable under this Act;
  - (ii) enter and search any premises where energy is, or is believed to be supplied for the purpose of
    - (a) verifying the statements made in the books of account kept, and returns submitted, under Section 6;
    - (b) [Substituted vide Orissa Act No. 9 of 1986.][checking of the readings of the meters, and testing the meters, metering equipments and connection thereof;]
    - (c) verifying the particulars required in connection with the levy of electricity duty;
  - (iii) exercise such other powers and perform such other duties as may be necessary for carrying out the purposes of this Act or the rules made thereunder.
- (2) All searches made under Sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

#### **10. Electricity duty recoverable as arrear of land revenue - Any sum due on account of electricity duty and interest, if any, not paid within the prescribed time and in the prescribed manner, shall be recoverable by the State Government as an arrear of land revenue**

- (a) in the case of energy supplied by a licensee, at the discretion of the State Government either from the consumer or, subject to the first proviso to Sub-section (1) of Section 5 from the licensee; and
- (b) in the case of other energy, from the person liable to pay such duty under this Act.

**11. Penalties - If any person**

- (a) required by Section 6 to keep record or to submit returns fails to keep or submit the same in the prescribed manner or form; or
- (b) intentionally obstructs an inspecting officer appointed under Section 7 in the exercise of his powers and duties under this Act and the rules made thereunder;
- (c) contravenes any rules made under this Act, he shall be guilty of an offence triable by a Magistrate of the first class and on conviction shall be liable to punishment with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

**12. Power to make rules –**

- (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.
- (3) In particular and without prejudice to the generality of the foregoing power, such rules may provide for
  - (a) the manner of calculating the duty including marginal adjustments under Section 3;
  - (b) the manner of collection and payment to the State Government of the electricity duty by the licensees and the appointing authorities;
  - (c) the time and manner of payment of the electricity duty by consumers; and
  - (d) any other matter for which provision is, in the opinion of the State Government, necessary to be made for giving effect to the provisions of this Act.

**13. Removal of doubts -** For the avoidance of doubt, it is hereby declared that nothing in this Act shall be taken to impose, or authorise the imposition of, a tax on the consumption or sale of electricity produced by a Government or other persons which is-

- (a) consumed by the State Government or by the Government of India or sold to the Government of India for consumption by that Government; or
- (b) consumed in the construction, maintenance of operations of any railway of the Government of India, or sold to that Government for consumption in the construction, maintenance of operation of any railway.

**14. Power to remove difficulty -** If any difficulty arises in giving effect to the provisions of the Act, the State Government shall have power, as occasion may arise, by order to do anything not inconsistent with the provisions of this Act or the rules made thereunder which appears to them necessary for the purpose of removing the difficulty.