



FINAL REPORT ON STANDARDISATION OF DISTRIBUTION FRANCHISE MODEL



Forum of Regulators

Prepared by Feedback Ventures Pvt. Ltd.

**FEEDBACK
VENTURES**
Making Infrastructure Happen

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1. Project Background

Having recognized the need for franchising in both urban and rural areas with prime objective of reducing AT&C losses and increased customer satisfaction, it was felt important to take up this activity in a methodical and integrated manner to ensure that the various layers of information are properly analyzed and understood by all the stakeholders: The Regulators; the Franchisor (Distribution Utility) and the Franchisee (Private Entrepreneur/ Company).

Though the Distribution Franchisee model has scripted success stories in the past both in urban and rural space, FOR identified the need to standardize the entire process of the Distribution Franchise Arrangement from the process of awarding a DF contract to the termination policies to be followed by the utility and the DF. Since most of the Utilities are now in the process of going through this public private partnership route for bringing in the desired efficiency, a need was also felt to analyze the role of a Regulator as well in facilitating the DF arrangement.

Eventually Feedback Ventures was appointed as consultants with following major activities under the scope of work:

- Review of experience of Distribution Franchise (DF);
- Identification of issues limiting the adoption of DF models;
- Identification of regulatory interface in Franchisee Arrangement;
- Dialogue with stakeholders to understand their perspectives;
- Design of framework and model contractual documents

The subsequent sections of the report shall elucidate on each of the concerns and the elements of our scope of work.



2. Review of Experience of Distribution Franchise

Revenue sustainability is an imperative requirement for running an electricity distribution network. This is true for both urban and rural networks and requires reduction of AT&C losses to minimum feasible levels. An important aspect of the improvements which have been highlighted through various reforms and guidelines has been private sector participation in all the initiatives undertaken by the distribution companies in improving their technical and management skills. Of the various measures undertaken for long lasting improvements in the distribution sector, one of the significant measure that has the potential of impacting on a larger time scale is introducing PPP models in rural as well as urban areas through Franchise route. Awarding distribution areas to private companies through the franchisee route does not involve the political fallout associated with the privatisation of a State-owned Utility but at the same time opens the room for benefits of private sector efficiency to come in. While the involvement of franchisee assures minimum revenue to the Utility, it also minimises the work load of the distribution utility.

As consultants, we have compiled the experience of various distribution franchise arrangements across different States in India in both rural and urban sector and have presented the same in our Inception Report. While in rural areas, there are many live cases of the operating franchisees, in urban areas the only operating franchisees are in Bhiwandi and Agra. From the point of view of assessing the post award performance, the only urban franchisee example is that of Bhiwandi since Agra Urban Distribution Franchisee has recently commenced operations and is yet to complete its first year of operation.

Rural Franchise

The States for which rural franchise arrangement has been studied were:

- Assam
- Madhya Pradesh
- Rajasthan
- West Bengal
- Uttar Pradesh
- Karnataka
- Uttarakhand

There are challenges in running a rural power distribution network, which are very different to those faced in metropolitan or urban areas. The loads (and hence revenues) are small due to low geographical load density (kW/sq.km) resulting in increased cost of distribution network. The proportion of metered domestic consumption is small compared to agricultural consumption. Agricultural consumption is often not metered but based on flat rate based on the installed capacity of the pump set. Consumers operating their pumps for fewer hours pay the same energy charges as those who operate their pump for longer hours. Besides being inequitable, it also results in wastage since there is no incentive for using one's pump sets in an economical manner. Often consumers replace their pumps by one of a higher kW rating, thus drawing more energy but still paying according to the kW rating of the smaller pump which is still in the records of the utility. Imperfect ways of calculating agricultural index often results in overstating energy supplied to flat rate agricultural consumers and thus shaving off from distribution losses. Meter reading, bill distribution and revenue collection are in themselves expensive for the utilities because of low load density.

Deployment of franchisees for management of local distribution in rural areas has helped in ensuring revenue sustainability and improves services to the consumers. Non-Governmental Organizations (NGOs), Users Associations, Cooperatives or individual entrepreneurs, the Panchayat Raj Institutions (PRIs) and self help groups (SHGs) qualify as potential rural franchisees. It has also been observed that this system has led to the economic empowerment of women, war widows, and unemployed youths.

One of the critical success factors that have been observed from the past experience in the success of a rural distribution franchise is the knowledge transfer and capacity building of the franchisee by the Utility. This ensures the confidence building of the franchisee and at the same the skill set of the franchisee is raised so as to carry out the desired activities more efficiently. The factors which have played crucial role in the successful deployment and management of rural franchisees are:

- Commercially viable incentive structure
- Effective monitoring system
- Awareness creation at local level to encourage participation

Experience has also shown that input based franchise arrangement has not worked well in rural areas. The reasons for the same are the complexity of the model and lack of knowledge and experience on the part of the franchisee to undertake the job. Instead a better approach could be to have a progressive model wherein the franchisee initially undertakes the area on franchise under revenue collection or input linked revenue model and over a period of time when it has gained enough experience and have shown consistent performance, gets upgraded to the input based model. This would ensure that the franchisee gains enough understanding of the electricity distribution business from the on-ground experience and at the same time Utility would also be in a position to assess the capability of the franchisee to undertake extended responsibilities under the input based model.

Urban Franchise

The urban model, is differentiated from the rural model based on the scale of operations, which while lending itself attractive to large and medium size corporate, rules out the participation of individual entrepreneurs, cooperatives, non-governmental organizations, users etc. Further, the franchise arrangement does not remain limited to meter reading, billing and revenue collection, as in case of some of the rural franchisee models, but it becomes a full service franchise, where the franchisee performs all the functions of the distribution licensee.

As has been stated earlier that the only live example of operating Urban Distribution Franchise are Bhiwandi and Agra, of which Bhiwandi is the only place where franchisee has been working for long enough to be considered for performance evaluation. We have reviewed the urban franchise process across various states in India from the point of view of treatment of various critical elements in the contractual documents as floated by various Utilities for appointing Distribution Franchisee. The documents have been reviewed in the light of the following parameters:

Parameters Mapped from the Contractual Documents of Various Utilities for Appointment of Urban Distribution Franchisee	
Franchisee Area	Billing and Payment Mechanism
Information in the Bidding Document	Treatment of Electricity Duty and Taxation
Cost of the Bidding Document	Tariff Indexation
Pre-Qualification Criteria	Treatment of Employees
Consortium / Joint Venture	Treatment of existing contracts
Capital Investment	Handing of offices and others assets
Evaluation Criteria	Adherence to Performance Benchmarks
Contract Period	Audit and Inspection
Baseline Parameters	Penalties
Performance Benchmarks	Incentive on Collection of Arrears
Supply of Energy	Termination of Contract
Energy Procurement from other sources	

The treatment of above parameters has been detailed in our inception report for the following urban areas:

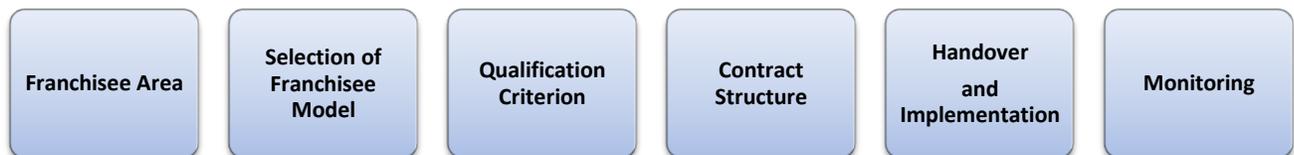
- Aurangabad (Maharashtra)
- Bhiwandi (Maharashtra)
- Nagpur (Old) (Maharashtra)
- Nagpur (New) (Maharashtra)
- Roorkee (Uttarakhand)
- Agra (Uttar Pradesh)
- Muzaffarpur (Bihar)
- Dewas (Madhya Pradesh)

As regard the performance improvement post award of Distribution Franchise, Bhiwandi qualifies to be considered as a success story. With an annual input energy requirement of around 2500 MUs and AT&C loss over 60% with 7-8 hours of load shedding, AT&C losses have been brought down to around 19% in two years. Steep reduction in AT&C also resulted in quality and reliable power supply to consumers there by achieving high consumer satisfaction.



3. Identification of Issues limiting the adoption of DF Models

To create an understanding of the overall framework of the Distribution Franchise arrangement, we have deliberated over certain basic framework elements at the inception stage. The Distribution Franchise arrangement spins around the following basic parameters:



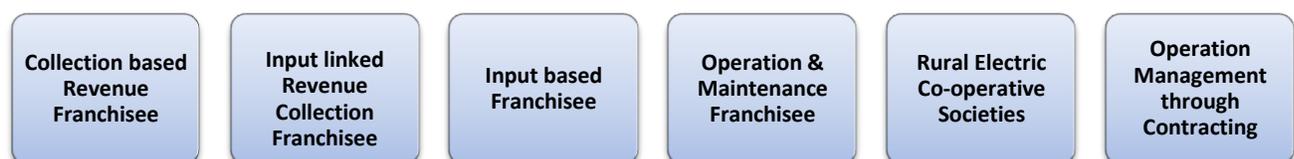
While the above parameters have already been discussed in detail in the inception report, we are providing a brief description of each of the above parameter for quick reference.

Franchisee Area

The First and foremost step in the process of franchisee appointment is the selection of the area to be franchised. A careful and thorough research has to be done before finalizing the area to be franchised considering the main objective of franchising a particular area as enhancing the revenue, decreasing the losses and increasing consumer satisfaction level. The franchised area at the same time should also offer the franchisee sufficient opportunities to work for the benefit of the utility and for itself.

Selection of Distribution Franchise Model

There are six franchisee models which are being followed in one form or the other in different states across India. While rural franchising offers different choice of models ranging from simple revenue collection franchisee to the complex input based franchisee model, the viability of an urban franchisee is seen more or less through input based model. The reasons for the same are obvious as participation and the stakes involved in Urban franchisee is much higher as compared to a rural franchisee arrangement. The various models in practice are as below:



Qualification Criteria

Qualification Criterion refers to the technical capability of a firm to carry out the desired task. In the context of a distribution franchisee, qualification criterion may vary from one transaction to the other because of the size of the area both in terms of jurisdiction and revenue and also as per the roles and responsibilities outsourced to the franchisee. While fixing the qualification criterion, the aim should be to restrict participation from the non-competent companies on the one hand and allowing maximum participation so as to bring in competition on the other. One needs to appreciate the fact, in the Distribution Franchise space, both in Urban and Rural Sector, there are not many companies in India who have prior experience of retail power distribution. Therefore, if participation is restricted to companies which have direct experience, it may limit the participation to only a few companies. It is, therefore, important to do a proper due diligence while devising the prequalification criterion for selecting a franchisee. In case of rural areas, qualification criteria should also take into account the kind of local participation available in the area.

Contract Structure

Contract Structuring, which shall be the guiding the franchisee to operate and the Utility to regulate and monitor the franchisee, should be carried out very carefully. The contract document primarily covers the detailing of the following parameters:

Contract Parameters
Contract Period
Baseline Parameters
Supply of Energy
Energy Procurement from other sources
Responsibility for and Quantum of investment
Billing and Payment Mechanism
Treatment of subsidy and Electricity Duty
Franchisee OR Utility taking away major share of the loss reduction/ likely profits
Treatment of employees
Treatment of existing contracts
Handing over of offices and other assets
Taxation issues
Quality of supply and standard of performance
Timely MIS and monitoring
Audit & Inception
Penalties & Termination of Contract

Handover and Implementation

Handover and implementation of a Distribution Franchise Agreement is primarily governed by conditions precedent and conditions subsequent to the agreement to be satisfied by both the Utility and the Franchisee. The timelines for meeting the conditions precedent and conditions subsequent have to be defined in the franchise agreement. Broadly the conditions include:

Submission of Performance Guarantee by the Franchisee	Arrears Determination to be done jointly by the Utility and the Franchisee
Infrastructure Roll – out Plan to be submitted by the Franchisee	Average Tariff for years subsequent to base year to be jointly computed by Utility and Franchisee
Joint Audit of various Parameters	Release of Pending Consumer Connections by the Franchisee
Calibration of Meters by the Utility	

Monitoring

It is important to realize that by awarding a franchisee, the distribution utility, in a way, is delegating its work to the franchisee. Hence, there is no dilution in the responsibility for satisfactory operation, maintenance, upgrading and growth of the franchised distribution network. The franchiser has to therefore put in place an appropriate management information system (MIS). This, in turn, requires that the information required to be furnished by the franchisee and their format and frequency be clearly spelt out. Attempt should be to strike a balance between effective monitoring and at the same time allowing the franchisee to operate freely. Typically for an input based urban franchisee, the monitoring parameters may broadly include:

- Distribution system (sub-stations, feeders, HT and LT Lines, Power and Distribution Transformers and Reliability Indices),
- Revenue and Arrears,
- Energy Audit & AT&C Loss Monitoring,
- Capital Expenditure,
- Metering,
- Safety and Accidents,
- Consumer connection, disconnection and reconnection
- Grievance handling,
- Compliance of the Distribution Supply Code and other Standards of Performance prescribed by the SERC, Electricity Act and Regulations/guidelines applicable to the licensee



4. Identification of Regulatory Interface in the Franchisee Arrangement

Under *Section 2 (27)* of the Electricity Act 2003, Franchisee means a person authorized by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply. Also, *Seventh Proviso to Section 14* of the Act stipulates that “in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate license from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply”.

While there is a provision of deployment of franchisee under the Act, the issue relating to Regulatory Interface in the Franchisee Arrangement remains to be addressed. The importance of this aspect can be perceived from the angle that the performance or the contract structure of the franchisee will have an impact on the overall performance and the cost structure of the Utility which in turn would have an impact on the overall consumer tariff across the licensee’s area. Since the regulator does not differentiate between the retail consumer tariff for the franchise and non franchise area of the utility, it should not happen that the consumers in the non-franchise area are penalized by paying higher tariff due to non-performance or increased expenses of the Utility on account of franchisee deployment.

We have deliberated in the inception report on various areas during the pre and post franchisee award stages where the necessity of the Regulator approval may be felt necessary. Some of the areas described in the inception report are as below:

Pre – Franchisee Appointment Stage	Concept and Design Approval
	Baseline Parameters
	Scope and Term of Franchise
	Performance target of the franchisee and Penalties thereof
	Minimum Capital investment
	Input Rate and Provision for revision in Input Rate on change of different variables
	Subsidy Administration and Grants through Central and State Funding Schemes
	Supply Security
Post – Franchisee Appointment Stage	Performance Monitoring / Investment Approval / Monitoring

In the subsequent section, we shall present the views that emerged from the stakeholders’ discussion and the common consensus on the regulatory interface in the franchisee institutionalization process.



5. Stakeholders Discussion

Having identified the various issues critical to the Distribution Franchise arrangement, stakeholder meet was organized on August 13, 2010 with an objective of collating views and having brainstorming session on issues which are vital in making a franchise arrangement success and a win win combination for both the utility and the franchisee. A list of the participants is given below:

S.No.	Name	Name of Organization
1	Shri Anurag Raizada	Feedback Ventures Pvt. Ltd.
2	Shri Naveen Kapoor	Feedback Ventures Pvt. Ltd.
3	Shri Bharath	Feedback Ventures Pvt. Ltd.
4	Ms. Nupur	Feedback Ventures Pvt. Ltd.
5	CDRI (Retd) D. Chatterjee	Maharashtra State Electricity Distribution Co. Ltd.
6	Shri U.K. Ghosh	M.P.P.K.V.V. Co. Ltd, Indora
7	Shri D.K. Patidar	M.P.P.K.V.V. Co. Ltd, Indora
8	Shri R.C. Joshi	M.P.P.K.V.V. Co. Ltd, Indora
9	Shri Ashok Saxena	M.P.P.K.V.V. Co. Ltd, Indora
10	Shri RD Kshirsagar	M.P.P.K.V.V. Co. Ltd, Indora
11	Shri Rajesh Prasad	Reliance Infrastructure
12	Shri Shantanu Dixit	Prayas
13	Shri Mithun Chakraborty	NDPL
14	Shri Prasad Sutaone	GTL
15	Shri Sumer Singh Yadav	DHBVNL
16	Shri Anil Goyal	DHBVNL
17	Ms. Padmaja Mehta	CEA
18	Shri R. Dahiya	HERC
19	Shri Tarun Katiyar	NDPL
20	Shri Sunil Wadhwa	NDPL
21	Shri Ajai Nirula	NDPL
22	Shri A.K. Sharma	JVVNL
23	Shri V.J. Talwar	UERC
24	Shri K.K. Garg	MPERC
25	Shri Arun Kumar	PFC
26	Shri S.K. Srivastava	PFC
27	Shri S.K. Verma	A2Z
28	Shri Anil Sharma	A2Z

S.No.	Name	Name of Organization
29	Shri Satish Mishra	Reliance Energy
30	Shri Kamlesh Singh	MOP
31	Shri Arjun Pratap Singh	UPCL
32	Shri P.K. Verma	UPPCL
33	Shri Virender Yadav	HBH

As may be seen, the participants included the representatives from different states which have either implemented franchise arrangement or are in the process of doing so. The participants also included members from State Regulatory Commission, Utilities and prospective Franchisees.

The various issues and the decision points put forward to the participants for discussion purpose divided into franchisee selection process and contract structure were as below:

Request for Proposal		
S. No	Parameters	Decision Points
1	Franchise Area	Criterion for selection of the area. Should it include both HT and LT consumers or only LT consumers.
2	Information in the bidding document	How much and what information regarding the area should be a part of the Bidding Document
3	Cost of bidding document	Criterion for deciding the cost. Can it be linked to the revenue size of the area
4	Pre-Qualification Criteria	Optimum PQR to ensure quality as well active participation. Should the participation be restricted only to power sector/distribution sector companies
5	Consortium/ Joint Venture Bids	Can they be allowed and if so what shall be framework of such consortium.
6	Capital Investment	<ul style="list-style-type: none"> Utility to specify the minimum capital investment amount in the Bid Document or can be left to the franchisee to make capital investment as per the need. In case the Utility specifies the capital investment to be done by the franchisee, should Detailed Project Report of the area be a part of the bidding document. Utility to discontinue all the planned or future investments in the franchisee area or continue with same.
7	Evaluation Criteria	<p>Methodology to compute the levelised input energy rate or Bulk Sale Tariff (BST):</p> <ul style="list-style-type: none"> Separate HT and LT input rate Should increase in energy growth be considered during BST computation Discounting rate to be considered for computation of levelised input rate.

Contract Structure		
S. No.	Parameter	Decision Points
1	Contract Period	Very short or excessively long, based on investment utilization and lower payout to franchisee, review mechanism, provision for extension beyond contract period
2	Baseline Parameters	Whether average billing rate to be treated as frozen or open to revision post award on ground validation of baseline parameters, adjustment of input rates in case of deviation or not
3	Performance Benchmarks	Year on Year loss reduction to be specified or lump sum target over a period of time
4	Supply of Energy	Minimum supply to be assured or not, basis of fixing minimum supply, minimum supply each year or simply growth rate to be mentioned OR total supply to be met with or without corresponding availability
5	Energy Procurement from other sources	Regulatory approvals , quantum of energy, involvement of Utility
6	Billing and Payment Mechanism	Periodicity of Billing and payment by Franchisee, adjustment of dues from either party, etc
7	Treatment of Electricity Duty and Taxation	Input Rate to be inclusive or exclusive, retention by utility/franchisee
8	Franchisee OR Utility taking away major share of the loss reduction/ likely profits	Tariff Indexation and Consumer Mix Changes leading to increase in Revenue
9	Treatment of Employees	Deputation Vs Redeployment
10	Treatment of Existing Contracts	Whether DF can cancel or not especially Capital Expenditure
11	Handing of offices and other assets	All or some, rent, etc
13	Adherence to Performance Benchmarks	Compliance and monitoring mechanism , consequences for non-adherence
14	Audits and Inspection	Whose authority, Circumstances or Periodical, Process of appointment of agency, fee, etc
15	Penalties	Late payment and Non-conformance penalty
16	Error! Reference source not found.	What incentive should the franchisee be entitled for collecting arrears of the Utility's period.
17	Termination of Contract	Grounds, whose authority, settlement of account, etc

Besides views were also taken on the need and the approach for Regulatory Interface both at pre-franchising and post franchising stages.

Based on the stakeholders discussion, internal brainstorming with FOR at Delhi and at 12th FOR meeting held at Thiruvananthapuram on 25th September 2010, following decision have been made which have also been captured in the form of guidelines annexed as **Annexure 1** to this report.

Franchisee Area

It was earlier suggested that the franchisee area should have annual energy input in the range of 400 – 500 MUs and T&D Losses greater than 25%. Based on the internal discussion with FOR Secretariat and other stakeholders, it was suggested that the franchised area should offer the franchisee sufficient opportunities to work for the benefit of the utility and for itself and therefore should be selected as below:

1. To begin with, the utility should target compact areas which have input energy of at least 2000 Million Units (MUs) per annum or more than 500 MW Load or more than 3 Lac Consumers. The Distribution Losses should be at least 20%.
2. Subsequently, the utility may franchise other compact areas which have input energy of at least 400 MUs and Distribution Losses higher than 20%.
3. Those areas which have input energy of less than 400 MUs or the Distribution Losses less than 20%, should ideally not be franchised as the same are not considered viable for a long term franchise looking at the large players who may like to participate
4. If the franchised areas referred to at 1 or 2 above are at a distribution loss level of less than 20%, the objective of distribution franchising should be to increase customer satisfaction by reducing load shedding and improving reliability of supply and for that purpose also source medium or long term power to meet the deficit of energy in the franchised area, if any.

Contract Period

Having discussed the pros and cons of very short term and very long term contracts it was unanimously agreed that the Contract Period should ideally be 15 years. However, for areas with distribution losses less than 20% where there could be a need to enter into long term power procurement agreements to meet the deficit of energy, the contract period should be 20 years.

Pre-Qualification Criteria

While there has been varied precedence in the past franchise transactions for pre-qualification criteria, looking at the limited number of players in the power distribution sector and successful precedence in Power Generation, Telecom, Banking and Insurance Sector, any prospective bidder meeting the criteria given below should be allowed to participate in the Bidding process:

1. Public Limited company
2. Should meet the conditions of Code of Conduct for grant of Distribution Business License under Section 14 of the Electricity Act, 2003
3. Net Worth - Equivalent to 50% of the Annual Revenue of the Franchise Area
4. Internal Resource Generation i.e. Cash Accruals – 25% of the Annual Revenue

In typical cases, however, the utilities, with prior permission from SERC, may also permit other institutions such as cooperative societies or similar institutional bodies for being deployed as franchisee keeping in view the local conditions and the size of area to be franchised..

Consortium

Having arrived at a common consensus on the Pre Qualification Criteria laid down above, it was felt that since the Pre Qualification Criteria does not require any technical qualification criteria to be satisfied by a bidder, consortium bidding is not required.

Evaluation of Pre-qualification

With the kind of pre qualification criteria prescribed, there is no need for the scoring mechanism that has been followed by various utilities in the

past. Accordingly, any bidder qualifying the Pre Qualification Criteria prescribed above should be eligible for Financial Bid Opening.

Information in the Bidding Document

Looking at the nature of contract, its duration, long term repercussions for the franchiser, franchisee, consumers and the regulator it was suggested that the utility should ensure that:

1. At least 5 years commercial data along with the technical and infrastructure details as described in the model RFP document should be provided.
2. In order to lend credibility and minimize post franchise disputes, the utility should get a Third Party Audit of its commercial data of at least last one year including Input Energy, Energy Sales, Amount Billed and Collected, Distribution Losses and AT&C Losses and make the same available to all the bidders well before the close of the bid, say 3 to 4 weeks. This point has been further elaborated in the subsequent para.
3. In order to avoid post-tender negotiation on important clauses of Franchise arrangement, the Franchise Agreement should be made a part of the tender document. The same must be frozen after the pre-bid conference after considering the views and suggestions given by the bidders, if any.

Baseline Parameters

Having recognized the importance of baseline parameters and the likely conflict arising out of the difference in baseline parameters post the award of the franchisee it was suggested that the baseline parameters of at least the preceding financial year should be audited by an independent third party auditor during preparatory stage of the bidding process. The audited data should be as close to the date of bidding as possible. This will ensure that the bidders have the audited data for at least 12 months based on which they may bid.

With the audited baseline data being available, the Average Billing Rate (net of Subsidy) for the Base Year should also be frozen.

Bid Variable

While there was a common consensus on the bid variable to be based on combined input rate for HT and LT consumers, there were difference in opinion on whether the benchmark input rate should be specified in the RFP document or not. While both the cases have their own merits and demerits, on discussion with FOR Secretariat it was it was decided that:

1. The Bid Variable should be based on the combined input rate for HT & LT Consumers because of operational and accounting issues involved in separate HT & LT rates such as computation of input energy, exact losses in HT and LT segment especially in mixed feeders, etc
2. There should be no Minimum Benchmark rates because of the difference in perception between the utility and the prospective bidders on issues that are taken into account while fixing such benchmark rates including projected energy sales, loss and collection efficiency levels on year to year basis, capital investments and expenditure levels.
3. In order to estimate the energy input for the contract period, a CAGR of energy sales for past 5 years may be ascertained and applied to compute the energy sales of the first 5 years of the contract period and, taking into account the load saturation, energy conservation and reduction in energy losses, at half the CAGR rate to each of the remaining years of the contract period. The projected energy input may be arrived at by applying the projected T&D loss reduction trajectory, to the energy sales figures so arrived at.
4. The discounting rate to be used for computing the present value should be the discounting rate that is notified by CERC from time to time for bid evaluation under the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees
5. The selection should be based on a comparison of the Present Value of the revenue payout by each bidder during the contract period.

Loss Reduction Targets and Penalty for non-achievement

To keep the focus of the franchisee intact on the objective of distribution franchising from the Utility point of view it was suggested that:

1. Loss reduction trajectory should be mentioned in the bid documents.
2. Loss reduction trajectory should be prescribed keeping in view the existing distribution loss levels, historical background of franchised area itself and practical expectations. In any case, the loss reduction trajectory shall require mandatory approval from the concerned State Electricity Regulatory Commission (SERC). For the purpose of submission to SERC, the utility should incorporate the following loss reduction trajectory:
 - a. If distribution losses are higher than 25% - reduction by 5% per annum till 25% loss level is achieved.
 - b. If distribution losses are up to or less than 25% - reduction by 3% per annum till 19% loss level is achieved
 - c. If distribution losses are up to or less than 19% - reduction by 2% per annum till 15% loss level is achieved
 - d. If distribution losses are up to or less than 15% - reduction by 1% per annum till 12% loss level is achieved
3. The targets will change from one slab to another on shifting of the distribution losses from one slab to another.

It was also discussed that since the franchisee would already factored in the loss reduction targets in the quoted input rate, further penalizing him on this account would be unfair and therefore it was decided that no penalty should be charged from the Distribution Franchisee on account of non achievement of loss targets.

Treatment of Tax, Duties and levies

Considering the options available, it was discussed that the utility should adopt the following approach:

1. The input rates quoted by the Franchisee should be exclusive of the Electricity Duty (ED), Tax on Sale of Electricity (ToSE), Municipal Taxes (MT) and any other taxes/levies/duties that may be levied by the State Government but asks the utility to collect on its behalf.
2. In such a case, the Franchisee shall pass on the taxes/duties/levies to the Utility on collection basis.
3. 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 utility (in case of Indirect Tax) as the case may be.

Treatment of Subsidies

Following approach was agreed to be adopted by the Utility with respect to treatment of subsidies:

1. Input Rate to be quoted by the bidders should be exclusive of Subsidy.
2. Subsidy received from the Government should be retained by the Utility.
3. Regarding charging the new consumers, who may be added post franchise, on the subsidized rates, the prevailing tariff schedule shall be adhered to by the Franchisee. Any loss of revenue on this account shall be taken care of through tariff indexation mechanism i.e. tariff sharing ratio which takes care of change in consumer mix as well.

Capital Investment

It was finalized after much brainstorming that the minimum capital investment should be mentioned in the bid document and should be incorporated in the contract structure as below:

1. To ensure transparent bid evaluation, the minimum Capital Expenditure should be specified as equivalent to 50% of Total Revenue Billed for the Base Year spread over a period of 5 years. The franchisee shall roll out its investment in such way that at least 10% of the minimum investment plan is spent every year for the first five years of the contract period.

2. Since the utility will have to bear a large part of the investments done by the franchisee towards the end of the contract period due to prevailing depreciation rates, it will be necessary to regulate the investments by the franchisee in this regard. Accordingly, the investments to be made by the franchisee in the last 5 years of the contract period would require prior approval from SERC except the following investments
 - a. For release of any new consumer connections
 - b. For network upgradation to meet normal load growth
3. To compensate the franchisee at the end of the contract period, the average rate of depreciation for the purpose of computing the depreciated cost of the investments made by the franchisee shall be taken as 8% per annum or as approved by the SERC.

Supply of Energy & Procurement of Deficit Energy

- Considering the criticality and far reaching repercussions of energy supply to the franchise area, it was decided that the utilities should adopt the following approach:
1. The Utility should not differentiate between similar areas in the State as regards the supply of energy. However, if the hours of supply depends on loss level of that area, that policy may continue so that in the event of reduction of losses in the franchise area, it may get comparatively higher quantum of energy to meet the consumers' demand.
 2. In case the Utility is unable to provide sufficient energy to meet the requirement of the franchise area, the licensee, upon being requested by the franchisee, shall procure the energy that is in deficit from the open market, for the franchisee area.
 3. In order to fully recover the cost of energy to meet such deficit, the franchisee may charge the consumers in the form of a Reliability Charge per unit and such charge could be decided through public hearing process and prior approval of the SERC.

Tariff Sharing

There was a common understanding among the participants that to carry out tariff adjustment, a mechanism linking the Revenue from Input Energy Rate receivable by the Utility from the Distribution Franchisee to change in tariff and/or consumer mix, should be adopted. The only bone of contention that arises is who should share the benefits of change in consumer mix or change in consumer tariff. After discussion with stakeholders and further discussion with FOR Secretariat, it was decided that the Utility and the franchisee should share, in the ratio of 75:25, any increase in revenue due to increase in Average Billing Rate (i.e. Average Billing Rate of the current period minus Average Billing Rate of the Base Year). The rationale behind allowing the franchisee to retain 25% of the revenue on account of change in tariff or consumer mix is that with every increase in revenue, the collection responsibility, bad debts and consequent losses of the franchisee could also go up in absolute term and, therefore, the franchisee would need to be compensated in that regard. However, any decrease in revenue due to decrease in Average Billing Rate (i.e. Average Billing Rate of the current period minus Average Billing Rate of the Base Year) would be entirely absorbed by the Utility i.e. franchisee will not be required to share the same.

Incentives on Arrears

It was suggested that the franchisee should collect the connected and disconnected arrears of the utility for which an incentive of 10% and 20% in respect of connected and disconnected arrears respectively should be offered to them.

Billing and Payment Mechanism

While the precedence in the past were of weekly and fortnightly billing and payment by the franchisee to the Utility but considering the alternatives and practicality of the billing and payment mechanism, the common view was to have billing for energy supply by the utility to and payment from franchisee to the utility on monthly basis. If required, the utility may make provision for Incentive on early payment.

Treatment of Employees

It was agreed upon that the Utility employees should provide handholding support to the franchisee for the first 3 months for which the franchisee

shall have to bear the cost of salary & allowances payable to the Utility employees involved therein. Thereafter, the Franchisee shall have an option to take Utility employees on deputation for 5 years. In such a case, the franchisee will have to offer pay and allowances which are better than that of the utility. However, the working terms and conditions of the franchisee would be applicable on all such employees.

Handing of office and assets The common view in this regard was as below:

1. Offices and Assets including land earmarked for substations, customer care centre, stores and workshops dedicated for the franchise area shall be handed over to the franchisee without any rent.
2. Upon any asset being removed for replacement by the franchisee's asset or declared unserviceable, the scrap should be given back to the Utility.

Penalties for Non-Performance

Considering the nature of this contract, it was suggested that the utility may adopt the following approach:

1. To ensure serious bids and franchisee commitment to its roles and responsibilities, the following terms should be made part of the bid documents :
 - a. **Bid Bond** – Rs.10 Cr for every 250 Cr of annual revenue
 - b. **Performance Guarantee** – 1/5th of annual revenue out of which half shall be locked throughout the contract period whereas the other half shall be returned in proportion to the minimum mandatory investment done by the franchisee over the first 5 years. The portion of the Performance Guarantee that is not returned shall be liable to be invoked either in case of non-compliance of Standards of Performance or failure to bring down the distribution losses to 20% in the initial 10 years.
 - c. **Payment Security** – LC equivalent to 60 days of average energy input in the franchise area. In addition to this for the purpose of

creating a collateral arrangement, the Utility and the Franchisee shall also enter into a Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation.

2. In case of non-adherence of the supply code/standards of performance, any penalty levied by the SERC on the utility shall be recoverable from the franchisee on a back to back basis. Accordingly, the franchisee shall have to be authorized to represent any such case before the SERC.

Audits & Inspection

The discussion group had the view that the practices in the past transaction in this regard have more or less been adequate except the to the extent of the scope of audit and therefore should be followed as it is. Accordingly the responsibilities of the auditor may include:

1. 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 quarterly basis)
2. 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)
3. Auditing the revenue collected, ED and taxes collected from each category of the consumers. (On quarterly basis)
4. 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 quarterly basis)
5. 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)

6. 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. (At the time of take over and thereafter on quarterly basis)
7. The auditor shall review 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. (At the time of take over and thereafter on quarterly basis)

Regulatory Interface

The role of the Regulator was recognized and was felt vital by all the participants during the discussion, primarily because the performance of the franchised area also has an implication on the overall tariff being decided by the Regulator and the Regulator may not like to treat the franchised area separately from the other areas. It was therefore decided that once the standard guidelines and bidding documents are in place, any deviation from the standard bidding document should be done after approval from the State Regulatory Commission. Besides above, it was also suggested to have Regulatory Interface for the following:

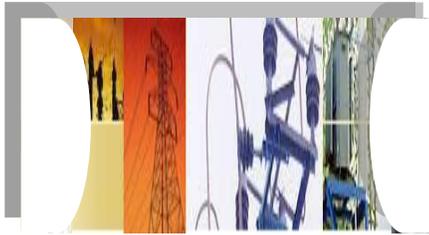
1. Mandatory approval of T&D Loss Reduction Trajectory from SERC
2. Approval of specified Investments planned in the last 5 years of the contract
3. For improved reliability of power supply, the Licensee, on being requested by the Distribution Franchisee, may procure extra power from the market through a tripartite agreement for supply to the Franchised Area with provision to recover Reliability Charges from the consumers as approved by the SERC for which public hearing process to take into account the consumer's suggestions/ view point shall be fixed by the SERC.



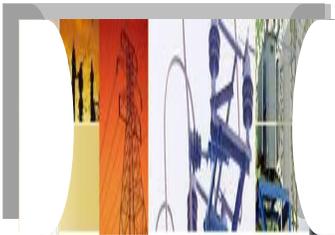
6. Design of Framework and Contractual Documents

Based on the stakeholders' discussion, our interpretation of the various critical issues and key inputs from FOR Secretariat, we have formulated the guidelines for implementing Input based Urban Franchise along with the standard bidding documents attached as **Annexure 1**, **Annexure 2** and **Annexure 3** respectively. The guidelines besides providing clarity on the various aspects of the Urban Distribution Franchise arrangement, will also serve as a ready reckoning for the Utilities for carrying out the preparatory exercise for deploying Urban Distribution Franchise.

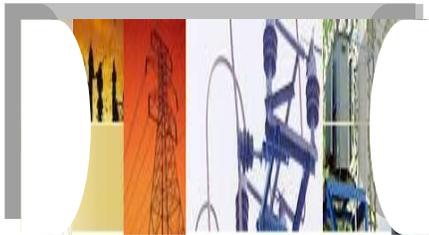
While the standards documents designed here refers to the Urban Distribution Franchise Model, it is worth mentioning that for rural distribution franchise RGGVY guidelines for franchisee deployment can be considered as a reference document. Standardization of contractual documents for rural franchise may not be considered suitable in this case due to the complex nature of a rural framework. A rural institutional framework has multiples variables ranging from the economics of energy supply, paying capacity of the consumers, area density, local dynamics and political pressures to the resource availability issues which would also include availability of skilled organizations to undertake the distribution franchise. Each of rural areas identified for distribution franchise would have its own unique concerns and predicament, therefore standardization of any contractual document may not suitable across all the areas. For rural distribution franchise, the document would have to be designed in a way such that it incorporates the socio-economic dynamics of that particular area. We have therefore restricted our effort for designing the framework and contractual document for franchise arrangement in the Urban Sector.



Annexure 1 : Standard Guidelines for Urban Distribution Franchising



Annexure 2 : Standard Request for Proposal for Urban Distribution Franchising



Annexure 3 : Standard Urban Distribution Franchise Agreement



GUIDELINES FOR IMPLEMENTING POWER DISTRIBUTION FRANCHISING IN URBAN AREAS IN INDIAN POWER SECTOR



Forum of Regulators

Prepared by Feedback Ventures Pvt. Ltd.

**FEEDBACK
VENTURES**
Making Infrastructure Happen

**SEPTEMBER
2010**

Preface

In India, the Distribution Franchisee model is increasingly been adopted for minimizing loss reduction, both distribution and commercial. The Urban Distribution Franchisee model is a testament to the winning combination of the PPP model where the utility is benefitted by the entry of private sector for the much needed efficiency improvement. An important aspect of the improvements which have also been highlighted through various reforms and guidelines has been private sector participation in all the initiatives undertaken by the distribution companies in improving their technical and management capabilities.

A unique public-private partnership model that results in significant reduction in AT&C losses in a short span of time, increased reliability and better customer service, various Urban franchisee models have been adopted in Indian States like Maharashtra, Uttar Pradesh. Other States like Uttarakhand, Bihar, Madhya Pradesh, Haryana and Karnataka are in the process of implementing Distribution Franchising.

One of the measures, which has been stipulated as a pre-requisite in rural areas under the RGGVY guidelines and driven by the need of controlling losses, revenue sustainability of rural power supply and manpower replacement, is the appointment of distribution franchisees. Distribution Franchisee in Rural Areas or Rural Franchising, as it is called, has also been tested with various models at many places across India and to a certain extent has proven successful in increasing the revenue to the Utility.

The need for franchising is, therefore, being recognized equally in the urban and rural areas. While the process is still evolving, it is important to take up this activity in a methodical and integrated manner to attain institutionalization.

FOR has attempted through this Guidelines and Standard Model for Appointment of Distribution Franchisee to ensure that a uniform and transparent process is followed for the appointment of Distribution Franchisee throughout the country. The booklet will serve as a guide to the Utilities which are in the process or are planning in future of deploying Franchisees.

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1. Introduction

Though the Distribution Franchisee model has scripted success stories, Forum of Regulators has identified the need to standardize the entire process of the Distribution Franchise Arrangement from the process of awarding a Distribution Franchisee (DF) contract to a company to the termination policies to be followed by the utility and the DF.

Since most of the Utilities are now in the process of undertaking distribution franchising as a public private partnership model for bringing in the desired efficiencies, the role of the regulator, going forward, in facilitating the DF arrangement, also becomes critical.

To ensure wider participation and ownership by all stakeholders, a workshop on “Standard Model for Distribution Franchisee” was held in Delhi on 13th August, 2010 where representatives of State Electricity Regulatory Commissions, Utilities and Franchisees were invited to offer their comments. The chief objective of the workshop was to arrive at a consensus on the various parameters which affect the distribution franchise arrangement. The subsequent sections of the guidelines shall detail about the various issues critical to the Distribution Franchisee institutionalization process.

2. Guidelines for Urban Distribution Franchising

Based on the issues involved in distribution franchising in general and urban distribution franchising in particular, past precedence in other States, and taking into accounts the points of view offered by the stakeholders and the suggestions of M/s Feedback Ventures Pvt Ltd, Consultants to FoR, these guidelines have been framed.

2.1 Franchise Area

The First and foremost step in the process of appointment of franchisees is selection of the area to be franchised. A careful and thorough research needs to be done before finalizing the area to be franchised. The main objectives of franchising a particular area are

- a) Enhancing the revenue;
- b) Reducing the distribution and commercial losses;
- c) Increasing consumer satisfaction level; and
- d) Procuring power for reducing load shedding if the distribution losses of a franchised area is less than 20% or has been brought down below 20%

The franchised area should offer the franchisee sufficient opportunities to work for the benefit of the utility and for itself.

1. To begin with, the utility should target compact areas which have input energy of at least 2000 Million Units (MUs) per annum or more than 500 MW Load or more than 3 Lac Consumers. The Distribution Losses should be at least 20%.
2. Subsequently, the utility may franchise other compact areas which have input energy of at least 400 MUs and Distribution Losses higher than 20%.
3. Those areas which have input energy of less than 400 MUs or the Distribution Losses less than 20%, should ideally not be franchised as the same are not considered viable for a long term franchise looking at the large players who may like to participate
4. If the franchised areas referred to at 1 or 2 above are at a distribution loss level of less than 20%, the objective of distribution franchising should be to increase customer satisfaction by reducing load shedding and improving reliability of supply and for that

purpose also source medium or long term power to meet the deficit of energy in the franchised area, if any.

2.2 Contract Period

The contract period of the franchise is the term for which the franchisee undertakes the operations in the franchise area. The franchise arrangement must be of an appropriate time frame such that the financial viability of the enterprise is ensured, as well as the planned development of the distribution system in the area can also take place. An optimum time frame provides ample time to the franchisee to spread the investments cost over a longer time span, gives an opportunity to effect necessary improvement in the distribution system and also get adequate return on the investments.

The Contract Period should ideally be 15 years. However, for areas with distribution losses less than 20% where there could be a need to enter into long term power procurement agreements to meet the deficit of energy, the contract period should be 20 years.

2.3 Pre-Qualification Criteria

Qualification Criterion aim to assess the capability of a firm to carry out the desired task. In the context of a distribution franchisee, qualification criterion may vary from one transaction to the other because of the size of the area both in terms of jurisdiction and revenue and also due to the roles and responsibilities outsourced to the franchisee. The qualification criterion needs to be fixed such that it allows participation from maximum bidders to bring in competition. However, the utility cannot afford to leave the distribution system to players with dubious track record. Therefore, a balance needs to be struck between competition and quality of participation.

While fixing the pre-qualification criteria for appointment of distribution franchisee, it has to be kept in mind that the conditions for eligibility for grant of a distribution franchise cannot be more onerous than the conditions for grant of a second distribution license as prescribed in sixth proviso to Section 14 of the Electricity Act, 2003 viz capital adequacy, credit worthiness and code of conduct.

Looking at the limited number of players in the power distribution sector and successful precedence in Power Generation, Telecom, Banking and Insurance Sector, any prospective bidder meeting the criteria given below should be allowed to participate in the Bidding process:

1. Public Limited company
2. Should meet the conditions of Code of Conduct for grant of Distribution Business License under Section 14 of the Electricity Act, 2003
3. Net Worth - Equivalent to 50% of the Annual Revenue of the Franchise Area
4. Internal Resource Generation i.e. Cash Accruals – 25% of the Annual Revenue

In typical cases, however, the utilities, with prior permission from SERC, may also permit other institutions such as cooperative societies or similar institutional bodies for being deployed as franchisee keeping in view the local conditions and the size of area to be franchised.

2.4 Consortium

Owing to limited number of players in Power Distribution, the utilities could face difficulty in getting good number of bidders for competitive participation unless it allowed the bidders to form a consortium comprising of two or more companies who may meet some but not all the pre-qualification conditions individually but could together meet all the conditions by complementing on one or the other qualification criteria. While some utilities in the past have allowed by participation by consortiums or joint venture companies subject to meeting certain conditions, others have not allowed. Looking at the type of instances of consortium bidding in the past, this consortium have mostly been formed when a financially capable bidder is unable to meet the technical qualification criteria and, therefore, wishes to rope in a partner who can complement the same.

Looking at the Pre Qualification Criteria laid down above, the same does not require any technical qualification criteria to be satisfied by a bidder and, therefore, consortium bidding is not required.

2.5 Evaluation of Pre-qualification

As per the existing practice of bid evaluation, various eligibility criteria prescribed in the bid document have been given different scores in terms of their importance to the running of the distribution franchise. Some utilities have given more weight to the technical capability of a bidder than their respective financial capability or vice-versa with a view to evaluate the bidders accordingly. The main purpose of carrying out evaluation in this way has been to open and evaluate the financial bids i.e. input energy rates of only those bidders who are found to be technically qualified. Some utilities have chosen to disclose the evaluation criteria on macro level while some others have mentioned the same in full so that the bidders could carry out a self-evaluation of their eligibility. This kind of scoring methodology introduces an element of discretion in bid evaluation and, therefore, should be avoided.

With the kind of pre qualification criteria prescribed in the guidelines, there is no need for this scoring mechanism. Accordingly, any bidder qualifying the Pre Qualification Criteria prescribed above should be eligible for Financial Bid Opening.

2.6 Information in the Bidding Document

The bidders need detailed information of the franchise area for better understanding of the area in terms of available distribution infrastructure, consumers, load, revenue billed and collected, loss levels, expense structure of the utility, etc. Most of the information is given in the Request for Proposal (RFP) issued by the utility. Utilities in the past have given the techno-commercial details of at least the previous three years and have also included the Distribution Franchise Agreement (DFA) or a model DFA or principles of DFA to be converted into a full fledged DFA post selection of the franchisee.

Looking at the nature of contract, its duration, long term repercussions for the franchiser, franchisee, consumers and the regulator, the utility should ensure that:

- i. At least 5 years commercial data along with the technical and infrastructure details as described in the model RFP document should be provided.
- ii. In order to lend credibility and minimize post franchise disputes, the utility should get a Third Party Audit of its commercial data of at least last one year including Input

Energy, Energy Sales, Amount Billed and Collected, Distribution Losses and AT&C Losses and make the same available to all the bidders well before the close of the bid, say 3 to 4 weeks. This point has been further elaborated in the subsequent para.

- iii. In order to avoid post-tender negotiation on important clauses of Franchise arrangement, the Franchise Agreement should be made a part of the tender document. The same must be frozen after pre-bid.

2.7 Baseline Parameters

Verification of the baseline parameters is a critical issue and has the potential to bring the relationship of franchiser with the franchisee to an end before it starts. The franchisee could refuse to take over an area where the baseline data given in the bid document is substantially different from the data that may be worked out based on actual verification just before takeover of the franchise area. It is practically very difficult to effect changes in a franchise agreement once signed. The only option, therefore, is that the utility freezes the Average Billing Rate (ABR) of the base year period before the bid but based on sound validation of the billing data.

- i. As already described in the previous para, for increased transparency and informed bidding by the bidders, the baseline parameters of at least the preceding financial year should be audited by an independent third party auditor during preparatory stage of the bidding process. The audited data should be as close to the date of bidding as possible. This will ensure that the bidders have the audited data for at least 12 months based on which they may bid.
- ii. With the audited baseline data being available, the Average Billing Rate (net of Subsidy) for the Base Year should also be frozen.

2.8 Bid Variable

The bidders are generally required to quote and evaluated on the basis of the annualized input rates. While as per the current practice, the bidders have generally been asked to quote a

combined HT/LT rate as a single input rate, the bidders have, sometimes, been also asked to quote input rates separately for HT and LT consumers. Some utilities have even specified minimum benchmark rates for the entire term of the franchise which the bidders have to comply and quote rates higher than the specified rates. However, not specifying the projected input energy could possibly lead to bidders quoting lower rates in the initial years and higher rates only towards the later period of the contract, a tendency which is best known front loading rates. This tendency could be checked by specifying the projected input energy during the contract period, taking into account the past and future growth, and then asking the bidders to quote their rates. In such cases, the bid evaluation is done by computing the value of the projected revenues to the utility based on the projected input energy multiplied by the bidders' quoted input rates and then discounting the projected revenues by a discounting rate specified in the bid document, also known as present value method.

Keeping in view the critically of this issue with respect to distribution franchisee selection process:

- i. The Bid Variable should be based on the combined input rate for HT & LT Consumers because of operational and accounting issues involved in separate HT & LT rates such as computation of input energy, exact losses in HT and LT segment especially in mixed feeders, etc
- ii. There should be no Minimum Benchmark rates because of the difference in perception between the utility and the prospective bidders on issues that are taken into account while fixing such benchmark rates including projected energy sales, loss and collection efficiency levels on year to year basis, capital investments and expenditure levels.
- iii. In order to estimate the energy input for the contract period, a CAGR of energy sales for past 5 years may be ascertained and applied to compute the energy sales of the first 5 years of the contract period and, taking into account the load saturation, energy conservation and reduction in energy losses, at half the CAGR rate to each of the remaining years of the contract period. The projected energy input may be arrived at by applying the projected T&D loss reduction trajectory, as described in the next para, to the energy sales figures so arrived at.

- iv. The discounting rate to be used for computing the present value should be the discounting rate that is notified by CERC from time to time for bid evaluation under the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees
- v. The selection should be based on a comparison of the Present Value of the revenue payout by each bidder during the contract period.

2.9 Loss Reduction Targets and Penalty for non-achievement

The main objective of appointment of a distribution franchisee is to bring down the AT&C losses in the franchise area. The sooner the losses are brought down, the better. As per the practice followed till now, utilities generally specify a loss reduction trajectory which could be either yearly loss reduction targets or a lump sum loss reduction target to be achieved within a specified period. Despite the fact that the rates quoted by the bidders do take into account the minimum loss reduction trajectory, the utilities see a benefit in specifying such a trajectory so that the franchisee put in conscious efforts to bring down the losses irrespective of the rates that they quote.

Keeping in view the objective of distribution franchising:

1. Loss reduction trajectory should be mentioned in the bid documents.
2. Loss reduction trajectory should be prescribed keeping in view the existing distribution loss levels, historical background of franchised area itself and practical expectations. In any case, the loss reduction trajectory shall require mandatory approval from the concerned State Electricity Regulatory Commission (SERC). For the purpose of submission to SERC, the utility should incorporate the following loss reduction trajectory:
 - a. If distribution losses are higher than 25% - reduction by 5% per annum till 25% loss level is achieved.
 - b. If distribution losses are up to or less than 25% - reduction by 3% per annum till 19% loss level is achieved

- c. If distribution losses are up to or less than 19% - reduction by 2% per annum till 15% loss level is achieved
 - d. If distribution losses are up to or less than 15% - reduction by 1% per annum till 12% loss level is achieved
3. The targets will change from one slab to another on shifting of the distribution losses from one slab to another.
4. No penalty should be charged from the Distribution Franchisee on account of non achievement of loss targets, since input rate quoted by bidder already factors in the same.

2.10 Treatment of Tax, Duties and levies

In case of a direct or an indirect tax, levied by the State or Central Government, which is already in vogue at time of bidding, the same logically should be borne by the parties concerned in the way in which it is defined in the Draft Franchise Agreement which is circulated along with the bid documents. The State Govt may, during the contract period, levy electricity duty, tax on sale of electricity, municipal taxes or any other tax/levy which the utility may be asked to collect along with the electricity bills from the consumers. The amount so collected would form part of the collection of the utility although accounted for separately in the books of accounts maintained by the utility. There are two options for collecting this amount under the distribution franchising system. The first option is to include the tax amount in the input energy rate so that the same gets collected along with the input energy bill while the franchisee recovers the same from the consumers. In this case, the utility collects the entire amount of taxes but the franchisee is able to retain only the amount collected from the consumers. In the second option, the tax amount is excluded from the input energy rate so that franchisee pays only for the input energy. In addition, the taxes are collected by the franchisee from the consumers and the amount so collected is passed on to the utility. In this case, the utility gets only the amount collected from the consumers and passes on the same to the State Government. Considering the options available, the utility should adopt the following approach:

1. The input rates quoted by the Franchisee should be exclusive of the Electricity Duty (ED), Tax on Sale of Electricity (ToSE), Municipal Taxes (MT) and any other taxes/levies/duties that may be levied by the State Government but asks the utility to collect on its behalf.
2. In such a case, the Franchisee shall pass on the taxes/duties/levies to the Utility on collection basis.
3. 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 utility (in case of Indirect Tax) as the case may be.

2.11 Treatment of Subsidies

The state government provides subsidies to certain category of consumers. This subsidy is provided to the utility and is not part of the collection of the utility from the consumers. There are two options for collecting this amount under the distribution franchising system. The first option is to include the subsidy amount in the input energy rate so that the same gets passed on from the franchisee and the amount received from the State Government may be passed on to the franchisee. In this case, the franchisee could insist that the amount of subsidy may be adjusted against the input energy amount payable by the franchisee while the utility may retain the subsidy collected from the State Government. In the second option, the subsidy amount could be excluded from the input energy rate so that franchisee pays only for the input energy. In this case, the subsidy is retained by the utility after receipt from the State Government. Keeping in view of the options available, the utility should adopt the following approach:

1. Input Rate should be exclusive of Subsidy.
2. Subsidy received from the Government should be retained by the Utility.
3. Regarding charging the new consumers added post franchise on the subsidized rates, the prevailing tariff schedule shall be adhered to by the Franchisee. Any loss of revenue on this account shall be taken care of through tariff indexation mechanism which takes care of change in consumer mix as well.

2.12 Capital Investment

The amount of capital investment to be made in the franchise area is of utmost concern to a bidder. In case there is any investment scheme already planned or under execution in the franchise area, it becomes more attractive to the prospective bidders. Planned investment by the utility mitigates the burden on the prospective franchisee.

As per the recent bids, either the franchisees have been given freedom to formulate their own capital expenditure plan or have been bound by the agreement to invest a specified amount of money in the franchise area i.e. the capital investment is stipulated by the utility. Any investments in the franchise area will be advantageous, as there would be faster development/augmentation of the distribution system. However, specifying a minimum capital investment level could put the bidders on different footings due to different perception regarding the investment requirement thus impacting the rates that the bidder may be able to quote.

Considering the alternatives available, the utility should adopt the following approach:

1. To ensure transparent bid evaluation, the minimum Capital Expenditure should be specified as equivalent to 50% of Total Revenue Billed for the Base Year spread over a period of 5 years. The franchisee shall roll out its investment in such way that at least 10% of the minimum investment plan is spent every year for the first five years of the contract period.
2. Since the utility will have to bear a large part of the investments done by the franchisee towards the end of the contract period due to prevailing depreciation rates, it will be necessary to regulate the investments by the franchisee in this regard. Accordingly, the investments to be made by the franchisee in the last 5 years of the contract period would require prior approval from SERC except the following investments
 - a. For release of any new consumer connections
 - b. For network upgradation to meet normal load growth
3. To compensate the franchisee at the end of the contract period, the average rate of depreciation for the purpose of computing the depreciated cost of the investments made by the franchisee shall be taken as 8% per annum or as approved by the SERC.

2.13 Supply of Energy & Procurement of Deficit Energy

The electricity supplied to the franchisee depends on the consumers and consumer mix present in the franchise area. While the utility may commit to supply a specified amount of electricity on a yearly basis, the same could be subject to the load shedding directives, as applicable to other areas of the utility. The energy requirement of a franchisee could go up with increase in the number of consumers, change in consumer mix and load growth.

If the franchisee is assured of the supply as per the requirement of the franchise area, it could help to build good will in terms of quality and reliability of supply amongst consumers and in turn get payment and acceptability from the consumers.

If there is any deviation in the supply of energy and the consumer mix has more subsidized consumers (domestic especially life line, agriculture, etc) and less subsidizing consumers (commercial, industries), the franchisee can ill afford to meet shortage of energy by procuring from the open market at high rates. The same could result in more load shedding and thereby lead to increased consumer dissatisfaction. Since the utility is likely to continuously meet the entire energy requirement including load growth in the non-franchised areas, it should ideally not discriminate between a franchised and a non-franchised area on this ground.

Looking at the recent distribution franchisee bids from a utility's perspective, the input energy rate quoted by the bidders has been below (especially in the initial years of the franchise contract) the cost of energy to the utility (some states are paying very high cost under the Unscheduled Interchange (UI) mechanism) for meeting the supply obligation. The utility, therefore, could either put a cap on the supply completely or allow some growth in the input energy taking into account the past growth but subject to availability of the additional energy with the utility. The utility could also stipulate that the deficit in the energy, if any, should be procured by the franchisee from the open market through short term or medium term contract with the help of the utility. Alternatively, the utility could agree to supply the additional energy at the pooled cost at which it has to procure the energy for its own requirement in other areas.

Considering the criticality and far reaching repercussions of energy supply to the franchise area, the utilities should adopt the following approach:

1. The Utility should not differentiate between similar areas in the State as regards the supply of energy. However, if the hours of supply depends on loss level of that area, that policy may continue so that in the event of reduction of losses in the franchise area, it may get comparatively higher quantum of energy to meet the consumers' demand.

2. In case the Utility is unable to provide sufficient energy to meet the requirement of the franchise area, the franchisee may be permitted to source the energy that is in deficit from the open market through the utility. As regards the mechanism, while the franchisee will identify and procure power from diverse sources, the agreements for purchase of power shall have to be executed by the Utility as the principal Party. Utility will have to subject itself to Section 86(1)(b) of the Electricity Act, 2003 by making necessary applications to the SERC for scrutiny and approval even if the power is procured specifically for the Franchisee area. The Utility shall be responsible for justifying the need for power, its price, its contractual arrangement under power purchase agreements, for scrutiny and approval of the SERC. As the Franchisee is not a trader but can only identify the additional sources of power purchase and the rate for the same, it is the Utility that would have to enter into Power Purchase Agreements (PPAs) with contracted parties for power purchase. Utility can explore the option of entering 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 Utility would be regulated by the SERC under the provisions of Section 86(1)(b) of the EA 2003. The required quantum of additional power shall be allocated to the franchisee area.

3. In order to fully recover the cost of energy to meet such deficit, the franchisee may charge the consumers in the form of a Reliability Charge per unit and such charge could be decided through public hearing process and prior approval of the SERC.

2.14 Tariff Indexation

With every increase in tariff or change in consumer mix towards high tariff category, there is increased revenue for the utility. However, every downward revision of the tariff or change in consumer mix towards low tariff category means lower revenue for utility.

The same situation holds true when the franchisee is appointed in a particular area. A common allegation against the distribution franchising system is that the franchisee takes away a major share of the profits and the utility does not get its due share. Therefore, a win-win mechanism for adjustment of the input energy rate is required to be developed to cater to the change in tariff or consumer mix that may happen during the Distribution Franchise Agreement period.

To carry out tariff adjustment, a mechanism linking the Revenue from Input Energy Rate receivable by the Utility from the Distribution Franchisee to change in tariff and/or consumer mix, should be adopted. The Utility and the franchisee should share, in the ratio of 75:25, any increase in revenue due to increase in Average Billing Rate (i.e. Average Billing Rate of the current period minus Average Billing Rate of the Base Year). The rationale behind allowing the franchisee to retain 25% of the revenue on account of change in tariff or consumer mix is that with every increase in revenue, the collection responsibility, bad debts and consequent losses of the franchisee could also go up in absolute term and, therefore, the franchisee would need to be compensated in that regard. However, any decrease in revenue due to decrease in Average Billing Rate (i.e. Average Billing Rate of the current period minus Average Billing Rate of the Base Year) would be entirely absorbed by the Utility i.e. franchisee will not be required to share the same.

2.15 Incentives on Arrears

The arrears are broadly classified into –

- Arrears from connected Live Consumers
- Arrears from Permanently Disconnected Consumers

Once the area is handed over to the franchisee, it alone has the interface with the customers belonging to the franchise area. Therefore, it becomes logical that the franchisee assumes the responsibility to collect the arrears from the consumers, both connected and disconnected.

Also, immediately after hand over, the franchisee has to collect the revenues billed by the utility whose due date has either not expired or recently expired at the time of hand over. The utility, in such a case, could not only require the franchisee to collect the amount due from the consumers but also fix the collection efficiency level for the franchisee to comply and remit the arrears which could be either 100% or the prevailing collection efficiency at the time of hand over. To take care of the time, money and effort of the franchisee on this account, the utilities could agree to pay some incentives as a percentage of the collected amount which is mentioned in the Franchise Agreement.

In the recent franchisee appointments, the franchisee have been asked to collect the amount billed but not due or not billed amount one month prior to the date of hand over of the franchised area. The franchisees have been obliged to collect the billed but not due or not billed amount of the utilities at the prevailing collection efficiency. The franchisee have also been obliged to collect the connected and disconnected arrears of the utility for which an incentive of 10% and 20% in respect of connected and disconnected arrears respectively has been offered to them.

In this regard, the utilities should follow the practice that is prescribed in the standard DFA attached to these guidelines.

2.16 Billing and Payment mechanism

Billing and payment mechanism refers to the periodicity of the billing and payment by the franchisee including things to be kept in mind at the time of hand over and first billing by the Franchisee, Adjustment of dues from either party etc. While utility may like to have short period billing like weekly or fortnightly, the franchisee may like a system of monthly billing. An optimum time period of billing & payment must be decided.

Considering the alternatives and practicality of the billing and payment mechanism, billing for energy supply by the utility to and payment from franchisee to the utility should be on Monthly basis. If required, the utility may make provision for rebate on early payment.

2.17 Treatment of Employees

In almost all the franchising arrangements initiated by the utilities, the employees went against the decision as they apprehended that they would be sent to rural areas or other non-franchised areas and thereby get unsettled. However, the legitimate interests of the employees had been taken care of by the utilities by way of deputation and redeployment policies. Under the deputation rules, the employees are allowed to work for the franchisee. The franchisee is allowed to choose from the employees of the utility who are willing to join the franchisee. In such cases, while the pay salaries and allowances cannot be inferior to that of the utility, the working terms and conditions of the franchisee become applicable on such employees.

Looking at the far reaching consequences of this arrangement in enabling smooth take over and transition for both utility and the franchisee, Utility employees should provide handholding support to the franchisee for the first 3 months for which the franchisee shall have to bear the cost of salary & allowances payable to the Utility employees involved therein. Thereafter, the Franchisee shall have an option to take Utility employees on deputation for 5 years. In such a case, the franchisee will have to offer pay and allowances which are better than that of the utility. However, the working terms and conditions of the franchisee would be applicable on all such employees.

2.18 Treatment of Existing Contracts

The utility might have entered into various contracts concerned to the franchise area, prior to handing over the area to a franchisee. The contracts may be relating to capital investment or to commercial nature like meter reading, bill processing, bill distribution, collection of revenue, operation and maintenance, meter replacement, release of connection, etc or of similar nature. The franchisee, on the other hand, could insist on freedom to cancel any of the ongoing contracts and enter into new contracts excluding that of capital nature which are of irreversible nature commonly. The utility could in turn stipulate that any such cancellation would require prior consent from it and also ask the franchisee to bear the cost of cancellation of such contracts.

Considering the importance of this issue, the utility should follow the following approach:

1. The Bid document should provide details of all the ongoing contracts.

2. Work in progress for Capital Investment already in Pipeline shall continue. However, in case the Utility fails to complete the said works, the franchisee may carry out the remaining work on behalf of the Utility and deduct the investments from the input energy amount payable to the utility.
3. Other contracts can be cancelled and terminated by the Franchisee subject to payment of termination costs up to a particular limit to be specified in the bid documents.

2.19 Handing of office and assets

While handing over the franchise area to the franchisee, the utility hands over its other assets like offices, stores, workshops, collection centres, complaint centres, etc apart from the distribution assets. As per the recent bids for appointment of franchisees, the utilities have been seen to keep high value or key assets with themselves even if the same may not be required by them post-franchise. The utilities also like to charge rent for the assets which can fetch the same. To standardize the practice in this regard, the following approach is to be adopted:

1. Offices and Assets including land earmarked for substations, customer care centre, stores and workshops dedicated for the franchise area shall be handed over to the franchisee without any rent.
2. Upon any asset being removed for replacement by the franchisee's asset or declared unserviceable, the scrap should be given back to the Utility.

2.20 Penalties for Non-Performance

Every contract provides for penalty to be paid by either party to the contract due to non-performance of the obligation which that party is required to perform under the contract. In distribution franchising, the penalties are levied for non-achievement of performance benchmarks, non-adherence of the supply code/standards of performance, late payment of input energy or other payments.

Penalty due to non-payment or late payment of energy charges or other payment may be logical to impose. Even penalty on account of non-adherence of the standards of performance seems justified.

However, there is debate as to whether the utility should impose penalty for non-achievement of performance benchmarks because it is the franchisee that loses on that account whereas the utility continues to get the input energy amount based on the rates quoted by the bidders.

Considering the nature of this contract, the utility may adopt the following approach:

1. To ensure serious bids and franchisee commitment to its roles and responsibilities, the following terms should be made part of the bid documents :
 - a. **Bid Bond** – Rs.10 Cr for every 250 Cr of annual revenue
 - b. **Performance Guarantee** – $1/5^{\text{th}}$ of annual revenue out of which half shall be locked throughout the contract period whereas the other half shall be returned in proportion to the minimum mandatory investment done by the franchisee over the first 5 years. The portion of the Performance Guarantee that is not returned shall be liable to be invoked either in case of non-compliance of Standards of Performance or failure to bring down the distribution losses to 20% in the initial 10 years.
 - c. **Payment Security** – LC equivalent to 60 days of average energy input in the franchise area. In addition to this, for the purpose of creating a collateral arrangement, the Utility and the Franchisee shall also enter into a Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation
2. In case of non-adherence of the supply code/standards of performance, any penalty levied by the SERC on the utility shall be recoverable from the franchisee on a back to back basis. Accordingly, the franchisee shall have to be authorized to represent any such case before the SERC.

2.21 Audits & Inspection

Audit is one of the very important clauses in a Distribution Franchise Agreement. In many cases, the data provided by the utility could be inaccurate. Then, there could be some special cases when the performance of the franchisee may be required to be audited. Hence auditing of the data from the point of view of the franchisee during pre-hand over stage and from the point of view of the utility during post- handover contract period becomes very essential. An independent auditor is, therefore, to be appointed for the audit of the data at certain intervals of time. The fee of the auditor could either be paid by the utility or the franchisee or shared by both the utility and the franchisee.

Apart from the audit, the utility could also sometimes need to inspect the records of the franchisee for which an inspector may be required to be appointed by the utility.

The circumstances under which the audit may be conducted as well as the audit fee sharing needs to be defined clearly.

In this regard, the utilities should follow the practice relating to appointment and fee sharing that is prescribed in the standard DFA attached to these guidelines. The responsibilities of the auditor will include

1. 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 quarterly basis)
2. 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)
3. Auditing the revenue collected, ED and taxes collected from each category of the consumers. (On quarterly basis)
4. 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 quarterly basis)

5. 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)
6. 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. (At the time of take over and thereafter on quarterly basis)
7. The auditor shall review 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. (At the time of take over and thereafter on quarterly basis)

2.22 Authorisation to Represent

The franchisee will require authorization under different sections of the Electricity Act and other Regulations for protection of his legitimate interests as also to represent his case before the judicial and quasi-judicial bodies such as SERC, Consumer Grievance Redressal Forums, Ombudsman, Consumer Courts, etc. To create an enabling environment in this regard, the utilities should adopt the following approach.

1. Sufficient number of officers of the Distribution Franchisee should be authorized under Section 126, Section 135(1A) and Section 135 (2) of the Electricity Act 2003 for taking necessary action to prevent the unauthorized use, theft and pilferage of electricity in Franchise Area. The Franchisee must inform the utility about the categories of officers and the relevant sections of the Electricity Act, 2003 for which authorization is needed.

2. Sufficient number of officers of the Distribution Franchisee should be authorized for representing before the SERC, Consumer Grievance Redressal Forums, Ombudsman, Consumer Courts, etc.
3. The Franchisee should also be allowed to represent to the State Transmission Utility for
 - a. augmenting the transmission capacity matching with the growth in distribution network
 - b. metering of input points including calibration of meters
 - c. matters relating to load dispatch and grid discipline

2.23 Regulatory Interface

Since the performance of the franchised area also have an implication on the overall tariff being decided by the Regulator and the Regulator may not like to treat the franchised area separately from the other areas, any deviation from the standard bidding document should be done after approval from the State Regulatory Commission. Besides above, the following Regulatory Interface shall have to be adhered by the utilities:

1. Mandatory approval of T&D Loss Reduction Trajectory from SERC
2. Approval of specified Investments planned in the last 5 years of the contract
3. For improved reliability of power supply, the Licensee, on being requested by the Distribution Franchisee, may procure extra power from the market through a tripartite agreement for supply to the Franchised Area with provision to recover Reliability Charges from the consumers as approved by the SERC for which public hearing process to take into account the consumer's suggestions/ view point shall be fixed by the SERC.

(Name of the Utility)

(Logo of the Utility)

Model Request for Proposal (RFP)

For

Appointment of Input Based Distribution Franchisee

In [Name of the Area]

Tender Specification No. _____

Due date for tender opening _____

Issued by

[Name and Address of the Issuing Authority]

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Date of Issue of RFP Document:

RFP Specifications for Appointment of Input Based Distribution Franchisee for [Name of the Area] falling under [Name of the Utility]

This “RFP document” along with Schedules & Annexure is issued to

M/s.....

.....

.....

Please note:-

1. This document is non-transferable.
2. [Brief of the Utility]. The Distribution Franchisee Agreement shall be entered into between [Name of the Utility] and the successful bidder selected by [Name of the Utility] through a transparent competitive bidding process.
3. Although [Name of the Utility] has taken adequate care while preparing the RFP documents, the Bidders shall satisfy himself that document is complete in all respects. The Bidders shall intimate any discrepancy in the RFP document to this office within 5 days from the date of issue of the document to the Bidder. If no intimation is received by this office from the Bidder within that period from the date of issue of tender document, it shall be assumed that the RFP document, as issued to the Bidder, is complete in all respects.
4. [Name of the Utility] may modify, amend or supplement this RFP document including selection process and evaluation criteria, if deemed necessary by it or the same is required under law. Further, [Name of the Utility] or its authorized officers reserve the right, without prior notice, to change the selection procedure and the delivery of information at any time before the submission of bid without assigning any reasons thereof. However, such change shall be intimated to all parties who have procured this document.
5. This document is not intended to provide basis of any investment decision to be made by any Bidder. Each prospective Bidder must make his own independent assessment of the project, baseline parameters and ground conditions at his own cost.[Name of the Utility], nor its employees, consultants, advisors accept

- any liability or responsibility for the accuracy or completeness of, nor make any representation or warranty, express, or implied, with respect to the information contained in the RFP, or on which the RFP is based, or any other information or representations supplied or made in connection with the Selection Process.
6. Nothing in the RFP should be relied on, as a promise or representation as to the future.
 7. [Name of the Utility] reserves the right to reject any or all of the Bids submitted in response to this tender document at any stage without assigning any reasons whatsoever.
 8. It is also agreed that the document is not confidential.

Place:

Designation of the Issuing Authority,

Address of the Issuing Authority

Phone & Fax No.

1. Summary Sheet

Project Summary	Appointment of Input Based Distribution Franchisee
Specified Area	[Name of the Area] falling under [Name of the Utility] as per details contained in Clause 2.5 of this RFP document
Pre-Bid Meeting	DD/MM/YYYY at [Time] Hours at [Place of Pre-Bid]
Last Date and Time of Receipt of Bids	DD/MM/YYYY at [Time] Hours
Due date of Opening	Part - I - Technical Bid DD/MM/YYYY at [Time]Hours Part - II – Price Bid of the technically qualified bidders on a date and time to be intimated after the technical bid evaluation
Place of Opening	Address of the place of opening
Bid to be Addressed to	Address of the issuing authority
Telephone No.	
Fax No.	
Email	
Website	
Earnest Money Deposit	Amount and In favour of

2. General

2.1. Background of [Name of the Utility]

[To be described]

2.2. Objectives of the Project

2.2.1. In an endeavour to improve operational efficiency of the distribution system and quality of service to its consumers, [Name of the Utility] seeks to bring in management expertise through public-private participation, in distribution of electricity.

2.2.2. [Name of the Utility] intends to appoint an Input Based Distribution Franchisee, to be selected by [Name of the Utility], through a bidding process for [Name of the Area] falling under [Name of the Utility].

2.2.3. [Name of the Utility] objectives of appointing a distribution franchisee, inter alia, are:

- i. To minimise Aggregate Distribution and Commercial losses
- ii. To bring improvement in Metering, Billing and Revenue Collection
- iii. To minimise Current Assets on account of arrears
- iv. To enhance customer satisfaction level by improving quality of service

2.2.4. The selection of the franchisee parties shall be through a transparent bidding process and within the provisions of the Electricity Act, 2003.

2.3. Relevant Provisions of the Electricity Act, 2003

2.3.1. The Electricity Act has opened new avenues for bringing in private participation in the distribution sector.

2.3.2. The 7th proviso to Section 14 of the Electricity Act, 2003 states that:

“...in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another

person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply”

2.3.3. Accordingly, a person who undertakes the distribution of electricity for a specified area on behalf of the Distribution Licensee will not be required to obtain separate license from the concerned State Electricity Regulatory Commission.

2.4. Definitions & Abbreviations

2.4.1. Definitions

Aggregate Technical and Commercial Losses (ATC Losses) - Shall mean the sum total of technical loss, commercial losses and shortage due to non-realisation of total billed amount. The same shall be computed as

$$\frac{\{\text{Total Energy Input (MUs) less Energy Realised (MUs)}\}}{\text{Total Energy Input (MUs)}} \times 100$$

Where, Energy Realised is the Sale of Energy (MUs) X Collection Efficiency

Average Revenue Realisation - Shall mean the total revenue collected per unit energy supplied by [Name of the Utility] at Input Points on annualised basis. The same shall be computed as:

$$\frac{\text{Total Revenue Collected}}{\text{Total Energy Input}}$$

Bid - Shall mean the Technical Bid and Price Bid submitted in response to this RFP document issued by [Name of the Utility].

Bidder - Shall mean the Bidding Company or Bidding Consortium.

Bidding Company - Shall mean the single corporate entity bidding for the Project.

Bidding Consortium - Shall mean a group of corporate entities bidding for the Project.

Consumer - Shall be as defined under the Electricity Act, 2003

Note: A consumer would be either referred to as “Low Tension Consumer (LT consumer)” meaning person who has been supplied power by the licensee at low voltage or “High Tension Consumer (HT consumer)”, until and unless specified otherwise.

Distribution – Shall mean the supply and conveyance of electricity by means of distribution system.

Distribution Franchisee / Franchisee - Shall mean the Successful Bidding Company appointed by [Name of the Utility] to act as an agent of [Name of the Utility] to purchase and distribute electricity in the Franchise Area.

Distribution Franchisee Agreement “DFA” - Shall mean the Agreement to be entered into by the successful bidder and [Name of the Utility] for the sale of power to the Franchisee and for any other services, such as right to use the existing distribution network.

Distribution Assets - Shall mean the assets employed by [Name of the Utility]/ Distribution Franchisee in the Franchise Area for distribution of electricity.

Distribution Licensee - Shall mean the [Name of the Licensee].

Expiry Date - Shall mean the fifteenth/ twentieth (15th or 20th) anniversary of the effective date.

Effective Date - Shall mean the date of handing over of the business operations of Franchise Area by [Name of the Utility] to the Distribution Franchisee pursuant to the Distribution Franchisee Agreement after the conditions precedent is satisfied.

Financial Proposal - Shall mean the proposal of the Bidder setting out the Input Rate for the Energy injected by [Name of the Utility] at the Inputs Points in the Franchise Area and other details as set out in **Clause 5.5** of this Document.

Franchise Area - Shall mean the area as mentioned in this Section of the RFP in respect of which Distribution Franchisee shall act as an agent of [Name of the Utility].

Input Energy - Shall mean sum total of energy supplied through all input points.

Input Points - Shall mean 33 KV side of 220 KV and 132 KV Sub-stations and 132 KV side of 132/11 KV sub-Sub-station specified in Clause 2.5 and shall include such other EHV/HV substations or feeders, which may feed energy to the Franchise Area at the Effective date or during the term of the Agreement.

Input Energy Rate - Shall mean Rupees per unit of electricity supplied by [Name of the Utility] at the Input Points, and shall be quoted by the Bidder.

Parties - Shall mean a reference to selected Bidder and [Name of the Utility] collectively and "Party" shall mean an individual reference to either one of them.

Prudent Utility 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, efficient distribution of electricity, operation and maintenance of Distribution Assets, billing & collection of distributed power, etc.

Project - Shall mean the purchase and distribution of electricity and related activities in the Franchise Area as a Distribution Franchisee of [Name of the Utility] in accordance with the requirements set forth in the RFP.

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

Request for Proposal (RFP) document - Shall mean this document, issued to the Bidders seeking Technical and Financial Proposals.

Technical Proposal - Shall mean the proposal of the Bidder setting out details as set forth in **Clause 5.3** of this Document.

SERC – Shall mean [Name of the State] Electricity Regulatory Commission.

2.4.2. Abbreviations

Cr	:	Number equivalent to 10 million or 100 lacs
D/B	:	Distribution Box
DF	:	Distribution Franchisee
EHV	:	Extra High Voltage
EMD	:	Earnest Money Deposit
Eoi	:	Expression of Interest
FA	:	Franchise Area
FY	:	Financial Year
HP	:	Horse Power
HT	:	High Tension
IST	:	Indian Standard Time
IT	:	Information Technology
Abbreviation of the Utility	:	Full name of the Utility
KM	:	Kilometer
kV	:	Kilo Volt
LoI	:	Letter of Intent
LT	:	Low Tension
MCB	:	Miniature Circuit Breaker
MUs	:	Million Units
O & M	:	Operations & Maintenance
PD	:	Permanently Disconnected
RFP	:	Request for Proposal
Rs.	:	Indian Rupees
SCC	:	Service Connection Charge
SD	:	Security Deposit
SLC	:	Service Line Charge
T&D	:	Transmission & Distribution
T/F	:	Transformer
(Abbreviation of the State Regulatory Commission)	:	[Name of the State] Electricity Regulatory Commission

2.5. Brief description about the Franchise Area

2.5.1. The Franchise Area shall be the [Name of the Area] as identified by [Name of the Municipal Corporation]. The Franchise Area will be the sum total of areas of individual sub-divisions coming under the franchise area. In case, due to expansion of the city (Nagar Nigam boundaries), any area presently under any rural sub-division comes under city boundaries, then the Franchise area may be extended accordingly.

2.5.2. A brief description of the existing distribution network in the Franchise Area is given herewith. The Organisation Structure of [Name of the Franchise Area] along with Divisions and sub-divisions is as outlined in Table 1.

Table 1: Organisational Structure

S. No.	Name of the Division	Particulars of Sub Divisions
1		
2		
3		

2.5.3. The distribution infrastructure in the Franchise Area is given below:

Table 2: Distribution Infrastructure Summary

Particulars	Units	Particular
No. of EHV Sub-station	Nos.	
33 kV Input Points	Nos.	
11 kV Input Points	Nos.	
33 kV Input Points (Cross Over)	Nos.	
Total Input Points	Nos.	
33 kV Substations	Nos.	
33 kV Substations Capacity	MVA	

Particulars	Units	Particular
11 kV Switching Stations	Nos.	
33 kV Feeders	Nos.	
11 kV Feeders	Nos.	
33 KV Lines		
Over head Line	Km	
Under Ground	Km	
Total	Km	
11 KV Lines		
Over head Line	Km	
Under Ground	Km	
Total	Km	
L.T. Lines		
Over head Lines	Km	
Under Ground	Km	
Total	Km	
Poles		
33 KV Lines	Nos.	
11 KV Lines	Nos.	
L.T. Lines	Nos.	
Total	Nos.	
11 KV/433 V DTC	Capacity / Nos.	

2.5.4. The EHV/HV substations/ feeders of the Franchise Area as mentioned in Table 3 shall form the Input Points for injection of electricity in the Franchise Area. Details of EHV sub stations (Input Points) are as under:

Table 3: Details of Transmission EHV Substations for input supply to [Name of the Franchise Area]

Name of the Division	Name of EHV/HV Sub-station	Capacity Installed (MVA)	Maximum Demand	Connected Load	No. of Input Feeders	
		(MVA)	(MVA)	(MVA)	33 KV	11 KV
	TOTAL					

2.5.5. The load data as on [mm/yyyy] for the Franchise Area is given below:

Table 4: Loading parameters of [Name of the Franchise Area]

Data Head	Total (MVA)
Total connected Load	
Maximum demand	
Existing load capacity	
Demand from New connections	
Current demand shortfall	

2.5.6. The loss and collection efficiency for the Franchise Area is given below:

Table 5: Losses and Average Billing and Revenue Realization

Year	Units Received (Mus)	T&D Loss (%)	Collection Efficiency (%)	Avg. Billing Rate (Rs. / KWh)	Avg. Revenue Realization (Rs. / KWh)
Yo-4					
Yo-3					
Yo-2					
Yo-1					
Yo (Base Year)					

2.5.7. Category wise consumer detail, Connected Load, Sales, Revenue Details is as under:

Table 6: Category wise Consumer Details

Particulars (Indicative Category List)	No. of Consumers				
	Yo-4	Yo-3	Yo-2	Yo-1	Yo
DOMESTIC LIGHT, FAN & POWER					
NON-DOMESTIC LIGHT, FAN & POWER					
PUBLIC LAMPS					
LIGHT, FAN & POWER FOR PUBLIC INSTITUTION					
LIGHT, FAN & POWER FOR PRIVATE INSTITUTION					
SMALL POWER - PVT. T/W & PUMPING					
SMALL AND MEDIUM POWER					
PUBLIC WATER WORKS					
STW, PANCHAYTI RAJ TUBE WELL & PUMPED CANALS					
TEMPORARY SUPPLY					
DEPT. EMPLOYEES AND PENSIONERS					
HV-1					
HV-2 LARGE AND HEAVY POWER					
HV-3 RAILWAY TRACTION					
HV-4 LIFT IRRIGATION WORKS					
TOTAL					

Table 7: Category wise Connected Load

Particulars (Indicative Category List)	Connected Load (KW)				
	Y0-4	Yo-3	Yo-2	Yo-1	Yo
DOMESTIC LIGHT, FAN & POWER					
NON-DOMESTIC LIGHT, FAN & POWER					
PUBLIC LAMPS					
LIGHT, FAN & POWER FOR PUBLIC INSTITUTION					
LIGHT, FAN & POWER FOR PRIVATE INSTITUTION					
SMALL POWER - PVT. T/W & PUMPING					
SMALL AND MEDIUM POWER					
PUBLIC WATER WORKS					
STW, PANCHAYTI RAJ TUBE WELL & PUMPED CANALS					
TEMPORARY SUPPLY					
DEPT. EMPLOYEES AND PENSIONERS					
HV-1					
HV-2 LARGE AND HEAVY POWER					
HV-3 RAILWAY TRACTION					
HV-4 LIFT IRRIGATION WORKS					
TOTAL					

Table 8: Category wise Unit Sales

Particulars (Indicative Category List)	Units Sales (MU)				
	Yo-4	Yo-3	Yo-2	Yo-1	Yo
DOMESTIC LIGHT, FAN & POWER					
NON-DOMESTIC LIGHT, FAN & POWER					
PUBLIC LAMPS					
LIGHT, FAN & POWER FOR PUBLIC INSTITUTION					
LIGHT, FAN & POWER FOR PRIVATE INSTITUTION					
SMALL POWER - PVT. T/W & PUMPING					
SMALL AND MEDIUM POWER					
PUBLIC WATER WORKS					
STW, PANCHAYTI RAJ TUBE WELL & PUMPED CANALS					
TEMPORARY SUPPLY					
DEPT. EMPLOYEES AND PENSIONERS					
HV-1					
HV-2 LARGE AND HEAVY POWER					
HV-3 RAILWAY TRACTION					
HV-4 LIFT IRRIGATION WORKS					
TOTAL					

Table 9: Category wise Revenue Billed, Collected and Arrears (Rs. Lacs)

Particulars (Indicative Category List)	Revenue Billed (Rs. Lacs)					Revenue Collected (Rs Lacs)					Arrears (Rs Lacs) till Date
	Yo-4	Yo-3	Yo-2	Yo-1	Yo	Yo-4	Yo-3	Yo-2	Yo-2	Yo	Till Date
DOMESTIC LIGHT, FAN & POWER											
NON-DOMESTIC LIGHT, FAN & POWER											
PUBLIC LAMPS											
LIGHT, FAN & POWER FOR PUBLIC INSTITUTION											
LIGHT, FAN & POWER FOR PRIVATE INSTITUTION											
SMALL POWER - PVT. T/W & PUMPING											
SMALL AND MEDIUM POWER											
PUBLIC WATER WORKS											
STW, PANCHAYTI RAJ TUBE WELL & PUMPED CANALS											
TEMPORARY SUPPLY											
DEPT. EMPLOYEES AND PENSIONERS											
HV-1											
HV-2 LARGE AND HEAVY POWER											
HV-3 RAILWAY TRACTION											
HV-4 LIFT IRRIGATION WORKS											
TOTAL											

2.5.8. Details of capital work in progress, planned capital investment and outsourced activities are mentioned as below:

Table 10: Capital Works in Progress

S. No.	Scope of Work	Name of the Contractor	Contract Period	Total Contract Value (Rs.)	% work completed (Rs.)	Source of Funding

Table 11: Planned Capital Investment

S. No.	Scope of Work	Period of Investment	Expected Investment Value (Rs.)	Source of Funding

Table 12: Details of Outsourcing Activities

S. No.	Scope of Work	Name of the Outsourcing Agency	Contract Value (Rs.)	Period of Contract	Liability for early Termination (Rs.)

2.5.9. Details of employees in the franchisee area are as below:

Table 13: Details of Utility Employees in the Franchisee Area

Employee Category	No of Employees

2.5.10. Bidders requiring further details on any of the above mentioned heads may contact the issuing authority or the concerned field offices.

3. Project Description**3.1. Salient Features of the Project**

3.1.1 The project encompasses all the activities relating to purchase and distribution of power to the existing / future consumers in the Franchise Area, maintenance of the Distribution Assets and all the related activities subject to the terms and conditions as stipulated from time to time by [Name of the Utility] and [Name of the State Electricity Regulatory Commission].

3.2. Brief Roles and Responsibilities of Distribution Franchisee

3.2.1 Undertaking all the liabilities and obligations of the Distribution Licensee in the Franchisee Area as stipulated in Electricity Act, 2003 and corresponding regulations as if they were to apply to the Distribution Licensee;

3.2.2 Discharging all duties and responsibilities on behalf of [Name of the Utility] as per the terms and conditions of the License given by [Name of the State Electricity Regulatory Commission];

3.2.3 Undertaking any other activity as may be notified from time to time by [Name of the State Electricity Regulatory Commission] to Distribution Licensee;

3.2.4 Complying with all the directives issued from time to time by [Name of the State Electricity Regulatory Commission] and [Name of the Utility] for implementation of [Name of the State Electricity Regulatory Commission] directives;

3.2.5 Undertaking the distribution and supply of power to the consumers of [Name of the Utility] in the Franchise Area;

3.2.6 Undertaking all Operations and Maintenance related activities in the Franchise Area;

3.2.7 Maintaining the existing distribution network and replacing failed distribution transformers and defective meters within the prescribed time frame including repair of the same;

- 3.2.8 Undertaking reading of meters, generation the bills, distribution of the same and payment collection from the consumers in the Franchise Area, as per the retail tariff structure determined by [Name of the State Electricity Regulatory Commission] and abiding by the Supply Code and other Standard of Performance and license conditions thereof;
- 3.2.9 Making payments to [Name of the Utility] as per the terms and conditions of the clause on Payment and Collection in the Distribution Franchisee Agreement (DFA);
- 3.2.10 Collection of arrears as an agent of [Name of the Utility], and remittance of the same as per the terms and conditions of the DFA;
- 3.2.11 Establishing a consumer service centre as per [Name of the Utility] specifications (to be supplied later) for handling consumer complaints;
- 3.2.12 Redressal of Commercial and Billing Complaints;
- 3.2.13 Allotting new connections and carrying out all necessary activities for release of the same;
- 3.2.14 Maintaining consumer database and billing records as per the format prescribed by [Name of the Utility];
- 3.2.15 Generating Management Information System (MIS) periodically and monitoring reports in prescribed formats and online communication of the same to [Name of the Utility];
- 3.2.16 Installing metering devices and carrying out energy audit on monthly basis and submit the report of the same to [Name of the Utility];
- 3.2.17 Carrying out periodical demand estimation / load forecasting and apprising [Name of the Utility]of the same;
- 3.2.18 Maintaining rolling stock of transformers and other necessary material as per the norms prescribed (to be given later) by [Name of the Utility];

3.2.19 Upgrading, renovating and maintaining the existing distribution network/ systems/ assets as per Prudent Utility Practices and the standards that may be prescribed by [Name of the State Electricity Regulatory Commission];

Rights and Authorities of a Franchisee

3.2.20 Initiating necessary action, in accordance with the Electricity Act, to prevent the theft of power, interference with meters and extinguishing public lamps, theft of electric lines and material etc;

3.2.21 Entering into a tripartite agreement with the Utility and the Generator and paying wheeling charges to [Name of the Utility], if required, in case power is brought into the Franchise Area by purchasing the same from sources other than [Name of the Utility] on the request of the franchisee;

3.2.22 Charging the consumers in the form of a Reliability Charge per unit for purchase of power from sources other than [Name of the Utility] to be decided through public hearing process and prior approval of the [Name of the State Regulatory Commission].

3.2.23 Cancelling/terminating all contracts except for capital works in progress subject to payment of termination costs as specified in the contract between the [Name of the Utility and the Contractor].

3.2.24 To continue work in progress for Capital Investment already in pipeline and to complete the same in case the Utility fails to complete the said works, on behalf of the Utility and deducting the investments from the input energy amount payable to the utility.

3.3. Support given by [Name of the Utility]

3.3.1 **[Name of the Utility]** shall supply the power at Input Points as per its aggregated power supply and load shedding schedule planned periodically, based on directives issued by **[Name of the State Electricity Regulatory Commission]** on load shedding and availability of EHV transmission capacity at Input Points.

- 3.3.2 **[Name of the Utility]** shall communicate to DF any shortfall or inability to supply the scheduled power requirements of the DF.
- 3.3.3 **[Name of the Utility]** shall carry out the meter reading jointly with DF on a monthly basis at input point of the Franchise Area.
- 3.3.4 Utility employees should provide handhold support to the franchisee for the first 3 months for which the franchisee shall have to bear the cost of salary & allowances payable to the Utility employees involved therein.
- 3.3.5 **[Name of the Utility]** shall permit deputation of its employees working in the Franchise Area as on the Effective Date to the Distribution Franchisee subject to the DF completing 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 6 of the DFA.
- 3.3.6 **[Name of the Utility]** shall facilitate approval of the Investment schemes planned by the Distribution Franchisee from **[Name of the State Electricity Regulatory Commission]**.
- 3.3.7 **[Name of the Utility]** will request the State Transmission Utility to upgrade the primary EHV sub-stations from time to time while the DF shall have to take care of the overloading of secondary 33/11 KV sub-stations.

3.4. Term of Franchisee

The term of the Distribution Franchisee shall be for a period of Twenty (20) / Fifteen (15) years from the Effective Date.

3.5. Distribution Franchisee Agreement “DFA”

[Name of the Utility] shall enter into an agreement with the DF. This agreement shall govern all transactions under such arrangement between the successful bidder and [Name of the Utility]. The DFA has been annexed herewith and marked as Annexure 1. However, [Name of the Utility] reserves the right to make any amendments to the Agreement in Annexure 1 before the DFA is signed by the Parties provided that such amendments shall not be in the nature of post bid financial benefit to the Distribution Franchisee.

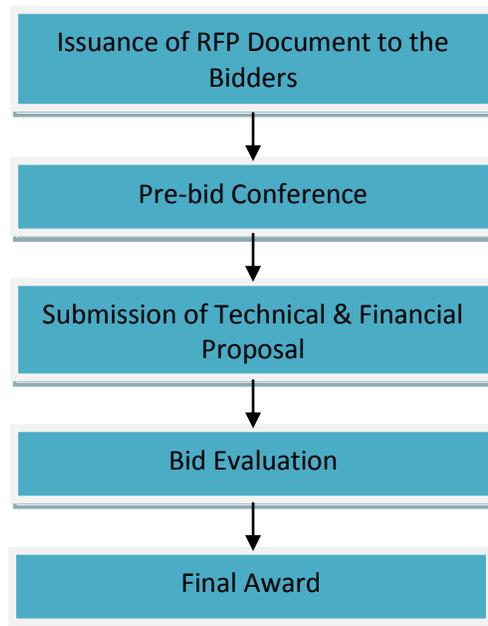
4. Selection Process

4.1 Bidding Process

The bidding process would mainly consist of the following stages.

- Issuance of RFP document
- Pre-bid conference
- Submission of the Technical and Financial Proposal
- Bid Evaluation & Award of Contract

A diagrammatic representation of the bidding process is as shown below;



4.1.1 [Name of the Utility] shall issue the RFP document to all the interested bidders. The bidding process shall be deemed to commence from the time of issue of the RFP document. The purpose of this RFP is to provide Bidders with information regarding the proposed franchisee arrangement in order to assist them in formulation of their proposals.

- 4.1.2 A Pre-Bid Conference shall be held by [Name of the Utility] on the date as indicated in the Time Table as per clause 6.4, the purpose of which shall be to address the concerns of the bidders with respect to RFP.
- 4.1.3 The bidders shall submit a Technical and Financial Proposals in response to the RFP document on the date as indicated in the Time Table mentioned in clause 6.4.
- 4.1.4 As a part of the selection process, Technical Proposal submitted by interested Bidders in response to RFP, shall be evaluated based on the methodology and evaluation criteria as detailed in the RFP. The Bidders are required to submit their Technical Proposal in the formats placed as Exhibit 1 to 3 of this document.
- 4.1.5 Financial Proposal of the bidders satisfying the technical evaluation criteria shall be evaluated based on the methodology and evaluation criteria as detailed in this RFP. The information required to be provided by the Bidders submitting their Financial Proposal is placed as Exhibit 4 and 5 of this document.
- 4.1.6 The final award of the Project shall be made by [Name of the Utility] to the Bidder short-listed after evaluation of the Financial Proposal.
- 4.1.7 In the event of two or more Bidders found equal after evaluation of Financial Proposal, [Name of the Utility] reserves the right to select and declare a bidder through any such measure as may be deemed fit in its sole discretion including annulment of the bidding process.
- 4.1.8 The selected Bidder shall be issued the Letter of Intent (LoI) by [Name of the Utility].

5. Evaluation**5.1 Responsiveness**

The bids submitted by Bidders shall be initially examined to establish “Responsiveness”. A Bid may be deemed “Non-Responsive” by [Name of the Utility] if it does not satisfy any of the following conditions.

- 5.1.1 It is not received by the Due Date and time specified in the RFP. Name of the Utility] does not take any responsibility for postal/ other delays in receiving the required documents by the Due Date and time.
- 5.1.2 It does not include sufficient information including documentary proof towards the eligibility criteria for it to be evaluated and/ or it does not comply strictly with the formats specified.
- 5.1.3 It is not signed and/ or sealed in the manner and to the extent indicated in this RFP.
- 5.1.4 It is not accompanied by the required RFP document fee, if applicable.
- 5.1.5 It is not accompanied by a valid Earnest Money Deposit.
- 5.1.6 It is not accompanied by a signed copy of the RFP document including Distribution Franchisee Agreement.
- 5.1.7 The bidder seeks deviations on the RFP and/or draft DFA.
- 5.1.8 If the bidder fails to submit the undertaking regarding blacklisting or is black-listed in the format mentioned at Exhibit 6.

5.2 Proposals by a Bidding Consortium

- 5.2.1 Consortium Bidding is not allowed.

5.3 Technical Proposal

5.3.1 For the purpose of technical evaluation, the bidder should satisfy the following prequalification criteria:

- The bidder should be a public limited company and which meets the conditions of Code of Conduct for grant of Distribution Business License
- The minimum Net worth of the Bidder should be Rs.....Cr. [Equivalent to 50% Annual Revenue Billed in the franchisee area for the year preceding the year in which the bidding is done].
- The Internal Resource Generation of the Bidder should be Rs.....Cr. [Equivalent to 25% of the Annual Revenue Billed in the franchisee area for the year preceding the year in which the bidding is done].

The bidder should necessarily submit the documentary evidence in regard to the above failing which the bidder may be considered disqualified on account of non-responsiveness.

5.4 Financial Proposal

5.4.1 The Bidders are required to bid for annualized Input Rate for power to be injected by [Name of the Utility] at Input Points in the Franchise Area for the entire term of DFA. The bidders are required to submit a detailed Financial Proposal as per the Exhibit 4 and 5.

5.4.2 The annualised Input Rate, as quoted by the Bidders shall factor in for at least the minimum reduction in T&D losses as per Article 5.8 of the DFA placed at Annexure-1.

The rates in Exhibit 5 shall be quoted up to 3 decimal places and the same shall be non-decreasing for each year of the contract period.

5.4.3 The Evaluation of Financial Proposals submitted by the technically qualified Bidders, committing minimum improvement in performance level as stipulated in 5.4.2 above shall be carried out by comparing the present value of the revenue derived on the basis of the annualised Input Rate for entire term of DFA, computed at a discount rate of..... [As per the latest specified by CERC before the issuance of the Bid Document] and the estimated energy input as mentioned in the exhibit 5.

5.4.4 The methodology for computation of present value tariff is explained with the help of an exhibit below:

Year	Estimated Energy Input (Kwh)	Annual Bulk Supply Rate (To be Quoted by the Bidder) – Rs./kwh
1	400	1.90
2	450	2.10
3	530	2.35
4	600	2.50
5	625	2.75

Assuming the discounting rate as 11%, the present value shall be calculated as:

Year (A)	Discounting Factor (B)	Estimated Energy Input (MU) (C)	Annual Bulk Supply Rate (To be Quoted by the Bidder) – Rs./kwh (D)	Present Value of the Cash Flows (B * C * D*1000) (E)
Base Year	1			
1	0.90	400	1.90	6,84,000.00
2	0.81	450	2.10	7,65,000.45
3	0.73	530	2.35	9,09,000.22
4	0.66	600	2.50	9,90,000.00
5	0.59	625	2.75	10,14,000.06
Total				4,3,62,000.73

5.4.5 The objective of the evaluation of the Financial Proposal is to shortlist a Bidder who has offered the maximum present value for the power injected by [Name of the Utility] at Input Points in the Franchisee Area.

5.4.6 The Bidders may note that Input Rates to be quoted by them shall be exclusive of Electricity Duty which shall be payable by the Distribution Franchisee to the Government of [Name of the State].

5.4.7 The Bidder short-listed after evaluation of Technical Proposal, quoting the maximum present value, for the power injected by [Name of the Utility] at Input Points, in the Financial Proposal will ordinarily be selected for awarding the Project. However, [Name of the Utility] decision in the matter shall be final and binding on the bidder.

5.4.8 Any conditional Financial Proposal is liable for rejection.

6. Instructions to Bidders

The Bidders shall submit the Technical and Financial Proposals in separate sealed envelopes.

6.1 Submission of Technical Proposal

6.1.1 The Technical Proposal, one original and one copy, organized in a manner as specified in Exhibit 1 to 5, should be delivered in a sealed envelope or a box, with the following inscription:

“Technical Proposal for Distribution Franchisee for [Name of the Area]”

Name of the Bidder: _____

To,

[Name & Address of the Issuing Authority]

6.1.2 The original of the Technical Proposal shall be clearly marked “ORIGINAL” and copy of the Technical Proposal shall be clearly marked “Copy”. In the event of any discrepancy between the original and the copy, the original shall prevail.

6.2 Submission of Financial Proposal

6.2.1 The Financial Proposal, one original and one copy, organized in a manner as specified in Exhibit 6 and 7 should be delivered in a sealed envelope or a box, with the following inscription:

“Financial Proposal for Appointment of Distribution Franchisee for [Name of the Area] ”

Name of the Bidder: _____

To,

[Name & Address of the Issuing Authority]

- 6.2.2 The original of the Financial Proposal shall be clearly marked “ORIGINAL” and copy of the Financial Proposal shall be clearly marked “Copy”. In the event of any discrepancy between the original and the copy, the original shall prevail.
- 6.2.3 The Bidder has the option of sending his Bids i.e. Technical Proposal and Financial Proposal, by registered post or submitting the Proposal in person so as to reach the designated address by the time and date stipulated by [Name of the Utility]. [Name of the Utility] shall not be responsible for any delay in receipt of the Proposal. Any Proposal received by [Name of the Utility] after the deadline for submission of the Proposal stipulated by [Name of the Utility], shall not be opened. Each page of the Proposal should be initialled by the authorized signatory of the Bidder and the bid should be accompanied by the letter of authorization in the name of the person who has signed the bid. The last date of submission of proposals shall be [DD/MM/YY] upto XX00 Hrs. However, [Name of the Utility] reserves the right to extend the last date before the time of opening of proposals, if deemed necessary.

6.3 Fees and Deposits

Tender Document Fee

- 6.3.1 The Bidder shall pay [Name of the Utility] a non-refundable amount of Rs XXXXX [inclusive of applicable tax, if any], towards document fee, by way of Crossed Demand Draft/ Pay Order, drawn on a Nationalised/ Scheduled bank, in favour of.
- 6.3.2 The document fee or the receipt in the case the bidder has already made payment towards the tender document fee shall be placed in a separate envelope clearly marked as Document Fee on it, along with the Technical Proposal.
- 6.3.3 Bids, which are not accompanied by the above document fee/ receipt, shall be rejected by [Name of the Utility] as non-responsive.
- 6.3.4 The Bidder shall be responsible for all the costs associated with the preparation of the proposal and participation in discussions and negotiations. [Name of the Utility] shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.

Earnest Money Deposit (EMD)

- Each Bidder shall submit an Earnest Money Deposit (EMD) of an amount Rs.XXX [Should be equivalent to ~ 4% of the Annual Revenue Billed in the Franchisee Area] in the form of a Bank Guarantee or Demand Draft drawn on a Nationalised /Scheduled bank, in favour of [Name of the Authority]
- 6.3.5 EMD shall be placed in a separate envelope clearly marked as Earnest Money Deposit on it, along with the Technical Proposal.
- 6.3.6 Proposals, which are not accompanied by the above EMD, shall be rejected by [Name of the Utility] as non-responsive.
- 6.3.7 For unsuccessful Bidders, the EMD shall be refunded within 30 days signing the DFA with the selected Bidder
- 6.3.8 For successful Bidder, EMD shall be released on the payment of the security deposit and performance guarantee.
- 6.3.9 The following shall cause the forfeiture of EMD.
- If the Bidder modifies/ withdraws it's Proposal except as per the provisions specified in the RFP;
 - If the Bidder withdraws it's proposal before the expiry of the validity period of the Proposal;
 - If the successful Bidder fails to provide the performance guarantee and security deposit and execute the DFA within the stipulated time or any extension thereof provided by [Name of the Utility];
 - If any information or document furnished by the Bidder turns out to be misleading or untrue in any material respect.

6.4 Time Table and Milestones

Milestone	Date
Commencement of Sale of bid document	
Last date for sale of the bid document	
Last date of submission of bids	
Opening of Technical Proposal	

6.5 Opening of Technical Proposal

The Technical Proposal shall be opened on DD/MM/YYYY at XX00 Hrs, at the address to be intimated at a later stage, in the presence of one representative from each Bidder. The details regarding the Technical Proposal, as provided in the Exhibit 3 would be read out.

6.6 Opening of Financial Proposal

6.6.1 The Financial Proposal shall be opened in the presence of one representative from each of the technically qualified Bidder. Date, Time and Place for the same shall be notified by [Name of the Utility] in due course of time. The details regarding the Financial Proposal, as provided in the Exhibit 5 would be read out.

6.6.2 Information relating to the examination, clarification, evaluation and recommendation for the short listed Bidders shall not be disclosed to any person, not officially concerned with the process. [Name of the Utility] would treat all information submitted as part of the proposal in confidence and will ensure that all who have access to such material treat it in confidence. [Name of the Utility] would not divulge any such information unless ordered to do so by any Government authority that has the power under law to require its disclosure.

6.7 Validity of terms of bids

Each Proposal shall indicate that it is a firm and irrevocable offer, and shall remain valid and open for a period of not less than six months from the last date for submission of the Bids. Non-adherence to this requirement will be a ground for declaring the Proposal as non-responsive. In exceptional circumstances, [Name of the Utility] may solicit the Bidder's consent for extension of the period of validity. A Bidder accepting [Name of the Utility] request for extending the period of validity shall not be permitted to modify its Proposal.

6.8 Language of the Bid

The bid and all associated documents shall be in English

6.9 Signature of Bid

The person authorised to act on behalf of the Bidder shall sign the completed Bid and all related documentation at each page. In case an existing power of attorney already covers the authorisation for the present bidding then such Power of Attorney along with a certified copy of the Board Resolution shall be attached. Otherwise a proper Power of Attorney authorising to take all necessary action covering the present bid process shall have to be attached with the bid document along with a certified copy of the Board Resolution shall be attached with the proposal.

6.10 Sealing of Bids

6.10.1 The Technical/ Financial Proposal form shall be delivered in a sealed envelope or package clearly marked as “Confidential Technical/ Financial Proposal”.

6.10.2 The Financial and Technical Proposals shall be enclosed in two separate envelopes.

6.10.3 If the envelopes and /or the packages are not sealed, [Name of the Utility] shall not be responsible for the Bid’s misplacement, premature opening or confidentiality.

6.11 Other Instructions

The following may please be noted:

6.11.1 The Bids, that are incomplete in any respect and/or are not consistent with the requirements as specified in this RFP; and/or do not contain the Covering Letter, Letter of Commitment, and Letters of Acceptance as per the specified formats; would be considered non-responsive and would be liable for rejection.

6.11.2 The Bids, that are not accompanied by a signed copy of the RFP document including Distribution Franchisee Agreement would be considered non-responsive and would be liable for rejection. The bidder shall sign each and every page of the RFP document including the Annexure i.e. DFA issued to them on plain paper and shall submit it along with their proposal.

6.11.3 Strict adherence to formats, wherever specified, is required. Non-adherence to formats may be a ground for declaring the Proposal non-responsive. However, in case of Exhibit 2, if a bidder is unable to provide a letter of commitment as prescribed along with the proposal, the bidders shall have to provide an

undertaking on a non-judicial stamp paper of requisite value that if awarded the work, they will produce the letter of commitment before the signing of the DFA.

6.11.4 All communication and information should be provided in writing and in the English language only.

6.11.5 All the communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words.

6.11.6 No change in, or supplementary information to a Proposal shall be accepted after its submission. However, [Name of the Utility] reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the Proposal. Non-submission, incomplete submission or delayed submission of such additional information or clarifications sought by [Name of the Utility], may be a ground for rejecting the Proposal.

6.11.7 The Bids shall be evaluated as per the criteria as specified in this RFP.

6.11.8 The Bidder should designate one person (“Contact Person” and “Authorised Signatory”) to represent the Bidder in his dealings with [Name of the Utility]. This designated person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidder, etc.

6.11.9 If any claim made or information provided by the Bidder in the Proposal or any information provided by the Bidder in response to any subsequent query of [Name of the Utility], is found to be incorrect or is a material misrepresentation of facts, then the Proposal may be liable for rejection.

6.11.10 [Name of the Utility] reserves the right to reject any or all the Proposal without assigning any reasons whatsoever.

7. Formats for Bid Submission**7.1 Technical Proposal**

The Technical Proposal to be submitted by the Bidders shall be organized in the manner specified below:

- 1) Section 1:
 - a. Covering Letter as per the format specified in Exhibit 1.
 - b. Demand Draft for RFP Document fee, if applicable
 - c. Earnest Money Deposit
 - d. Undertaking towards Blacklisting as per the format specified in Exhibit 6.

- 2) Section 2:
 - a. Letter of Commitment as per the format specified in Exhibit 2

- 3) Section 3:
 - a. Information Requirements as per the formats specified in Exhibit 3
 - b. Audited Annual Reports for the last three years for all the corporate entities that are desired to be considered for evaluation of the Proposal.

7.2 Financial Proposal

The Financial Proposal to be submitted by the Bidders shall be organized in the manner specified below:

- 1) Section 1: Covering Letter as per the format specified in Exhibit 4.
- 2) Section 2: Financial Proposal as per the format specified in Exhibit 5.

8. Exhibit 1: Covering Letter for Technical Proposal

(The covering letter is to be submitted by the Bidding Company along with the Technical Proposal. This should be on the company’s letterhead.)

Date:

Place:

[Address of the issuing authority]

Dear Sir,

Sub: Distribution Franchisee for Urban Area.

Please find enclosed **one (1) original** + One(1) **copy** of our Technical Proposal in respect of the Distribution Franchisee for Urban Area (**“Project”**), in response to the Request for Proposal (“RFP”) document issued by the [Name of the Utility], on DD/MM/YYYY.

We hereby confirm the following:

1. The Proposal is being submitted by _____ (name of the Bidding Company) in accordance with the conditions stipulated in the RFP.
2. We have examined in detail and have understood and agree to abide by all the terms and conditions stipulated in the RFP issued by [Name of the Utility] and in any subsequent communication sent by [Name of the Utility]. Our Technical Proposal is consistent with all the requirements of submission as stated in the RFP or in any of the subsequent communications from [Name of the Utility].
3. We desire / do not desire to get credited for the financial strength of our Promoter(s), and/or experience & track record of our Promoter(s). Our Technical Proposal includes (only if desired to be credited for Promoter(s) strength) the Letter(s) of Commitment in the format specified in RFP, from _____(mention name of the corporate entities that are Promoter(s) /, who is/are the Promoter(s) / as per the conditions stipulated in the RFP, of _____(mention name(s) of the Bidding Company / respective Member Companies).

4. Our Technical Proposal includes Letters of Acceptance, consistent with the format as specified in the RFP.

5. The information submitted in our Technical Proposal is complete, is strictly as per the requirements as stipulated in the RFP, and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Technical Proposal.

6. We as the Bidding Company, designate Mr./Ms. _____ (mention name, designation, contact address, phone no., fax no. etc) as our representative who is authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidder, etc. in respect of the Project.

For and on behalf of :

Signature :
(Authorised Signatory)

Name of the Person :

Designation :

9. Exhibit 2: Letter of Commitment

(The letter of Commitment to be submitted, along with the Technical Proposal, shall be from the Promoter(s) if any, the strengths of which are desired to be considered for the purpose of evaluation of the Technical Proposal)

Date:

Place:

[Address of the issuing authority]

Dear Sir,

Sub: Distribution Franchisee for Urban Area

This has reference to the Technical Proposal being submitted by _____ (name of the Bidding Company), in respect of Distribution Franchisee for Urban Area ("**Project**"), in response to the Request for Proposal ("RFP") document issued by the [Name of the Utility], on DD/MM/YYYY.

We hereby confirm the following:

1. We _____ (name of Promoter), have examined in detail and have understood and satisfied ourselves regarding the contents mainly in respect of the following :
 - The Request for Proposal document issued by [Name of the Utility];
 - All subsequent communications between [Name of the Utility] and the Bidder, represented by _____ (name of the Bidding Company) ;
 - The Technical Proposal being submitted by _____ (name of the Bidding Company).

2. We undertake to support _____(name of the Bidding Company for which the Letter of Commitment is being furnished) as detailed in the Technical Proposal being submitted by _____(name of the Bidding Company).

3. We therefore request [Name of the Utility] to consider our strengths, our experience, and our track record as specified in the Proposal pursuant to the conditions specified in the RFP, for the purposes of evaluation of the Technical Proposal.

For and on behalf of :

Signature :
 (Authorised Signatory) :
 Name of the Person :
 Designation :

10. Exhibit 3: Information Requirement for Technical Proposal

- a) This section specifies information to be provided in respect of all the relevant corporate entities as stated by the Bidder; and only such entities would be considered for evaluation.
- b) Bidders should attach the Audited Annual Reports for the last three years of all the corporate entities which would be evaluated under Technical Evaluation in accordance with the information submitted by the Bidder.

FINANCIAL CAPABILITY

Under this head the financial strength of the Bidding Company or the consolidated financial strength of any one of the Promoter(s) of the Bidding Company is evaluated. In the following table, the corporate entity that is to be considered for evaluation of Financial Capability should be mentioned clearly.

Name of the Company to be considered for Evaluation of Financial Capability	Tick only one of the following
Bidding Company	
Promoter of the Bidding Company	

If the Bidding Company requires that the consolidated strength of the Promoter be considered, then details regarding such a Promoter should be furnished in the following table. In the absence of any information regarding the Promoter, the financial strength of the Bidding Company only would be evaluated.

S. No.	Name of the Promoter	Relationship with the Bidding Company / Lead Partner

1. Evaluation of Financial Net Worth

Under this head, the financial net worth as on **March 31, [Immediate preceding year]** of the Bidding Company or the consolidated financial strength of any one of the Promoter(s) of the Bidding Company would be considered.

Particulars of the company	Name of the Company to be considered for Evaluation of Financial Capability	Tangible Financial net worth as on March 31, [YYYY] (Rs. Crores)
Bidding Company		
Promoter of the Bidding Company		

2. Annual Turnover

Under this head, the annual turnover (i.e. Sales from core activities) in the past three years of the Bidding Company or the consolidated financial strength of any one of the Promoter(s) of the Bidding Company would be considered. In the following table, the corporate entity that is to be considered for evaluation of Financial Capability should be mentioned clearly.

Particulars of the company	Name of the Company to be considered for Evaluation of Financial Capability	Annual turnover (Rs. Crores) Y1	Annual turnover (Rs. Crores) Y2	Annual turnover (Rs. Crores) Y3
Bidding Company				
Promoter of the Bidding Company				

3. Gross Cash Accruals

Under this head, gross cash accruals (i.e. Profit after Tax plus Depreciation and other non-cash expenses) for the past three years of the Bidding Company or the consolidated financial strength of any one of the Promoter(s) of the Bidding Company would be considered. In the following table, the corporate entity that is to be considered for evaluation of Financial Capability should be mentioned clearly.

Particulars of the company	Name of the Company to be considered for Evaluation of Financial Capability	Gross Cash Accruals (Rs. Crores) Y1	Gross Cash Accruals (Rs. Crores) Y2	Gross Cash Accruals (Rs. Crores) Y3
Bidding Company				
Promoter of the Bidding Company				

4. Stock Exchange Listing Information (In case Applicable)

Under this head the scrip code and the scrip name, as on March 31, YYYY, of the Bombay Stock Exchange/ the National Stock Exchange or any recognised stock exchange should be mentioned.

Name of the Exchange	Scrip Code	Scrip Name
The Bombay Stock Exchange		
The National Stock Exchange		
Any other please specify the Exchange name		

EXPERIENCE AND TRACK RECORD

The bidder should include the following in this section:

1. The Bidder should provide proof of being a public limited company and details of incorporation.
2. The Bidder should give an undertaking that it satisfies and shall all the times comply with the conditions of Code of Conduct for grant of Distribution Business License
3. In this section the bidder should clearly mention about its company profile including core business activities, clientele, number of employees, and any other detail the bidder feel necessary to provide.

11. Exhibit 4: Covering Letter for Financial Proposal

(This covering letter for Financial Proposal is to be submitted by the Bidding Company or the Lead Partner of a Bidding Consortium along with the Financial Proposal.)

Date:

Place:

[Address of the issuing authority]

Dear Sir,

Sub: Distribution Franchisee for Urban Areas falling _____

Please find enclosed **one (1) original + one (1) copy** of our Financial Proposal in respect of the Distribution Franchisee for Urban Area ("**Project**"), in response to the Request for Proposal ("RFP") document issued by the [Name of the Utility] on __DD/MM/YYYY.

We hereby confirm the following:

1. The Proposal is being submitted by _____ (name of the Bidding Company) who is the Bidding Company in accordance with the conditions stipulated in the RFP.
2. We have examined in detail and have understood, and abide by; all the terms and conditions stipulated in the RFP document issued by [Name of the Utility] and in any subsequent communication sent by [Name of the Utility].
3. Our Financial Proposal is consistent with all the requirements of submission as stated in the RFP or in any of the subsequent communications from [Name of the Utility].
4. We would be solely responsible for any errors or omissions in our Financial Proposal.

For and on behalf of :
 Signature :
 (Authorised Signatory)
 Name of the Person :
 Designation :

12. Exhibit 5: Format for Financial Proposal

Year	Estimated Annual Energy Input (MUs)	Minimum Benchmark Input Rates (Rs/kWh)	Input Rate (Rs/ kWh) (Up to three decimal place)
1	To Be Provided by the Utility		
2	To Be Provided by the Utility		
3	To Be Provided by the Utility		
4	To Be Provided by the Utility		
5	To Be Provided by the Utility		
6	To Be Provided by the Utility		
7	To Be Provided by the Utility		
8	To Be Provided by the Utility		
9	To Be Provided by the Utility		
10	To Be Provided by the Utility		
11	To Be Provided by the Utility		
12	To Be Provided by the Utility		
14	To Be Provided by the Utility		
15	To Be Provided by the Utility		

For and on behalf of :

Signature :

(Authorised Signatory)

Name of the Person :

Designation :

13. Exhibit 6: Undertaking regarding Blacklisting to be attached with the Technical Proposal

(This undertaking is to be submitted by the Bidding Company and promoter, if applicable along with the Technical Proposal. This should be on a non-judicial stamp paper of requisite value)

Date:

Place :

[Address of the Issuing Authority]

Dear Sir,

Sub: Distribution Franchisee for Urban Area.

This undertaking is being submitted in respect of the Distribution Franchisee for Urban Area (“Project”), in response to the Request for Proposal (“RFP”) document issued by the [Name of the Utility] DD/MM/YYYY.

We hereby confirm the following:

1. We have never been blacklisted by any Government Department or Public Sector Undertaking of any State Government in India or the Government of India.
2. We understand and agree that if this information is found to be incorrect at any stage before technical and financial evaluation; our proposal will be considered as non-responsive and rejected accordingly.
3. We further understand and agree that if the project is awarded to us on the strength of this undertaking and this undertaking is found to be incorrect post award of project, this will be treated as Critical Event of Default in terms of Article 16.1 of the Distribution Franchisee Agreement and dealt with as provided for in that article.

For and on behalf of :
Signature :
(Authorised Signatory)
Name of the Person :
Designation :

14. Annexure 1: DISTRIBUTION FRANCHISEE AGREEMENT

Annexure 1: Distribution Franchisee Agreement

DISTRIBUTION FRANCHISEE AGREEMENT FOR URBAN AREAS OF [Name of the Utility]

This Agreement made at [Name of the Place] this ___ th day of [Month], [Year] between [Name of the Utility], a company registered under the Companies Act, 1956 having its registered office at [Address of the Utility] hereinafter referred to as “[Abbreviation of the Utility]” (which expression unless repugnant to the context or meaning thereof shall include its successors and assigns) of the ONE PART

And

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

WHEREAS:

- A. [Name of the Utility] is a Distribution Licensee under the provisions of the Electricity Act, 2003 (the “Act”) having license to supply electricity in [Name of the Franchise Area] in the State of [Name of the State].
- B. Under the provisions of the Act, [Name of the Utility] is entitled to distribute electricity to a specified area within its area of supply through another person referred to as Franchisee.
- C. For the purpose of sale and supply of electricity in the [Name of the Franchise Area] Urban Distribution Divisions of [Name of the Utility] as more particularly described hereinafter, [Name of the Utility] selected _____ Limited through the competitive bidding process.
- D. [Name of the Utility] issued a Letter of Intent No.....datedto 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 within the Franchise Area by executing this Distribution Franchisee Agreement.

- F. The parties are fully aware that this Agreement is for sale and purchase of electricity for distribution 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.

Average Revenue Realisation

Shall mean the total revenue collected per unit energy supplied by [Name of the Utility] at Input Points on annualized basis. The same shall be computed as:

Average Revenue Realisation = Total Revenue Collected / Total Energy Input.

Base Year

Shall mean the financial year _____ .

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 = (Revenue realized from Consumers in rupees /Energy Billed to Consumers in rupees)*100

Consumer

Shall mean as defined under the Electricity Act, 2003.

Complaint

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

Contract Year

Shall mean each successive period of one year beginning from the Effective Date of this Agreement.

Distribution System

Means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the Consumers.

Distribution

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

Distribution Assets

Shall mean the assets employed by [Name of the Utility] / Distribution Franchisee in the Franchise Area for distribution of electricity.

[Name of the Utility] Distribution Assets

Shall mean the assets created and employed by [Name of the Utility] 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, 11/0.4KV Sub-stations, underground cables, electrical plant, control switch gear, meters having design voltage 33 kV and below, service lines and other similar assets at the consumer end and other assets employed by [Name of the Utility] for distribution of electricity including Complaint Centres, Billing/IT Centres, Collection Centres, Stores (except major Stores), Transformer Repair Workshops/Test Labs dedicated to the Franchise Area, Division/Sub-division Offices together with furniture, fixtures, IT hardware/software and communication equipments. It shall include vacant land owned by [Name of the Utility] identified for creation of sub-stations. It will also include residential accommodations which are presently occupied by [Name of the Utility] Staff who may choose to go on deputation with the DF or are lying vacant and other offices spaces which may not be required by [Name of the Utility] after handing over to the DF subject to an undertaking from the DF that the property owned by [Name of the Utility] shall not in any way be sold, transferred, disposed off, alienated, mortgaged or sub-let by it. No rent shall be charged by the [Name of the Utility] for the assets handed over to the franchisee.

Franchisee Distribution Assets

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

Distribution Losses

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

Distribution Losses= (Energy Intake at Input Points less Energy Billed to Consumers in kWh)/
Energy Intake at Input Points in kWh*100

The above calculation excludes power purchased from any source other than [Name of the Utility].

Effective Date

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

Engineer-in-Charge

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

Expiry Date

Shall mean the 15th (fifteenth) anniversary of the Effective Date.

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.

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.

Extra High Voltage or EHV

Shall mean any voltage equal to & above 33,000 Volts subject to permissible variations.

Franchise

Means the rights granted by [Name of the Utility] to the Distribution Franchisee to act as a franchisee of [Name of the Utility] to purchase and distribute electricity in the Franchise Area and all the rights, powers and authorities available to [Name of the Utility] 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 Act. The Franchisee Agreement shall be an agreement for the sale of power to the Franchisee and for any other services, such as right to use the existing distribution network. Ninety percent of the Input Rates is deemed to be compensation for the sale of power and balance ten percent for the services component of the transaction.

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 [Name of the Utility].

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 including acts of God, acts of any Government (de jure or de facto) or regulatory body or public enemy, war, riots, embargoes, industry-wide strikes, the reduction in supply due to outage of generation facilities/ transmission lines or any other causes, circumstances, or contingencies, whether of a similar or dissimilar nature to the foregoing, beyond the parties control, which cannot be reasonably forecast or prevented, thereby, hindering the performance by the parties of any of their obligations hereunder.

Go [Name of the State]

Means the Government of [Name of the State] and any Ministry, Department, or any other Authority of the Government of [Name of the State].

Input Energy

Shall mean sum total of energy supplied through all Input Points.

Input Points

Shall mean the 33 KV side of 220 KV and 132KV Substations and 132 KV side of the 132/11 KV Substation specified in Annexure 1 and shall include such other EHV/HV substations or feeders, which may feed energy to the Franchise Area at the Effective date or during the term of the Agreement.

Input Rate

Shall mean Rupees per unit of electricity supplied by the [Name of the Utility] at the Input Points as quoted in the accepted Financial Proposal of the bidder in Annexure-4.

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 and shall include any other incident, which [Name of the Utility] expressly declares to be a major incident. Significant interruption of service for this purpose shall mean interruption impacting more than 10,000 Consumers continuously for a period of more than 24 hours and substantial damage to equipment shall mean damage to Distribution Assets exceeding Rs 50 Lacs in gross value.

Open Access

Shall mean open access as defined in the Electricity Act 2003.

Person

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

Prudent Utility 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 [Name of the Utility] 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 [Name of the Utility] and as the [Name of the Utility] may have the right and power to give.

[Abbreviation of the State Regulatory Commission]

Shall mean the [Name of the State Regulatory Commission], or its successors.

[Abbreviation of the Name of the Transmission in case of Unbundled Utilities]

Shall mean the [Name of the Transmission Company] and its successors and assigns.

ARTICLE 2: CONDITIONS PRECEDENT & SUBSEQUENT TO THE AGREEMENT

ARTICLE 2.1: CONDITIONS PRECEDENT TO BE SATISFIED BY THE DISTRIBUTION FRANCHISEE & [Name of the Utility]

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 [Name of the Utility] from any nationalized bank or Scheduled Bank for an amount equivalent to two months’ estimated amount payable to [Name of the Utility] by Distribution Franchisee based on energy input at Input Points in Franchise Area and Input Energy Rate quoted by the Distribution Franchisee for first year of Franchisee term. [Name of the Utility] and [Name of the Franchisee] shall also sign a Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purpose of collateral arrangement. This payment security mechanism shall be governed as per conditions stipulated in Article-11.

2.1.2 Submission of Performance Guarantee

The Distribution Franchisee shall secure the guarantee to perform by providing Performance Guarantee to the satisfaction of [Name of the Utility] from any nationalized bank or Scheduled Bank for an amount equivalent to 1/5th of the total annual revenue billed in the base year This Performance Guarantee shall be governed as per conditions stipulated in Article-11

The Earnest Money Deposit shall be refunded on submission of Performance Guarantee.

This Performance Guarantee shall be governed as per conditions stipulated in Article-11.

2.1.3 Infrastructure Roll-out Plan

The Distribution Franchisee shall submit an Infrastructure roll-out plan to [Name of the Utility] for the minimum capital investment to be carried out by the franchisee over the period of 5 years from the effective date as mentioned in Article 5.2.2 . Such investment plan shall be indicative and for the purpose of information sharing with the Utility on the approach to be adopted by the franchisee for lowering the T&D losses in the initial contract period. All investments to be made from 10th year onwards by the Franchisee shall be subject to [Name of the State Regulatory Commission] approval except that mentioned in Article 5.2.13. [Name of the Utility] shall facilitate the Distribution Franchisee in approaching the [Name of the State Regulatory Commission] for approval of the Infrastructure Roll-out Plan. Any investment made by the Distribution Franchisee 10th year onward which is not approved by the [Name of the State Regulatory Commission] shall not be compensated by [Name of the Utility] at the expiry / termination of the Franchise.

2.1.4 Completion of Audit of Various Parameters

The Joint Audit Team of [Name of the Utility] and the Distribution Franchisee shall complete an audit of the parameters listed below:

- 2.1.4.1 Past energy input and amount collected;
- 2.1.4.2 Opening level of Inventory;
- 2.1.4.3 Ongoing Contracts as on Effective Date; and
- 2.1.4.4 Determination of Average Billing Rate for the base year for the purpose of Article-7.

Since the baseline parameters of the preceding financial year have already been audited by an independent third party auditor the Average Billing Rate (net of Subsidy) for the Base Year at Rs ____ per unit shall be treated as frozen for the purpose of this agreement.

2.1.5 Calibration of Meters

The authorized representatives of [Name of the Utility], [Name of the Transmission Utility] and the Distribution Franchisee shall conduct a joint Calibration of the interface meters at the Input points.

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

2.1.7 Authorisation to DF to Represent

- (a) Sufficient number of officers of the Distribution Franchisee should be authorized under Section 126, Section 135(1A) and Section 135 (2) of the Electricity Act 2003 for taking necessary action to prevent the unauthorized use, theft and pilferage of electricity in Franchise Area. The Franchisee must inform the utility about the categories of officers and the relevant sections of the Electricity Act, 2003 for which authorization is needed.
- (b) Sufficient number of officers of the Distribution Franchisee should be authorized for representing before the SERC, Consumer Grievance Redressal Forums, Ombudsman, Consumer Courts, etc.
- (c) The Franchisee should also be allowed to represent to the State Transmission Utility for
 - i. augmenting the transmission capacity matching with the growth in distribution network
 - ii. metering of input points including calibration of meters
 - iii. matters relating to load dispatch and grid discipline

2.1.8 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, [Name of the Utility] 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 [NAME OF THE UTILITY]

2.2.1 Arrears Determination:

The Joint Audit Team of [Name of the Utility] and the Distribution Franchisee shall complete an audit of:

- 2.2.1.1 Opening Asset Register,
- 2.2.1.2 Opening level of arrears;
- 2.2.1.3 Segregation into permanently disconnected and current live arrears;
- 2.2.1.4 Ageing analysis of current live arrears up to a period of three months;
- 2.2.1.5 Credit Balance from Consumers; and
- 2.2.1.6 Joint verification of permanently disconnected Consumers.

- 2.2.2** Methodology to compute Average Billing Rate (ABR) tariff for each billing period for the purpose of Article-7 during the term of this Agreement shall be jointly finalized before the effective date.
- 2.2.3** [Name of the Utility] 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 [Name of the Utility] to the Distribution Franchisee and further supervision charges received from the Consumers, if any, towards such connections shall be remitted to the Distribution Franchisee.
- 2.2.4** All the conditions subsequent stated above shall be satisfied within thirty (30) days except for condition mentioned in Article 2.2.1.5 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 this Agreement shall be for a period of Fifteen (15) years from the Effective Date. However, upon bringing down the distribution losses below 20%, if the parties agree that the franchisee needs to enter into long term power procurement agreements to meet the deficit of energy, the contract period shall be extended to 20 years.

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 [Name of the Utility], then [Name of the Utility] 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
- (iii) non-supply of power by [Name of the Utility] as per Article 16.2(a) over a period of one year.

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 [Name of the Utility] harmless against the same as provided in Articles 14.1.2. The Distribution Franchisee shall compensate [Name of the Utility] for the losses suffered by [Name of the Utility], 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, [Name of the Utility] 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 liabilities of [Name of the Utility] as the Distribution Licensee for the Franchise Area as stipulated in the Law, 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 [Name of the Utility] Distribution Assets and all other rights, powers and authorities available to [Name of the Utility] as a Distribution Licensee to perform its obligation under this Agreement. Distribution Franchisee however shall not be the owner of [Name of the Utility] Distribution Assets.

4.2 Legal Status of Distribution Franchisee

The Distribution Franchisee shall be a franchisee of the [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility]. However the Distribution Franchisee may appoint the sub-contractor(s) for outsourcing some of its activities with a prior three days written intimation to [Name of the Utility].

It is however clarified that the Distribution Franchisee alone shall be liable and responsible to [Name of the Utility] 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 following Regulatory Interface:

1. Approval of specified Investments planned in the last 5 years of the contract
2. For improved reliability of power supply, the Licensee, on being requested by the Distribution Franchisee, may procure extra power from the market through a tripartite agreement for supply to the Franchised Area with provision to recover Reliability Charges from the consumers as approved by the [Name of the State Regulatory Commission] for which [Name of the State Regulatory Commission] shall have power to fix any public hearing process to take into account the consumer's suggestions/ view point.

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 Act.

4.7 Directions

Distribution Franchisee shall comply with [Name of the Utility] directives issued for compliance of the Laws, Regulations, Orders and Directives of [Name of the State Regulatory Commission]. However, the Distribution Franchisee shall have option of following alternative methods for complying with the applicable Laws, Regulations, Orders and Directives of [Name of the State Regulatory Commission].

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 Franchisee Agreement for the entire term of the Agreement and to the extent any provisions have continuing effect, after its expiration.

ARTICLE 5: ACTIVITIES OF DISTRIBUTION FRANCHISEE

5.1 'Right of Use' to [Name of the Utility] Distribution Assets

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

5.1.2 Distribution Franchisee shall use and maintain such assets at its own cost to keep them in good working condition as per Prudent Utility Practices.

5.1.3 Distribution Franchisee shall not dispose off or alienate or in any way encumber such assets without prior written approval of [Name of the Utility].

5.1.4 If any such asset is scrapped, the same shall be deposited at the major store of the [Name of the Utility] at [Name of the Franchise Area] by the Distribution Franchisee at its cost. [Name of the Utility] shall duly identify the scrap against its Asset register for Transformers & accessories and HT network.

5.1.5 [Name of the Franchisee Area] Asset Register of the Franchise Area, which shall be verified and signed by both the parties in compliance to the provisions of Article 2.2.1.1.

- 5.1.6 On termination/ expiry of this agreement, the Distribution Franchisee shall without demur hand over physical possession/ custody of [Name of the Utility] Distribution Assets in same condition, subject to normal wear and tear and Article 5.1.4.
- 5.1.7 Any shortfall in the quantity of [Name of the Utility] 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 has the option to replace such missing or lost equipment (shortfall) with comparable equipment
- 5.1.8 If the Distribution Franchisee uses [Name of the Utility] assets that have not been transferred as a part of [Name of the Utility] Distribution Assets, separate charges for the use of the same shall be payable to [Name of the Utility].
- 5.1.9 If the Distribution Franchisee intends to utilize other services of [Name of the Utility] such as Testing facilities for HT/LT metering, switching/substations and Distribution transformers or any other technical assistance, the charges for the same shall be payable to [Name of the Utility].

5.2 New Capital Expenditure

- 5.2.1 The Distribution Franchisee shall plan and implement capital expenditure to improve efficiencies, upgrade infrastructure etc. as is deemed necessary by it.
- 5.2.2 Distribution Franchisee shall provide for capital expenditure to improve efficiencies, augment and upgrade infrastructure, reduction in Distribution Losses and improvement in quality of supply in the Franchise Area as per its Minimum Capital Investment Plan for the contract period. The Distribution Franchisee shall make a minimum investment of Rs ____ Crores [Equivalent to 50% of Total Revenue Billed for the Base Year] spread over a period of 5 years. The franchisee shall roll out its investment in such way that at least 10% of the minimum investment plan is spent every year for the first five years of the contract period.
- 5.2.3 Such capital expenditure implemented by the Distribution Franchisee would include replacement of Distribution Assets.
- 5.2.4 The cost of all such capital investment shall be borne by the Distribution Franchisee. The input energy rates quoted by the Distribution Franchisee shall be deemed to have taken into account the cost of finance and depreciation on account of these investments.

5.2.5 The Distribution Franchisee shall ordinarily arrange the funds required for meeting its capital expenditure. However, in case there is any capital investment funding scheme like R-APDRP proposed from Government of India or the State Government or any Department or Undertakings thereof or any multilateral funding organizations which is available to [Name of the Utility] as Distribution Licensee, at terms and conditions which, in the opinion of the Distribution Franchisee, are better than those available to it from its own sources, then at the request of the Distribution Franchisee and detailed project proposals to be prepared and submitted by the Distribution Franchisee to [Name of the Utility] within the scope of such funding schemes, [Name of the Utility] shall avail such schemes and get the same implemented in the Franchise Area through the Distribution Franchisee. There shall be a back to back arrangement between [Name of the Utility] and the Distribution Franchisee with negotiated terms and conditions along with requisite bank guarantees mechanism for meeting the finance cost and loan liabilities of such schemes. For this purpose, [Name of the Utility] shall make payment of the interest and repayment of loan to the funding agency in the first place and seek reimbursement of the same from the Distribution Franchisee on monthly basis. This arrangement shall continue till such loan has been fully repaid by [Name of the Utility]. In such a case, at the expiry of the contract period, the DF shall also get depreciated cost of such assets from [Name of the Utility]. However, if either the contract is terminated before the contract period or in case of expiry of the contract period, the loan is not fully repaid, then the DF shall settle the outstanding loan and get depreciated value of the assets from [Name of the Utility] or upon his failing to do so, [Name of the Utility] shall make payment towards repayment of such outstanding loan and settle the same against the depreciated cost of assets. If any such loan is converted into grant at any stage under the policy of Government of India or State Government or any Department or Undertakings thereof or the said multilateral funding agency, then the benefit of such grant, in terms of refund of interest and principal amount, shall be passed on to the Franchisee but the [Name of the Utility] shall retain the assets covered under such grant without any obligation to pay for the depreciated cost of those assets.

5.2.6 The Distribution Franchisee shall also maintain a separate record of the Distribution Assets purchased by it with all details and particulars. It shall also make entries of these assets in the asset register.

5.2.7 Upon expiry/termination of this Agreement, Distribution Franchisee shall hand over all the [Name of the Utility] and Franchisee Distribution Assets of Franchise Area, to [Name of the Utility] in working condition subject to normal wear and tear. The Distribution Franchisee shall not have a right to take back these assets, if the same are to be compensated by [Name of the Utility] in terms of the Agreement.

- 5.2.8 On the expiry/termination of this Agreement, [Name of the Utility] shall compensate Distribution Franchisee for the Distribution Assets added by Distribution Franchisee, to the extent funded by the Distribution Franchisee, at the depreciated value of such assets.
- 5.2.9 Such assets in normal working condition shall be transferred to [Name of the Utility] at the depreciated value in the audited books of accounts of the Distribution Franchisee based on an average rate of depreciation rate of 8% per annum or the rate approved by [Name of the State Regulatory Commission].
- 5.2.10 The Distribution Franchisee shall submit details of the assets added by it on a quarterly basis, and the value of such assets shall be certified by [Name of the Utility] as acceptable. Such certification shall be done within a period of 90 (ninety) days from the date of creation of such asset.
- 5.2.11 Any land to be purchased for the purpose of construction of sub-station shall be provided by the [Name of the Utility]. In case the franchisee purchases any such land after taking due permission from the Utility, the cost of such land shall be remitted by the [Name of the Utility] to the franchisee at the expiry of the contract along with the interest thereon to be mutually agreed between the franchisee and the [Name of the Utility] before the purchase of land. Such land shall be transferred in the name of the Utility after the expiry of the contract and remittance of the due amount to the franchisee by the [Name of the Utility].
- 5.2.12 Notwithstanding anything stated above, all investments shall be planned and implemented keeping in view the distribution license conditions of [Name of the Utility] and following the procedures as prescribed therein.
- 5.2.13 All investments to be made by the DF in the last 5 years of the contract period will require prior approval from [Name of the State Regulatory Commission] except the following investments:
- a. For release of any new consumer connections
 - b. For network upgradation to meet normal load growth
- 5.2.14 All the investment schemes requiring approval from [Name of the State Regulatory Commission] shall be submitted by the Distribution Franchisee through [Name of the Utility] which will facilitate its approval from [Name of the State Regulatory Commission]. Any investment made in violation of these conditions which is rejected by the [Name of the State Regulatory Commission]/ [Name of the Utility], shall not be compensated, as provided for in 5.2.9 above, by [Name of the Utility].

5.3 Inventory of O&M Spares

- 5.3.1 [Name of the Utility] will hand over the inventory of O&M spares in the Franchise Area to the Distribution Franchisee on the Effective Date of this Agreement. Further, for the period of first three months from Effective Date, [Name of the Utility] may arrange to issue O&M spares to the Distribution Franchisee at its request, subject to availability, and at rates decided by [Name of the Utility].
- 5.3.2 Upon termination/expiration of this Agreement, Distribution Franchisee shall return the inventory of O&M spares to [Name of the Utility] in the same form and quantity as specified in Article 5.3.1.
- 5.3.3 Distribution Franchisee shall compensate [Name of the Utility] 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.
- 5.3.4 [Name of the Utility] shall compensate the Distribution Franchisee for the inventory of O&M spares at termination / Expiry of Agreement at latest acquisition price as may be applicable provided that, the maximum inventory that shall be taken over by [Name of the Utility] shall not be more than the minimum inventory norms of [Name of the Utility] from time to time.

5.4 Supply of Energy

- 5.4.1 [Name of the Utility] shall supply minimum energy at Input Points as per Annexure 4. However, this supply may vary subject to SLDC Directives on load shedding. Without prejudice to the foregoing, [Name of the Utility] shall not discriminate in the supply of power between the Franchise Area and its other Distribution Divisions. However, if the hours of supply depends on loss level of that area, that policy may continue so that in the event of reduction of losses in the franchise area, it may get comparatively higher quantum of energy to meet the consumers' demand.

- 5.4.2 In case [Name of the Utility] is unable to provide sufficient energy to meet the requirement of the franchise area, the franchisee may request [Name of the Utility] to source the 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 Utility as the principal Party. [Name of the Utility] will have to comply with Section 86(1)(b) of the Electricity Act, 2003 by making necessary applications to the [Name of the State Regulatory Commission] for scrutiny and approval even if the power is procured specifically for the Franchisee area. The [Name of the Utility] shall be responsible for justifying the need for power, its price, its contractual arrangement under power purchase agreements, for scrutiny and approval of the [Name of the State Regulatory Commission]. The DF will identify the additional sources of power purchase and the rate for the same, and [Name of the Utility] will enter into Power Purchase Agreements (PPAs) with contracted parties for power purchase. [Name of the Utility] 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 [Name of the Utility] will be subject to regulation by the [Name of the State Regulatory Commission] under the provisions of Section 86(1)(b) of the Act. The required quantum of additional power shall be allocated to the franchisee area.
- 5.4.3 [Name of the Utility] shall also assist the Franchisee in obtaining information from [Name of the State Transmission Company] about the transmission capacity for power purchase.
- 5.4.4 Such scheme will be implemented only after approval of [Name of the State Regulatory Commission]. [Name of the Utility] will have no responsibility or liability if such scheme is not approved/ rejected by [Name of the State Regulatory Commission].
- 5.4.5 In case of procurement of power from sources other than [Name of the Utility], the wheeling charges shall be payable by Distribution Franchisee for using the network other than that of the distribution network of the [Name of the Utility] for distribution of power in the Franchise Area and shall be levied as per [Name of the State Regulatory Commission] regulations.
- 5.4.6 The Distribution Franchisee shall not sell the Input Energy to anyone outside the Franchise Area.
- 5.4.7 The Distribution Franchisee shall strictly adhere to the planned load shedding schedule of [Name of the Utility] based on directives issued by SLDC.

5.4.8 The Distribution Franchisee shall also follow the instructions of [Name of the State Transmission Company] / State Load Dispatch Centre for grid discipline.

5.4.9 In order to fully recover the cost of energy to meet such deficit, the franchisee may charge the consumers in the form of a Reliability Charge per unit and such charge could be decided through a public hearing process and prior approval of the [Name of the State Regulatory Commission] to be facilitated by [Name of the Utility].

5.5 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 [Name of the Utility], in compliance with the Law, Regulations and Directives of [Name of the State Regulatory Commission] issued from time to time as if they were to apply to licensee and directives of [Name of the Utility] for compliance of laws, regulations, orders and directives of [Name of the Utility]. The broad scope of work would be as follows:

5.5.1 Undertake distribution & supply of power to the Consumers of [Name of the Utility] in the Franchise Area.

5.5.2 Undertake all Operation & Maintenance related activities in Franchise Area.

5.5.3 Treatment of Ongoing Contracts

5.5.3.1 Distribution Franchisee (DF) shall be responsible for administering and maintaining the ongoing contracts entered into by [Name of the Utility].

5.5.3.2 DF may cancel the ongoing contract, except capital expenditure, and enter into new contracts subject to bearing all the liabilities and third party claims accrued there from as per the contract terms and conditions between the [Name of the Utility] and the contractor but up to a sum of Rs _____. The DF shall keep [Name of the Utility] completely indemnified in this regard.

5.5.3.3 Work in progress for Capital Investments already in pipeline shall be continued by the [Name of the Utility]. In case of an ongoing capital expenditure contract involving a contractor appointed by [Name of the Utility], if such contractor fails to complete the said works as per the prescribed time schedule, the DF will be authorized to cancel such contract for which [Name of the Utility] shall bear all the liabilities and third party claims accrued there from, if any. In case of an ongoing capital expenditure contract being undertaken by the [Name of the Utility], in case the [Name of the Utility] fails to complete the said works as per the time schedule prescribed, the franchisee may carry out the remaining work on behalf of [Name of the Utility] and deduct the investments from the input energy amount payable to [Name of the Utility].

- 5.5.3.4 Any legal liability or any other such liability on completed contracts shall be borne by [Name of the Utility] and [Name of the Utility] shall keep the DF completely indemnified in this regard.

5.6 Technical Duties and Responsibilities of the Distribution Franchisee

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

5.6.1 Load Forecast

The Distribution Franchisee shall carry out demand estimation / load forecast of the Franchise Area periodically and apprise the same to [Name of the Utility].

5.6.2 Energy Audit

The Distribution Franchisee shall carry out energy audit on a monthly basis and submit a report of the same to [Name of the Utility]. The methodology for the same has been enclosed at Annexure - 2.

5.6.3 Operation, Repair & Maintenance and Up gradation

The Distribution Franchisee shall at its own cost perform:

- 5.6.3.1 Operation and maintenance of Distribution Assets from the start of input feeders of Franchise Area
- 5.6.3.2 Operation and maintenance of sub-stations and transformer stations
- 5.6.3.3 Installation of metering devices and carry out meter reading, monitoring all feeders and distribution transformers
- 5.6.3.4 Repair, maintain and replace failed distribution transformers as per [Name of the State Regulatory Commission] Supply Code and Standards of Performance
- 5.6.3.5 Maintain a minimum level of rolling stock of transformers and other necessary material
- 5.6.3.6 Upgrade, renovate and maintain the existing distribution network/ systems/ IT assets and systems as per Prudent Utility Practices and the standards that may be prescribed by [Name of the State Regulatory Commission]

5.6.3.7 For carrying out day-to-day maintenance work, if shutdown is required from EHV station on any feeder, the Distribution Franchisee shall apply for proper permit from the concerned [Name of the Transmission Company] EHV substation. Such permit shall be returned to concerned EHV substation immediately after the work is completed. The Distribution Franchisee shall also intimate schedule of planned outages to the concerned EHV substation and maintain day-to-day coordination for smooth operation of transmission network

5.6.3.8 Maintain a minimum power factor of 0.85 at the input points

5.6.4 **Compliance with standards**

5.6.4.1 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 [Name of the State Regulatory Commission].

5.6.4.2 The Distribution Franchisee shall be responsible for complying with all Indian Electricity Rules, [Name of the State Regulatory Commission] Standards, Regulations and other Directives as issued and modified from time to time and as applicable to any distribution licensee. Any penalty imposed on [Name of the Utility] by [Name of the State Regulatory Commission] or any other Government Authority on account of failure of the Distribution Franchisee in compliance shall be borne by the Distribution Franchisee.

5.6.4.3 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.

5.6.5 **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 [Name of the State Regulatory Commission] from time to time. Any penalty imposed on [Name of the Utility] by [Name of the State Regulatory Commission] 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 [Name of the State Regulatory Commission] 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 [Name of the State Regulatory Commission] 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 [Name of the State Regulatory Commission]. The Distribution Franchisee shall:

- a) Establish within a period of one year 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 court or forum under Consumer Protection Act 1986 or Consumer Grievance Redressal Forum under the [Name of the State Regulatory Commission] (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.

5.6.6 **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 [Name of the State Regulatory Commission].
- b) Distribution Franchisee shall be responsible for incurring capital expenditure in order to provide new connections in the Franchise Area. The expenditure involved in providing new connection, net of Service Connection Charges and any other contributions / charges received from the Consumer towards capital cost of providing new connection as per applicable Regulations shall be deemed to form part of the Franchisee Distribution Assets to be compensated in terms of Article-5.2.9.
- c) Subject to the provisions of the Electricity Act 2003, the Distribution Franchisee may refuse to supply, or may disconnect the supply of electricity to any premises.
- d) The Distribution Franchisee shall retain the Service Connection Charges (SCC) collected from the Consumers for giving new connections levied as prescribed by [Name of the State Regulatory Commission].
- e) The Distribution Franchisee shall collect the Security Deposit and System Loading Charges from the Consumers for giving new connections, which shall be transferred to [Name of the Utility].
- f) The applicable interest on these deposits shall be borne by [Name of the Utility] and shall be transferred to the Distribution Franchisee to meet its obligations as per applicable regulations.
- g) 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 Consumers existing on the Effective Date, [Name of the Utility] shall have the first right on the security deposit.
- h) The Distribution Franchisee shall not grant new connections to Permanently Disconnected (PD) Consumers as on Effective Date without the written consent of [Name of the Utility] unless arrears have been recovered from them and remitted to [Name of the Utility]. [Name of the Utility] 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.

5.7 Commercial Duties and Responsibilities of the Distribution Franchisee

The Distribution Franchisee shall perform in the Franchise Area:

- 5.7.1 Meter reading and billing to the Consumers as per the retail tariffs approved by [Name of the State Regulatory Commission] from time to time.
- 5.7.2 Collections from the Consumers as per the billing.
- 5.7.3 Collection of arrears on behalf of [Name of the Utility].
- 5.7.4 Make timely payments to [Name of the Utility] as per the terms and conditions of this Agreement.
- 5.7.5 Replace defective meters with new meters.
- 5.7.6 Maintain Consumer database and billing records.
- 5.7.7 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 [Name of the Utility] Regulations and Directives.
- 5.7.8 Discharge all duties and responsibilities of [Name of the Utility] as the distribution licensee as required by the License Regulations of the [Name of the State Regulatory Commission] except such of the conditions, which cannot be complied with by the Distribution Franchisee alone.
- 5.7.9 Undertake any other activity as may be notified from time to time by [Name of the State Regulatory Commission] to the distribution licensee.

5.8 Performance Improvement Targets

- 5.8.1 The Distribution Franchisee shall achieve a loss reduction trajectory as prescribed below:
 - 5.8.1.1 If distribution losses are higher than 25% - reduction by 5% per annum till 25% loss level is achieved.
 - 5.8.1.2 If distribution losses are up to or less than 25% - reduction by 3% per annum till 19% loss level is achieved
 - 5.8.1.3 If distribution losses are up to or less than 19% - reduction by 2% per annum till 15% loss level is achieved
 - 5.8.1.4 If distribution losses are up to or less than 15% - reduction by 1% per annum till 12% loss level is achieved
- 5.8.2 The targets will change from one slab to another on shifting of the distribution losses from one slab to another.

5.8.3 The franchisee agrees that it shall put in its best endeavor to achieve the loss reduction trajectory. If, however, the prescribed loss reduction trajectory is not achieved by the franchisee, no penalty shall be chargeable from the Distribution Franchisee on this account since it is assumed that the input rate quoted by bidder already factors in the same.

5.9 Duties and Responsibilities of [Name of the Utility]

The broad duties and responsibilities of [Name of the Utility] would include the following activities:

5.9.1 [Name of the Utility] shall ensure the supply of power to Distribution Franchisee of acceptable quality standards as per Article 5.4.

5.9.2 [Name of the Utility] shall communicate to Distribution Franchisee any shortfall or inability to supply, the power requirements of the Distribution Franchisee.

5.9.3 [Name of the Utility] shall carry out meter reading jointly with Distribution Franchisee on a monthly basis at Input Points of the Franchise Area.

5.9.4 [Name of the Utility] shall support the Distribution Franchisee initiatives to adopt innovative practices to bring about effectiveness and efficiency in electricity distribution business.

5.9.5 [Name of the Utility] will recommend setting up Special Courts and facilitate administrative and police support for smooth functioning of the Distribution Franchisee

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 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.

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 [Name of the Utility]/[Name of the Transmission Company]/ Central Transmission Utilities as the case may be.

6.2 Inspection and Testing of Meters

- 6.2.1 [Name of the Utility] / [Name of the Transmission Company] shall inspect and if necessary, recalibrate the metering system on a regular basis but in any event, at least once every three (3) 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 [Name of the Utility], Distribution Franchisee and [Name of the Transmission Company], 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 LV side of the power transformers or HV 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;

- ii) If the period during which the main meter was malfunctioning is not known or is not agreed to between the parties, the correction shall be applicable for a period equal to half the time elapsed since the date of the preceding calibration test, provided that under no circumstance shall the Correction Period exceed one month.
- 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 Distribution Franchisee shall carry out weekly meter readings at Input Points at 18.00 hours on 7th, 14th, and 21st day of each calendar month and intimate the same to [Name of the Utility] by 10.00 Hrs on the next business day.
- 6.4.2 A joint meter reading by both the parties shall be carried out on the 0.00 Hrs on the Effective Date.
- 6.4.3 A joint meter reading by both the parties shall be carried out on the last day of every calendar month at 1800 Hrs w.e.f the Effective Date. Adjustments, if any, shall be carried out for monthly payments as mentioned in Article 7 based on the aforementioned meter reading.
- 6.4.4 [Name of the Utility] shall raise invoices as mentioned in Article 7 based on input units measured by Distribution Franchisee as specified in previous Article.
- 6.4.5 The Metering and Measurement System stated in this Article shall also be applicable to payments on account of Wheeled Electricity.
- 6.4.6 Until 0.2 Class meters are installed as main meters, 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 [Name of the Utility] on the Distribution Franchisee shall correspond to the energy input between first day and thirtieth day from the Effective Date plus for the no. of days remaining in the calendar month after thirtieth day from the effective date. All subsequent invoices shall be raised by the [Name of the Utility] for period starting 1st day of the calendar month and last day of calendar month. Invoice shall be computed as below:

$$MI = (RIE_M + WC_M + TOSE_M + SDN_M + P) - (CARPDRM + CARCL_{RM})$$

Where

RIE_M = Revenue for Input Energy as per Joint Measurement

It shall be computed as below:

$$RIE_M = EI_M * AIR_N + TSR_N$$

Where, EI_M= Energy input in the Franchise Area during the month, which shall be the energy purchased from [Name of the Utility].

AIR_N= Annualized Input Rate applicable for the year as per Annexure-4.

TSR_N= Tariff Sharing Ratio (TSR) applicable to the billing period

In case of any increase in revenue due to increase in Average Billing Rate(i.e. Average Billing Rate of the current period minus Average Billing Rate of the Base Year), (+)75% of such increase. However, in case of any decrease in revenue due to decrease in Average Billing Rate (i.e. Average Billing Rate of the current period minus Average Billing Rate of the Base Year), it would be (-) 100%.

ABR shall be computed as sum product of total billed units and approved tariff in each Consumer category divided by total billed units in all Consumer categories. The Tariff Sharing Ratio shall be computed for every month and the same shall be used for computation of the revenue for Input Energy for units supplied to the Distribution Franchisee in the respective calendar month. Approved Tariff for this purpose shall mean the tariff and the applicable Fuel Surcharge Adjustment (FSA) approved by [Name of the State Regulatory Commission].

The sharing shall be based on the change of tariff or consumer mix as applicable to all the [Name of the Utility] consumers in the Distribution Franchisee Area. The sharing shall be based on the weighted average of units billed for each category in the relevant period and the applicable average tariffs considering all the elements of tariff except those in the nature of taxes / duties, interest income and delayed payment charges.

For the purpose of computation of Tariff Sharing Ratio, ABR as applicable to all [Name of the Utility] Consumers in Distribution Franchisee area for the Base Year i.e. FY _____ shall be applicable based on the audited ABR of Rs_____ Per unit as provided by [Name of the Utility].

WC_M = Wheeling Charges applicable to energy procured over and above the quantity purchased from [Name of the Utility] for the Month computed as per [Name of the State Regulatory Commission] regulations

TOSE_M is the Tax on Sale of Electricity collected during the billing period

SDN_M is the Security Deposit and System Loading Charges collected for new connections issued during the period and for which information has been received as per Article-13.1.

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.

CARPD_{RM} 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 [Name of the Utility] during this billing cycle and shall be computed as below:

$$\mathbf{CARPD_{RM} = 0.2 * ARPD_{RM}}$$

Where **ARPD_{RM}** is the amount of arrears on account of permanently disconnected Consumers prior to the Effective Date collected and remitted by the Distribution Franchisee to [Name of the Utility] during this billing cycle.

CARCL_{RM} 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:

$$\mathbf{CARCL_{RM} = 0.1 * ARCL_{RM}}$$

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 [Name of the Utility] during this billing cycle.

7.2 Payment

Distribution Franchisee shall make the payment to [Name of the Utility] in the following manner:

- 7.2.1 Distribution Franchisee shall maintain a record of total amount collected from Consumers against HT/ LT energy billed security deposit, and taxes & duties levied as applicable and intimate the same to [Name of the Utility] as per Article 13.1.1.
- 7.2.2 [Name of the Utility] shall raise monthly invoices as mentioned in clause 7.1.1 and Distribution Franchisee shall make the payments within a week of receipt of such invoice.
- 7.2.3 If any of the due dates is a public holiday, the payment shall be remitted on the next working day of [Name of the Utility].
- 7.2.4 The Distribution Franchisee may be required to provide credit to some HT/ LT Consumers under relevant Directives/ Orders/ Policies of [Name of the State Regulatory Commission] e.g. Employees, Weavers, BPL, etc. The amount (in Rupees) of the credit given by the Distribution Franchisee to such Consumers shall be adjusted from the payment due towards revenue for input energy.
- 7.2.5 In the event that any HT/ LT Consumer in the Franchise Area avails Open Access under the relevant Regulations issued by [Name of the State Regulatory Commission], 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 [Name of the Utility] and the Distribution Franchisee on the basis of a mutually agreed formula. However additional surcharges, if any, shall be remitted to [Name of the Utility] along with the regular payments.
- 7.2.6 Distribution Franchisee shall collect and remit to [Name of the Utility], 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.
- 7.2.7 Upon recovery of the arrears, Distribution Franchisee shall, within 7 (seven) days, provide the details of collection and make such payment to [Name of the Utility].

- 7.2.8 [Name of the Utility] 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.
- 7.2.9 The Distribution Franchisee shall also timely remit to [Name of the Utility] any other charges arising from the execution of the contract such as charges towards use of [Name of the Utility] billing facilities, testing facilities, etc. and the adjustments on account of reconciliation as per Article-9 and 10.
- 7.2.10 The payment to be made by Distribution Franchisee against invoice as mentioned in Article 7.1 shall not take into account any subsidy which shall be governed by Article 9.
- 7.2.11 [Name of the Utility] 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 [Name of the Utility] and shall be subject to appropriate documentation.
- 7.2.12 Any delay in payment to [Name of the Utility] after due date shall attract a penal interest of 18% per annum quarterly compounded. Any early payment before the due date by the franchisee shall also carry a rebate @ 1.5% on the amount payable to [Name of the Utility] by the Distribution Franchisee.
- 7.2.13 In case of a shortfall or default in payment by Distribution Franchisee against the payment obligation as per earlier Article, [Name of the Utility] may recover such amount by invocation of Performance Guarantee given by the Distribution Franchisee.
- 7.2.14 The money collected by the Distribution Franchisee shall be adjusted against the current billing of Distribution Franchisee, Distribution Franchisee arrears (which refer to arrears that arose during the term of the Franchise Agreement) and [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility].

7.2.15 Distribution Franchisee shall be responsible for payment of all taxes, duties (other than Electricity Duty), and statutory /local levies arising out of this sale & purchase of electricity of input energy applicable at the time of bidding. Any change in the prevailing taxes /duties/statutory levies and any new taxes/duties/statutory levies arising out of this sale & purchase of electricity, becoming applicable after bidding, which cannot be passed on to consumers by the DF will be borne by [Name of the Utility].

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. [Name of the Utility] shall transfer the right to collect the arrears to Distribution Franchisee on the Effective Date and the Distribution Franchisee and [Name of the Utility] shall unfailingly follow the procedure attached at Annexure 5 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 [Name of the Utility] by DF. The DF 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 including the amount already recovered.

8.5 Distribution Franchisee shall make best endeavour to collect arrears other than those specified in 8.4 from current live Consumers on account of charges for usage of electricity. [Name of the Utility] shall offer an incentive to Distribution Franchisee towards collection of such arrears @ 10% of total amount net of taxes and duties recovered from Consumers. However, the collection from current live Consumers may first be appropriated towards current bill and then towards the arrears. [Name of the Utility] 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 on Effective Date, shall not to be transferred to Distribution

- Franchisee for recovery. The responsibility to recover such arrear shall rest with [Name of the Utility].
- 8.7 Distribution Franchisee shall make best endeavour to collect the arrears accrued prior to Effective Date from PD Consumers. [Name of the Utility] shall offer an incentive to Distribution Franchisee towards collection of such arrears @ 20% of total amount net of taxes and duties recovered from Consumers. [Name of the Utility] shall not share any expenses, costs incurred by the Distribution Franchisee for such recovery. However, for recovery of arrears from permanently disconnected consumers under the provisions of Land Revenue Act, [Name of the Utility] shall nominate a Nodal Officer not below the rank of Executive Engineer for facilitating the recovery from such permanently disconnected consumers occurring before or after the Effective Date.
- 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 the arrears, Distribution Franchisee shall, within 7 (seven) days, provide the detail of collection and make such payment to [Name of the Utility].
- 8.10 Upon expiry / termination, Distribution Franchisee shall not transfer to [Name of the Utility] any 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. These arrears shall be jointly determined and agreed by [Name of the Utility] and the Distribution Franchisee. These arrears shall be collected and remitted by [Name of the Utility] to the Distribution Franchisee within three months of Expiry / Termination Date.
- 8.11 Arrears accrued during the term of Agreement prior to one month of Expiry/ Termination shall also be passed on to the Distribution Franchisee as and when collected by [Name of the Utility]. However, [Name of the Utility] shall not be under any obligation to collect such arrears. The Distribution Franchisee shall also give @ 10% of arrears recovered net of taxes and duties for the period three months prior to the Expiry Date from current live Consumers and @ 20% of arrears recovered net of taxes and duties from permanently disconnected Consumers.
- 8.12 The Distribution Franchisee shall not grant new connections to permanently disconnected Consumers without the consent of [Name of the Utility] unless arrears have been fully recovered from them and remitted to [Name of the Utility]. Distribution Franchisee shall provide periodic information on status of permanently disconnected Consumers. Further, there shall be a joint inspection of permanently disconnected Consumers at quarterly intervals with a methodology which shall be jointly decided. If at any stage, such a connection comes to the notice of [Name of the Utility], the Distribution Franchisee shall immediately disconnect the Consumer. [Name of the Utility] and Distribution Franchisee shall jointly defend the legal cases arising out of such an action by the Distribution Franchisee. Distribution Franchisee shall bear the associated costs.

8.13 Notwithstanding anything contained herein, the legal rights of [Name of the Utility] to recover the outstanding arrears from the Franchise Area shall also survive the Term of this Agreement.

8.14 Notwithstanding anything contained herein, the legal rights of Distribution Franchisee to recover the outstanding arrears accrued during the term of the Agreement 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 The Government of [Name of the State] presently offers subsidy on electricity tariff in certain Consumer categories, as approved by [Name of the State Regulatory Commission], which is paid to [Name of the Utility] on account of electricity supplied to those Consumers in Franchise Area. Any subsidy offered by [Name of the State Government] or Government of India or any other agency which has an impact on reducing the tariff shall continue to be paid to [Name of the Utility] 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/Gol and approved by [Name of the State Regulatory Commission], the DF is required to abide by the same, the subsidy on account of the same shall be retained with the [Name of the Utility]. Any loss of revenue on this account to the franchisee shall be taken care of through tariff sharing ratio mechanism.

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), Tax on Sale of Electricity (ToSE), Municipal Taxes (MT) and any other taxes/levies/duties that have been levied by the State Government but the utility has been directed to collect on behalf of the Government.

- 10.2** The liability for making payment of the duties, taxes and levies to the [Name of the State Government] shall rest on the [Name of the Utility]. The franchisee shall deposit the amount collected from the consumers on realized basis to [Name of the Utility] The Distribution Franchisee shall establish separate accounting for Electricity Duty liability as per provisions of applicable Electricity Duty Act as also for Taxes and other levies. Since, the billing amount and amount realized includes Electricity Duty, a scanned copy each of the notifications regarding rates of electricity duty, taxes and levies is attached as Annexure - 8.
- 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 utility (in case of Indirect Tax) as the case may be.

ARTICLE 11: PAYMENT SECURITY DEPOSIT AND PERFORMANCE GUARANTEE

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 [NAME OF THE UTILITY] 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 [NAME OF THE UTILITY] 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. Further, the Letter of Credit shall be provided from the bank which is appointed as Default 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 [Name of the Utility] initially valid for a period of one year from the Effective Date.
- 11.3** The Distribution Franchisee shall renew the Letter of Credit 15 (fifteen) days before its expiry date and furnish the same to [Name of the Utility], failing which [Name of the Utility] shall have the right to invoke the Letter of Credit.

- 11.4** Within one week of beginning of each quarter, the amount of the Letter of Credit shall be upgraded, based on average energy input in previous quarter and applicable Input Energy Rates for the year as per Annexure-4. The said input rates shall be indexed as per the Tariff Indexing Ratio, calculated as Ratio of prevailing ABR for the last quarter as applicable to all consumers in the Franchise Area and ABR as applicable to all consumers in the Franchise Area in the Base Year. ABR shall be computed as sum product of total billed units and approved tariff in each consumer category divided by total billed units in all consumer categories. Approved Tariff for this purpose shall mean the tariff and the applicable Fuel Surcharge Adjustment (FSA) approved by [Name of the State Regulatory Commission]. However, under no circumstances shall the amount of Letter of credit be revised downwards.
- 11.5** [Name of the Utility] 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 [Name of the Utility], restore the same to the level prior to invocation.
- 11.7** [Name of the Utility] 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 additional measure to ensure compliance of [Name of the Franchisee] obligations under this agreement, [Name of the Franchisee] and the [Name of the Utility] 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 Utility, through which the revenues of the [Name of the Franchisee] shall be routed and used as per the terms of the Default Escrow Agreement. [Name of the Franchisee] and [Name of the Utility] shall contemporaneously with the execution of the Default Escrow Agreement enter into a separate Agreement to Hypothecate Cum Deed of Hypothecation, whereby [Name of the Franchisee] shall agree to hypothecate, to [Name of the Utility], the amounts to the extent as required for the Letter of Credit as per Article 11.1 and Article 11.4 routed through the Default Escrow Account and the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 11.1 and 11.4.

Provided further that the Franchisee shall ensure that [Name of the Utility] has first ranking charge on the revenues routed through the Default Escrow Account.

Performance Guarantee

- 11.9** As provisioned in the Article-2.1.2 of this Agreement, the Distribution Franchisee shall submit and maintain valid for the term of this Agreement, a performance guarantee to the satisfaction of [NAME OF THE UTILITY] in the form of an irrevocable and unconditional Performance Guarantee from any nationalized bank or Scheduled Bank for an amount equivalent to 1/5th of the total annual revenue billed in the [base year].The Performance Guarantee shall be governed in the manner described in this article.
- 11.10** The Performance Guarantee shall be in the format prescribed by [Name of the Utility] initially valid for a period of one year from the Effective Date.
- 11.11** The Distribution Franchisee shall renew the Performance Guarantee 15 (fifteen) days before its expiry date and furnish the same to [Name of the Utility], failing which [Name of the Utility] shall have the right to invoke the Performance Guarantee.
- 11.12** While the Performance Guarantee shall be valid for the term of the agreement, one half of the same shall remain locked with [Name of the Utility] throughout the term of the agreement whereas the other half of the Performance Guarantee shall be released in proportion to the minimum mandatory investment done by the Distribution Franchisee over the first 5 years.
- 11.13** [Name of the Utility] has the right to invoke the unreleased portion of the Performance Guarantee in case of non-compliance to Standards of Performance or failure to bring down the distribution losses to 20% in the initial 10 years.
- 11.14** In case of non-adherence of the supply code/standards of performance, any penalty levied by the [Name of the State Regulatory Commission] on the utility shall be recoverable from the franchisee against the Performance Guarantee on a back to back basis for which the franchisee shall have the authority to represent its case before the [Name of the State Regulatory Commission] or any other judicial or quasi judicial body.
- 11.15** Distribution Franchisee shall, within two weeks of invocation of the Performance Guarantee by [Name of the Utility], restore the same to the level prior to invocation.

ARTICLE 12: DEPUTATION OF [NAME OF THE UTILITY] EMPLOYEES

The existing employees in [Name of the Utility] will be given an option to join the Distribution Franchisee on deputation.

- 12.1** [Name of the Utility]'s employees shall provide handholding support to the franchisee for the first 3 months for which the franchisee shall bear the cost of salary & allowances payable to the [Name of the Utility]'s employees involved therein.
- 12.2** [Name of the Utility] 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.
- 12.3** [Name of the Utility] shall permit deputation of its employees working in the Franchise Area as on the Effective Date to the Distribution Franchisee subject to the DF completing 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 6 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 [Name of the Utility] rules regarding contribution to PF, Pension, Gratuity, etc.
- 12.4** The cost of employees on deputation would be borne by Distribution Franchisee. The Distribution Franchisee will at least compensate the [Name of the Utility] employee on deputation with the Franchisee towards all the benefits available to him/ her as per his/ her employment terms of [Name of the Utility] such as monthly salary, statutory contributions like provident fund and pension funds 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 [Name of the Utility] employee on deputation with the Franchisee.
- 12.5** At the end of the period of deputation which shall be initially for 5 years or the Franchisee Agreement whichever is earlier, the employees on deputation will return to [Name of the Utility]. Such employees will not lose their seniority in [Name of the Utility] due to deputation with the Distribution Franchisee.
- 12.6** 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.

12.7 However, Distribution Franchisee’s employees shall not become either permanent or contract employees of [Name of the Utility] at any point in 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 a right to claim employment with [Name of the Utility] 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. [Name of the Utility] will not be responsible or liable for the claims raised by the employees of the Distribution Franchisee and the Distribution Franchisee shall indemnify [Name of the Utility] in respect thereof.

ARTICLE 13: REPORTING AND AUDIT

13.1 Reporting

The Distribution Franchisee shall furnish to [Name of the Utility] the following information as per schedule stated therein:

13.1.1 Distribution Franchisee shall be required to submit data regarding billing, collection, electricity duty and Security Deposit collected on account of new connections. Distribution Franchisee shall provide consumer-wise information in the format specified by [Name of the Utility] detailing the billing, collection and all related information on a monthly basis every month by a mutually agreed date. Such information shall be kept confidential by [Name of the Utility] and shall be used only under conditions of default by Distribution Franchisee under the Distribution Franchisee Agreement.

13.1.2 For the initial stabilization period, Such data shall be submitted as per schedule below:

Days from Effective Date	Information to be submitted on Day
1-27	30
28-42	45
43-57	60
58-60	63

13.1.3 After the initial stabilization period, the above information shall be submitted as per the respective billing cycle and shall be submitted to [Name of the Utility] not later than three days after the end of the billing cycle as per Article-7.1.

- 13.1.4 Distribution Franchisee shall be required to update the asset register and submit the same to [Name of the Utility] on a quarterly basis for the first year and thereafter on a monthly basis within 30 days after the end of respective periods.
- 13.1.5 Distribution Franchisee shall generate periodic Management Information System (MIS) and Monitoring Reports as required by [Name of the Utility] and [Name of the State Regulatory Commission] in the formats to be prescribed by [Name of the Utility]/ [Name of the State Regulatory Commission] from time to time after execution of the Distribution Franchisee Agreement and communicate them to [Name of the Utility] through email.
- 13.1.6 Distribution Franchisee shall submit detailed inventory status reports on an annual basis for all inventories within the Franchise Area.
- 13.1.7 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 [Name of the Utility] upon Expiry/termination subject to applicable permissions. [Name of the Utility] 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.
- 13.1.8 Distribution Franchisee shall notify [Name of the Utility] of any Major Incident affecting any part of the Distribution System that has occurred and shall at the earliest possible and in any event, by no later than fifteen (15) days or such period as may be extended by [Name of the Utility] from the date of such Major Incident. Distribution Franchisee shall also submit a report to [Name of the Utility] giving full details of the facts within the knowledge of the Distribution Franchisee regarding the incident and its cause.
- 13.1.9 Distribution Franchisee shall provide to the [Name of the Utility] within reasonable time such further particulars and information as may be required by [Name of the Utility] relating to the implementation of this Agreement for providing the same to the [Name of the State Government] 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 yearly audit of assets, inventories, billing data including the system, database and consumer service centres operated within the scope of the Franchise area by [Name of the Utility]. 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 quarterly 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)
- 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 quarterly basis)
- 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)
- 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. (At the time of take over and thereafter on quarterly basis)
- g) The auditor shall review 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. (At the time of take over and thereafter on quarterly basis)

13.2.2 [Name of the Utility] 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.

13.2.4 [Name of the Utility] reserves the right to conduct the physical verification of the Distribution Assets belonging to [Name of the Utility] 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 Agreement Representative.

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

ARTICLE 14: INDEMNIFICATION

Indemnity

14.1 The Distribution Franchisee during the term of this Agreement shall indemnify, defend and hold [Name of the Utility] harmless against:

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

- 14.1.2 Claims against [Name of the Utility] made by any third party for any act of commission or omission by Distribution Franchisee, Distribution Franchisee shall indemnify and hold [Name of the Utility] harmless and compensate all the losses so caused to [Name of the Utility]. [Name of the Utility] 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. [Name of the Utility]/ 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 [Name of the Utility] 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
- 14.1.6 Non-compliance of the Laws, Regulations, Orders and Directives of [Name of the State Regulatory Commission] 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 [Name of the Utility] shall indemnify, defend and hold the Distribution Franchisee harmless against:
- 14.2.1 Acts of commission or omission in the Franchise Area by [Name of the Utility] prior to the Effective Date of this Agreement.
- 14.2.2 Third party claims on account of [Name of the Utility] Distribution Assets as on Effective Date, for a period of six 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 [Name of the Utility] during the said period of six 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 as soon as reasonably practicable after the 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 14.2.1(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. 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 in its own name.

15.2 The Distribution Franchisee shall also obtain and keep in effect all Insurances required under laws of India.

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 [Name of the Utility] 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 and performance guarantee as per the Article 11 of this Agreement.
- d) Failure to maintain minimum service quality due to inadequate network investments

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. The Distribution Franchisee is indulging in any malpractice or corrupt practice or fraudulent practice(s).
- g. Sale of Input energy in the Franchise Area to any party outside the Franchise Area.
- h. 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 [Name of the Utility] 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 [Name of the State Regulatory Commission] 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 [Name of the State Regulatory Commission] “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 [Name of the State Regulatory Commission] “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 [Name of the Utility] 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 [Name of the Utility] 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.

16.2 [Name of the Utility] 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 [Name of the Utility] Event of Default:

a) Critical Event of Default

[Name of the Utility] does not ensure the supply of power to Distribution Franchisee of acceptable quality standards as per Article 5.4 above 90% of entitled pro-rata quantity as per article 5.4.1 for a period of six days in a calendar month.

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 [Name of the Utility], [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility] Event of Default

- 16.4.1 On the occurrence of Event of Default by [Name of the Utility], the Distribution Franchisee shall issue an Event of Default notice to [Name of the Utility].
- 16.4.2 [Name of the Utility] shall eliminate/ mitigate consequences of such Event of Default within a period of 60 days.
- 16.4.3 In case [Name of the Utility] is unable to eliminate/ mitigate the consequences of Event of Default, a preliminary notice of termination may be served by the Distribution Franchisee to [Name of the Utility], elaborating the Event of Default by [Name of the Utility].
- 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 [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility] in case of termination, Distribution Franchisee shall pay all the dues payable to [Name of the Utility] on the date of termination. Distribution Franchisee shall pay dues to third parties only after the payment of all [Name of the Utility] dues.
- b) [Name of the Utility] has right to make good any shortfall from the performance guarantee.
- c) [Name of the Utility] 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 [Name of the Utility] 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.
- e) The Distribution Franchisee shall furnish a certificate of Non encumbrance to claim the amount due to him as per provisions of Article-5.2.

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

16.6 Step In Rights of [Name of the Utility]

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

- a) [Name of the Utility] 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) [Name of the Utility] shall have the right to invoke the Bank Guarantee against the Security Deposit furnished by the Distribution Franchisee to recover all its dues and outstanding amounts.
- c) The Distribution Franchisee shall transfer all the Fixed Assets brought in as a part of the New Capital Expenditure in the Franchise Area in accordance with the Article-5.2.

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

- a) [Name of the Utility] or its Designate(s) shall be entitled to immediately enter any and/or all of the Site(s) and operate the Distribution System.
- b) [Name of the Utility] 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 [Name of the Utility].
- c) [Name of the Utility] shall invoke the Performance Guarantee and 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 [Name of the Utility].
- e) All Capital (Moveable and Immoveable) Assets of the Distribution Franchisee brought in the Franchise Area in accordance with Article 5.2 shall stand transferred to [Name of the Utility].
- f) However, the liability of meeting the repayment obligations on account of financing arrangements for such assets shall lie with the Distribution Franchisee.

16.6.3 Step-in Rights of [Name of the Utility] 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, [Name of the Utility] shall have a right to step-in the Franchise Area and restore electric supply services. The costs and expenses incurred for restoration by [Name of the Utility] shall be borne by the Distribution Franchisee.

16.7 Mode of Expiry Payment

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

- a) Depreciated Value of capital assets worked out as per Article-5.2;
- b) Value of current assets worked out as per Article-5.3;
- c) Arrears accrued in the last one-month prior to Expiry as per Article-8.11.

16.7.2 An amount equal to 70% of the depreciated value of capital assets on Expiry Date worked out as per the audit conducted at the end of [Year immediately preceding the last year of the contract] contract year shall be released to the Distribution Franchisee not later than 15 days from the Expiry Date upon furnishing of a certificate of non-encumbrance by the Distribution Franchisee and from the bankers of the Franchisee.

16.7.3 The balance payment on account of capital assets after accounting for deviations shall be released on completion of physical verification and auditing but not later than 60 days from expiry subject to fulfillment of all of the following:

- (i) Such Assets have been physically verified by the Joint Audit Team of [Name of the Utility] and the Distribution Franchisee and have been found to be in working order. The verification shall be completed within one month after Expiry of the agreement. In case of shortfalls, the non disputed amount shall be released promptly.
- (ii) The Distribution Franchisee has furnished a Certificate of Non-encumbrance issued both by the Franchisee as well as its bankers in respect of such Distribution Assets.
- (iii) The title and possession of such assets has been transferred to [Name of the Utility].

16.7.4 The payment for current assets due to the Distribution Franchisee shall be released not later than 60 days from Expiry date.

16.7.5 [Name of the Utility] shall make payment towards arrears accrued one month prior to the Expiry after such an amount has been jointly determined and agreed by [Name of the Utility] and Distribution Franchisee. The liability of [Name of the Utility] shall be limited to making payment of 90% of such amount within 60 days of such joint determination.

16.7.6 All the above payments shall be released after deductions on account of any outstanding amount towards [Name of the Utility], if any.

16.8 Mode of Termination Payment in case of [Name of the Utility] Event of Default

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

- i) Depreciated Value of capital assets worked out as per Article-5.2;
- ii) Value of current assets worked out as per Article-5.3;
- iii) Arrears accrued in the last one-month prior to termination as per Article-8.11

16.8.2 An amount equal to 50% of the depreciated value of capital assets on Termination date worked out as per the audit conducted at the end of last contract year shall be released to the Distribution Franchisee not later than 15 days from the Termination Date upon furnishing of a certificate of non-encumbrance by the Distribution Franchisee and from the bankers of the Franchisee.

16.8.3 The balance payment on account of capital assets after accounting for deviations shall be released on completion of physical verification and auditing but not later than 60 days from Termination Date subject to fulfillment of all of the following:

- (i) Such Assets have been physically verified by the Joint Audit Team of [Name of the Utility] and the Distribution Franchisee and have been found to be in working order. The verification shall be completed within one month after Termination of the agreement. In case of shortfalls, the non-disputed amount shall be released promptly.
- (ii) The Distribution Franchisee has furnished a Certificate of Non-encumbrance issued both by the Franchisee as well as its bankers in respect of such Distribution Assets.
- (iii) The title and possession of such assets has been transferred to [Name of the Utility].

16.8.4 The payment for current assets due to the Distribution Franchisee shall be released not later than 60 days from Termination date.

16.8.5 [Name of the Utility] shall make payment towards arrears accrued one month prior to such Termination after such an amount has been jointly determined and agreed by [Name of the Utility] and Distribution Franchisee. The liability of [Name of the Utility] shall be limited to making payment of 90% of such amount within 60 days of such joint determination.

16.8.6 All the above payments shall be released after deductions on account of any outstanding amount towards [Name of the Utility], if any

16.9 Mode of Termination Payment in case of Distribution Franchisee Event of Default

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

- a) Depreciated Value of capital assets worked out as per Article-5.2;
- b) Value of current assets worked out as per Article-5.3;
- c) Arrears accrued in the last one-month prior to Expiry as per Article-8.11.

16.9.2 An amount equal to 50% of the depreciated value of capital assets on Termination date worked out as per the audit conducted at the end of last contract year shall be released to the Distribution Franchisee not later than 15 days from the Termination Date upon furnishing of a certificate of non-encumbrance by the Distribution Franchisee.

16.9.3 The balance payment on account of capital assets after accounting for deviations shall be released on completion of physical verification and auditing but not later than 60 days from Termination Date.

16.9.4 The payment for current assets due to the Distribution Franchisee shall be released not later than 60 days from Termination date.

16.9.5 The payment for arrears accrued in the last one month prior to expiry shall be released not later than 90 days from the Termination date.

16.9.6 All the above payments shall be released after deductions on account of any outstanding amount towards [Name of the Utility], if any.

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 [Name of the State].

17.1.2 Any dispute arising out of compliance/ non-compliance of this Agreement shall be exclusively under the jurisdiction of court at [Name of the Place].

17.1.3 Disputes between the consumers in the Franchise Area and [Name of the Utility] 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 Thirty (30) 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, [Name of the Utility] 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, in connection with or with respect to this agreement, the subject matter hereof, the performance or nonperformance of any obligation hereunder, which cannot be resolved by negotiation between the Parties and the Dispute Resolution procedure as stated in the foregoing Articles, shall be exclusively submitted to arbitration at the request of either party upon written notice to that effect to the other party and. The proceedings shall be conducted subject to the provisions of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) by a panel consisting of three arbitrators.

17.2.6 While submitting the dispute or difference to arbitration in accordance with this Article the Party so submitting shall, in its notice, specify the name of one arbitrator appointed by it. Within 30 (thirty) days of the receipt of notice, the other Party shall appoint an arbitrator. The third arbitrator (who will act as the chairman) shall be nominated by the two arbitrators appointed as aforesaid or, failing such nomination within 30 (thirty) days of the appointment of the second arbitrator, shall be appointed in accordance with the Arbitration & Conciliation Act, 1996.

17.2.7 The language of the arbitration shall be English. The venue of Arbitration shall be [Name of the Place].

17.2.8 The arbitration award shall be in writing. The arbitrators shall also decide on the costs of the arbitration proceedings.

17.2.9 The Parties agree that the award of the arbitrators shall be final and binding upon the Parties.

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.

17.3 Disputed Payments

17.3.1 An invoice raised by [Name of the Utility] 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 [Name of the Utility] within the stipulated time. Cases of excessive billing, if any, during the last three months shall be jointly identified by the [Name of the Utility] and DF and shall be referred to the high level committee envisaged under Annexure – 5 '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, [Name of the Utility] shall within 7 days of settlement of such dispute refund the excess amount.

17.3.3 The information submitted by Distribution Franchisee and forming a basis for the Invoice can also be disputed by [Name of the Utility].

17.3.4 In case the dispute is resolved in the favour of [Name of the Utility], the Distribution Franchisee shall within 7 days of settlement of such dispute refund the additional amount.

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 No Party shall be liable to the other Parties if, and to the extent, that the performance or delay in performance of any of its obligations under this Agreement is prevented, restricted, delayed or interfered with due to occurrence of any event of force Majeure beyond the parties control, which cannot be reasonably forecast or prevented, thereby, hindering the performance by the parties of any of their obligations hereunder. The Party claiming an event of force majeure shall promptly notify the other Parties in writing, and provide full particulars of the cause or event and the date of first occurrence thereof as soon as possible after the event and also keep the other Parties informed of any further developments. The Party so affected shall use its best efforts to remove the cause of non-performance, and the Parties shall resume performance hereunder with the utmost dispatch when such cause is removed. For the purpose of clarity, the Parties agree that the failure of a Party to adhere to any statutory or regulatory requirement or to obtain necessary approvals shall not be deemed to be a force majeure situation. A condition of force majeure shall not relieve any Party of any obligation due under this Agreement prior to the event of force majeure.

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.

ARTICLE 19: MISCELLANEOUS PROVISIONS

19.1 [Name of the Utility] 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.

[Name of the Utility] 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 Engineer-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 Engineer-in-charge shall be of the rank of Chief Engineer or equivalent and above from [Name of the Utility] 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 them. The Agreement Representative shall be of the rank of Executive Director or equivalent and above 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 [Name of the Utility]. All these systems must be in compliance with Regulatory and Licensee conditions. [Name of the Utility], 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 [Name of the Utility] 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 charge on its gross margin i.e. the revenue realizations less the amount payable to [Name of the Utility] as per the regular invoices. 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 [Name of the Utility] assets for any other use except for distribution of electricity and activities concerned with the subject of this Franchisee
- 19.10 [Name of the Utility] at the request of the Distribution Franchisee shall pursue with the relevant agencies for the augmentation of EHV line and transformer capacity for Franchise Area.
- 19.11 [Name of the Utility] shall mark a copy of the Directives received by it under applicable laws, Regulations and Directives of [Name of the State Regulatory Commission], 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 [Name of the Utility]

Engineer in Charge:

Chief Engineer Phone:

Fax:

E-Mail:

Agreement Representative:

Phone:

Fax:

E-Mail:

For Distribution Franchisee:

Engineer-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.

[Name of the Utility] 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
[Name of the Utility]

For and on behalf
[M/s (Insert name of Distribution Franchisee)]

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

20.	List of Annexure (1-8)	
A.	Annexure 1: Brief description of Franchisee Area	
B.	Annexure 2: Methodology for energy audit	
C.	Annexure 3: Specifications of consumer service center	
D.	Annexure 4: Schedule of Annualized Energy Input Rates	
E.	Annexure 5 : Procedure for recovery of arrears	
F.	Annexure 6 : Deputation Rules of [NAME OF THE UTILITY]	
G.	Annexure 7: Format of Performance Bank Guarantee	
H	Annexure-8: Notification Of Electricity Duty	

A. ANNEXURE-1: BRIEF DESCRIPTION OF FRANCHISE AREA

Table 1: Organisational Structure

S. No.	Name of the Division	Particulars of Sub Divisions
1		
2		
3		

Table 2: Distribution Infrastructure Summary

Particulars	Units	Particular
No. of EHV Sub-station	Nos.	
33 kV Input Points	Nos.	
11 kV Input Points	Nos.	
33 kV Input Points (Cross Over)	Nos.	
Total Input Points	Nos.	
33 kV Substations	Nos.	
33 kV Substations Capacity	MVA	
11 kV Switching Stations	Nos.	
33 kV Feeders	Nos.	
11 kV Feeders	Nos.	
33 KV Lines		
Over head Line	Km	
Under Ground	Km	
Total	Km	
11 KV Lines		
Over head Line	Km	
Under Ground	Km	
Total	Km	
L.T. Lines		
Over head Lines	Km	
Under Ground	Km	
Total	Km	

Particulars	Units	Particular
Poles		
33 KV Lines	Nos.	
11 KV Lines	Nos.	
L.T. Lines	Nos.	
Total	Nos.	
11 KV/433 V DTC	Nos.	

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

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

B. ANNEXURE-2: METHODOLOGY FOR ENERGY AUDIT

	Sr. No.	Column Name	Description	Source of data	Remarks
Energy Input	1	Dist.	Energy sent to franchisee area from EHV substations on 66 kV, 33kV, 11kV feeders as applicable	Joint Meter Readings by [Name of the Utility] and the Distribution Franchisee	
	2	Other input at distribution level	Energy input other than non-EHV source like CPPs, IPPs, NCE generation sources, small hydro etc.	Distribution Franchisee	
	3	Cross-over, applicable if	Energy exchange between adjacent circles/divisions	Distribution Franchisee	Only mutually agreed transactions considered. Every import must have corresponding export and vice-versa.
Total input Energy	4	Sum of 1 to 3			
Metered Billing	5 (i) to 5 (n)	HT and LT	Category-wise Sales to Consumers	Distribution Franchisee	
	6	Total Metered Energy	Sum 5 (i) to 5 (n)		
	7	Percentage of Metered Billing w.r.t. Input Energy	$6/4 \times 100$		
Unmetered Energy	8 (i) to 8 (xiv)	Unmetered Load in HP as on -----.	Category-wise Connected Load of all Unmetered consumers in HP for the Franchise Area as on end of latest quarter	Distribution Franchisee	

	Sr. No.	Column Name	Description	Source of data	Remarks
	9 (i) to 9 (n)	KWh/ HP/ Month	Category-wise Index derived from metered consumption of the respective category for the zone	Distribution Franchisee	
	10 (i) to 10 (n)	Consumption	Category-wise multiplication of 8 & 9		
	11	Total Unmetered Energy	Sum 10 (i) to 10 (n)		
	12	% Unmetered energy w.r.t. Input Energy	$(11/4) \times 100$		
Total Energy Sales	13		6+11		
Loss	14		4-13		
Loss in percentage	15		$(14/4) \times 100$		

Note: 'n' is the number of consumer categories.

C. ANNEXURE-3: 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

D. ANNEXURE-4: SCHEDULE OF ANNUALISED INPUT RATES

S No	Commencing Year from effective Date	Energy Input (MUs)	Input Energy Rate (Rs/ Unit)
1	1		
2	2		
3	3		
4	4		
5	5		
6	6		
7	7		
8	8		
9	9		
10	10		
11	11		
12	12		
13	13		
14	14		
15	15		
16	16		
17	17		
18	18		
19	19		
20	20		

E. ANNEXURE-5: PROCEDURE FOR RECOVERY OF ARREARS

- 1) A high level committee comprising independent external legal, financial and technical experts shall be constituted by [Name of the Utility] 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 [Name of the Utility] 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 [Name of the Utility].
- 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 [Name of the Utility].
 - 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 Utility] in the Consumers' bill so as to effectively continue the claim of [Name of the Utility] 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 [Name of the Utility].

F. ANNEXURE-6: DEPUTATION RULES OF [Name of the Utility]

G. ANNEXURE-7: PERFORMANCE 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. _____ Urban 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 no 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. 15 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__

H. ANNEXURE-8: NOTIFICATION OF ELECTRICITY DUTY