

**Southern Electricity Supply Company of Orissa Ltd
(SOUTHCO)**

Request for Proposal

For

Appointment of Distribution Franchisee

for

**Buguda and Bellaguntha Sub Division under Bhanjanagar
Electrical Division, Bhanajanagar and may be extended to other
areas**

Bid Specification No. DF-003/2007-08

Issued by

Dy. General Manager (Commerce)

MARCH-2008

**Southern Electricity Supply Company of Orissa Limited
Corporate Office : Courpeta, Brahampur, Dist.: Ganjam
Pin-760004, Orissa**

Bid specification for Appointment of Distribution Franchisee for Buguda, Bellaguntha, Sub Division and may be extended to other identified Sub Division of SOUTHCO

Request for Proposal

This bid document, containing **Request for Proposal** "RFP" along with Exhibits/ Annexures as per index is issued to -

M/s. _____

Notes/ Disclaimer:

1. This document is not transferable.
2. Though adequate care has been taken while preparing and issuing the RFP, the Bidder should satisfy himself that documents are complete in all respects.
3. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received by this office, from any Bidder within ten days from the date of issue of this document, it shall be considered that issued document complete in all respects has been received by the Bidder.
4. Neither SOUTHCO, 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, on which the RFP is based, or any other information or representations supplied or made in connection with the Selection Process.
5. The RFP is not intended to provide the basis of any investment decision and each prospective Bidder must make its own independent assessment in respect of the Project. No person has been authorized by SOUTHCO to give any information or to make any representation not contained in the RFP.
6. Nothing in the RFP should be relied on, as a promise or representation as to the future.
7. SOUTHCO or its authorized officers reserve the right, without prior notice, to change the procedure for the identification of the Selected Bidder or terminate discussions and the delivery of information at any time before the signing of any agreement for the Project without assigning any reasons thereof.
8. Neither SOUTHCO nor its employees or consultants will have any liability to any prospective Bidder or any other person under law, equity or contract, or otherwise for any alleged loss, expense or damage which may arise from, or be incurred or suffered in connection with anything contained in the RFP, any matter deemed to form part of the RFP, the award of the Project, the project information and any other information supplied by or on behalf of SOUTHCO or their employees, any consultants or otherwise arising in any way from the selection process for the Project.
9. SOUTHCO reserves the right to change, modify, add to or alter the Selection Process including inclusion of additional evaluation criteria.
10. SOUTHCO reserves the right to change, modify or alter any or all the provisions of this document. Such a change would be intimated to all parties procuring this document.
11. SOUTHCO reserves the right to reject any or all of the Bids submitted in response to the RFP at any stage without assigning any reasons whatsoever.

Confidentiality:

The parties agree that this RFP document is not confidential.

Issued By:

Dy. General Manager(Commerce)
Southern Electricity Supply Company of Orissa Ltd.
Place: Brahmapur
Date:

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1. Definitions and Abbreviations

1.1 Definitions

For the purpose of this document and all annexure attached hereto, 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.

Affiliate

Shall mean in relation to any party, a person that controls, is controlled by or is under the common control with such party. As used in this definition the term "control" means, with respect to a person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such person, and, with respect to a person that is not a corporation, the power to direct the management or policies of such person, whether by operation of law, contract, or otherwise;

Average Revenue Realisation

Shall mean the total revenue collected per unit energy supplied by SOUTHCO at Input Points on annualised basis. The same shall be computed as:

Average Revenue Realisation = (Total Revenue Collected during the period) / (Total energy input during the period)

Base Year

Shall mean the financial year, which has registered the maximum Average Revenue Realisation per unit of energy injected in Sub Division at Input Point between FY 2006-07(Jan-07 to March-07) and FY 2007-08(Apr- 07 to Dec-07)

Bid

Shall mean the Technical Proposal and Financial Proposal submitted in response to this RFP issued by SOUTHCO.

Bidder

Shall mean the Bidding Company or Bidding Consortium.

Bidding Company

Shall mean a single corporate entity bidding for the Project

Bidding Consortium

Shall mean a group of corporate entities bidding for the Project

Collection Efficiency

For a particular period shall mean the ratio of revenue actually realized from consumers in that period (exclusive of ED) and amount of energy billed to consumers in that period in percentage terms and shall be calculated as below:
Collection Efficiency= (Revenue realized from consumers / Amount of Energy Billed to consumers)*100

Consumer

Means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Electricity Act'2003 or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

Complaint

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

Distribution

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

Distribution Assets

Shall mean all the assets employed by Distribution Licensee in the Franchise Area for distribution of electricity.

Distribution Licensee

Shall mean the Southern Electricity Supply of Company Orissa Limited "SOUTHCO" and its successors and permitted assigns.

Distribution Losses

For a particular period shall mean the difference between energy supplied at the Input Points for the period and Energy Billed to consumers for the period in percentage terms and shall be computed as below: *Distribution Losses= (Energy Intake at Input Points- Energy Billed to consumers)/ (Energy Intake at Input Points)*100*

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.

Effective Date

Shall mean the date on which the DFA is signed by both the Parties and date of handing over of the business operations of Franchise area by SOUTHCO to the Distribution Franchisee.

Encumbrance

Means any mortgage, charge, standard security, assignment or assignation by way of security, right of possession or other form of security interest.

Expiry Date

Shall mean the 3rd anniversary of the effective date.

Distribution Franchisee

Shall mean a successful Bidder appointed by SOUTHCO to act as an agent of SOUTHCO to distribute electricity in the Franchise Area.

Distribution Franchisee Agreement “DFA”

Shall mean the agreement to be entered into by the successful bidder and SOUTHCO

Franchise Area

Shall mean the area as mentioned in Section 2 of the RFP in respect of which Distribution Franchisee shall act as an agent of SOUTHCO

Input Point

Shall mean the Substation/feeder as specified in Section 2.3.2 and any such point of interconnection from which crossover facility may be provided.

Input Rate

Shall mean Rupees per unit of electricity supplied by SOUTHCO at the Input Point, and shall be quoted by the Bidder.

Law

Means, in relation to this agreement, all laws and electricity 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 OERC.

Lead Partner

Shall mean a Member Company of the Bidding Consortium, which is in charge of carrying out the Project and has an equity stake not less than 25% in the Bidding Consortium and has been duly authorised to lead the Bidding Consortium by the Member Companies.

Member Company

Shall mean each corporate entity in the Bidding Consortium

OERC

Shall mean the Orissa Electricity Regulatory Commission, or its successors, administrators and permitted assigns;

SOUTHCO

Shall mean the Southern Electricity Supply Company of Orissa Limited, Company registered under the Companies Act'1956 having its registered office at Plot No.-123, Sector-A, Zone-A ,Mancheswar Industrial Estate,Bhubaneswar-751010 and shall also include its successors and permitted assigns.

Parties

Shall mean a reference to selected Bidder and SOUTHCO 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 distribution of electricity and related activities in the Franchise Area as a Distribution Franchisee of SOUTHCO in accordance with the requirements set forth in the RFP

Promoters

Shall mean only those corporate entities/ Persons 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 a Promoter.

Request for Proposal “RFP”/ Document

Shall mean this document including all Exhibits/ Annexures and amendments, if any, 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 5.2 of this Document.

Financial Proposal

Shall mean the proposal of the Bidder setting out the Input Rate for energy injected by SOUTHCO at the Inputs Points in the Franchise Area and other details as set out in Clause 5.3 of this Document.

The words used in this document shall carry the same meaning as defined herein. Any word, phrase not defined here shall carry the meaning as is usually connoted in trade parlance or as is defined under the prevalent electricity laws.

1.2 Abbreviations

Crore	:	Number equivalent to 10 million or 100 lakh
CP	:	Corporate Planning
CPF	:	Contributory Provident Fund
D/B	:	Distribution Box
DF	:	Distribution Franchisee
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
KM	:	Kilometer
kV	:	Kilo Volt
LoI	:	Letter of Intent
LT	:	Low Tension
OERC	:	Orissa Electricity Regulatory Commission
MOU	:	Memorandum of Understanding
OSEB	:	Orissa State Electricity Board
GRIDCO	:	Grid Corporation of Orissa Ltd.
OPTCL	:	Orissa Power Transmission Corporation Ltd.
MUs	:	Million Units
O & M	:	Operation & Maintenance
PD	:	Permanently Disconnected
RFP	:	Request for Proposal
Rs.	:	Indian Rupees
SCC	:	Service Connection Charge
SD	:	Security Deposit
SLC	:	Service Line Charge
STU	:	State Transmission Utility
T&D	:	Transmission and Distribution
T/F	:	Transformer

2. Introduction

2.1 The Electricity Act

2.1.1 The Government of Orissa by Order No.1523 Bhubaneswar, dated 25.11.98, has made a Transfer Scheme where in the transfer of the Distribution undertakings of the Orissa State Electricity Board/ GRIDCO are transferred to four DISCOM's. Accordingly, the SOUTHCO is conducting its business of distribution and retail supply, being given a license No.2/99 as Licensee, in the area of Southern part of Orissa.

2.1.2 **SOUTHCO**, in an endeavor to improve operational efficiencies, and the quality of services provided to its consumers, seeks to bring in management expertise through public-private participation, in the distribution of electricity.

2.2 Relevant proviso of the Electricity Act

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

2.2.2 The proviso to Section 14 of the Electricity Act 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 license from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply"*

2.2.3 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 any separate license from the concerned State Commission.

2.3 Brief description about the Franchise Area

2.3.1 The Franchise Area shall be the Buguda and Bellaguntha Sub Division under Bhanjanagar Electrical Division, Bhanjanagar and may be extended to other Sub Divisions as identified by SOUTHCO and notified subsequently.

2.3.2 The feeder shall form the Input Point for injection of electricity in the Sub Division. The brief description of existing distribution network as on 31st January 2008 in Franchise Area is Annexed as Annexure-1.

2.3.3 As on 31st January 2008, the number of consumers in the Franchise and the consumer mix is given in the Annexure-1.

2.3.4 The load data as on 31st January 2008 for the Franchise Area is given below:

Sl. No.	Name of the Sub Division	Connected Load in KW
1.	Buguda	9846.43
2.	Bellaguntha	11175.01

2.3.5 Financial data related to energy input at Input Point, units and revenue billed, revenue collected for financial year FY 2006-07(Jan-07 to March-07) and FY 2007-08(Apr-07 to Dec-07) is given as Annexure-2

2.4 Objectives of the Project

2.4.1 SOUTHCO's objectives of appointing a Distribution Franchisee in the Franchisee area are:

- 2.4.1.1 To minimise aggregate Distribution and commercial losses
- 2.4.1. 2 To bring about improvements in Metering, Billing and Revenue Collection
- 2.4.1.3 To minimise Current Assets on account of arrears.
- 2.4.1.4 To enhance customer satisfaction level by improving quality of service
- 2.4.1.5 To provide stable, reliable and quality power supply to consumers.

2.4.2 The selection of interested parties shall be through a transparent bidding process.

3. Project Description

3.1 Salient Features of the Project

3.1.1The project encompasses activities relating to distribution of power, as mentioned in the clause 3.2, to the existing/ future consumers in the Franchise Area and all related activities subject to the terms and conditions as stipulated from time to time by SOUTHCO and OERC.

3.2 Brief Roles and Responsibilities of Distribution Franchisee

3.2.1 General Responsibilities

- 3.2.1.1 Undertaking all the liabilities and performing all obligations of the Distribution Licensee in the Franchise Area as stipulated in Electricity Act, 2003 and corresponding regulations as if they were to apply to the Distribution Franchisee;
- 3.2.1.2 Discharging all duties and responsibilities as applicable, on behalf of SOUTHCO as per the terms and conditions of the License given by OERC;

3.2.1.3 Undertaking any other activity as may be notified from time to time by OERC to Distribution Licensee;

3.2.1.4 Complying with all the directives issued from time to time by OERC and directives issued by SOUTHCO for compliance of the same;

3.2.2 Distribution Responsibilities

3.2.2.1 Undertake the supply and distribution of power to the Consumers of SOUTHCO in the Franchise Area.

3.2.2.2 Issue of new connections i.e. conduct inspections, conduct assessment of charges and get them audited form SOUTHCO, intimation of charges to Consumer and provide supply.

3.2.2.3 Compliance with the Indian Electricity Rules, 1956, OERC's Standards of Performance Regulations, 2004, Orissa Electricity Dist.(Conditions of Supply) Code,2004 and Directives of OERC.

3.2.2.4 Maintaining the existing distribution network/ systems/ assets as per Prudent Utility Practices and the standards that may be prescribed by OERC;

3.2.2.5 Monitoring of Distribution Network in the Franchise Area.

3.2.3 Repair and Maintenance Responsibilities

3.2.3.1 Undertaking all operation, maintenance and repair related activities in the Franchise Area;

3.2.3.2 Maintaining the existing Distribution network and conducting the necessary repairs in conformance with the OERC Standards of Performance Regulations, 2004.

3.2.3.3 The Distribution Franchisee shall establish a site store for the O&M spares. The Distribution Franchisee shall at all times, maintain a minimum level of Inventory of Current Assets, as prescribed by SOUTHCO.

3.2.4 Commercial Responsibilities

3.2.4.1 Undertaking reading of meters, generating the bills at the Spot, distribution of the same and payment collection from the consumers in the Franchise Area.

3.2.4.2 Remitting the collection from consumers to SOUTHCO as per the terms and conditions of the clause on Payment and Collection in the annexed Principles of the Distribution Franchisee Agreement;

- 3.2.4.3 Collection of Arrears as an agent of SOUTHCO and remission of the same as per terms and conditions of the DFA.
- 3.2.4.4 Establishing a Consumer Service Centre for handling consumer complaints.
- 3.2.4.5 Redressal of commercial and billing complaints.
- 3.2.4.6 Initiating necessary action, in accordance with the Electricity Act 2003, to prevent the theft of power, interference with meters and extinguishing public lamps, theft of electric lines and material etc.;
- 3.2.4.7 Alloting new connections and carrying out all necessary activities for release of the same.
- 3.2.4.8 Administering and maintaining the ongoing contracts, if required by the Distribution Franchisee, entered into by SOUTHCO. Alternatively, Distribution Franchisee may cancel the ongoing contract and enter into new contracts. However, any liability arising out of the continuance or cancellation of such contracts shall not be borne by SOUTHCO.

3.2.5 Reporting

- 3.2.5.1 Providing Billing and Collection data to SOUTHCO on a daily basis.
- 3.2.5.2 Generating Management Information System (MIS) periodically and monitoring reports in prescribed formats and online communication of the same to SOUTHCO;
- 3.2.5.3 Carrying out energy audit on monthly basis and submit the report of the same to SOUTHCO.
- 3.2.5.4 Carrying out periodical demand estimation / load forecasting and apprising SOUTHCO of the same;

3.3 Brief Responsibilities of SOUTHCO

3.3.1 Supply to the Franchise Area

- 3.3.1.1 SOUTHCO shall supply the power at Input Points as per its aggregated power supply and load shedding schedule planned periodically, based on directives issued by OERC on load shedding and availability of EHV transmission capacity at Input Points.
- 3.3.1.2 SOUTHCO shall communicate to Distribution Franchisee any shortfall or inability to supply the scheduled power requirements of the Distribution Franchisee.

- 3.3.1.3 In case of a major outage in the Franchise Area, SOUTHCO at its own discretion may provide crossover facilities from its other feeders in the Franchise Area.

3.3.2 Repair and Maintenance

- 3.3.2.1 SOUTHCO shall carry out Operation and Maintenance of the primary substation feeding the Franchise Area.

- 3.3.2.2 SOUTHCO shall also issue the Major O&M Spares for Repair Work, Routine Maintenance, New connections and maintenance of minimum inventory levels to the Distribution Franchisee limited to the following items, provided, however that, the dismantled material shall be deposited to SOUTHCO wherever applicable:

- a. All cables/ wires above the size of 10 Sq. mm
- b. All HT Network spares
- c. All types of meters including new connections and replacements
- d. Electric Poles
- e. Distribution Transformers and associated switchgear .The Rest of items required for Operation, Maintenance, Issue of new connections, Maintenance of minimum inventory shall be brought in by the Distribution Franchisee at its own cost.

SOUTHCO shall maintain the roll out of stock as per the OERC guidelines.

3.3.3 Capital Expenditure

- 3.3.3.1 SOUTHCO shall plan and carry out capital expenditure in the Franchise Area.

- 3.3.3.2 SOUTHCO shall install meters at Input Points and at appropriate locations to enable energy auditing.

- 3.3.3.3 In case SOUTHCO decides and Franchisee agrees or Franchisee suo mottu offers any type of investment in the specified areas, Franchisee may be allowed to infuse capital (in full or part) for any specific scheme or purpose on mutually agreed terms of investment.

3.3.4 Commercial Responsibilities

- 3.3.4.1 Making the payment to the Distribution Franchisee as per terms and conditions of the principles of DFA.

- 3.3.4.2 Audit of applications of new connections.

- 3.3.4.3 Carrying out the meter reading jointly with DF on a monthly basis at Input Point of the Franchise Area.

3.3.5 Miscellaneous

- 3.3.5.1 Undertaking Inspection and the required procedure for scrapping of unserviceable assets from the Franchise Area.

3.4 Term of Franchise:

The term of the Distribution Franchisee shall be initially for a period of three years from the Effective Date.

3.5 Distribution Franchisee Agreement “DFA”

- 3.5.1 SOUTHCO shall enter into an agreement with the Distribution Franchisee. This agreement shall govern all transactions under such arrangement between the successful bidder and SOUTHCO. Principles of DFA have been annexed herewith and marked as Annexure 4. However, SOUTHCO reserves the right to make any changes to the Annexure 4 before the DFA is signed by the Parties.

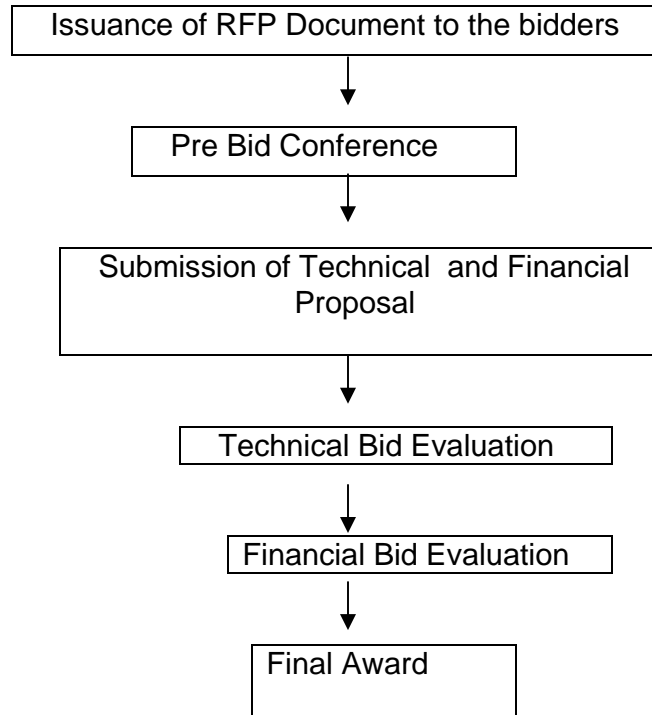
4. Selection Process

4.1 Bidding Process

The bidding process would mainly consist of the following stages:

- 4.1.1 Issuance of RFP document.
- 4.1.2 Pre-bid conference.
- 4.1.3 Submission of Technical and Financial Proposal
- 4.1.4 Technical Bid Evaluation
- 4.1.5 Financial Bid Evaluation
- 4.1.6 Award of Contract.

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



- 4.2 SOUTHCO 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 franchise arrangement in order to assist them in formulation of their Bids.
- 4.3 A Pre-Bid Conference shall be held by SOUTHCO 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.
- 4.4 The bidders shall submit Technical and Financial Proposal in response to the RFP document on the date as indicated in the Time Table mentioned in clause 6.4.
- 4.5 Technical Proposal of the bidder shall be evaluated based on the methodology and evaluation criteria as detailed in the bid document.
- 4.6 Financial Proposal of Technically qualified bidders shall be evaluated based on the methodology and evaluation criteria as detailed in this bid document. The information required to be provided by the Bidders submitting their Financial Proposal is placed as Exhibit 6 and 7 of this document.
- 4.7 The final award of the Project shall be made by SOUTHCO to the Bidder short-listed after evaluation of the Financial Proposals.
- 4.8 In the event of two or more Bidders found equal after evaluation of Financial Proposals, SOUTHCO reserves the right to select and declare any of such

Bidders as the selected Bidder or take any such measure as may be deemed fit in its sole discretion including annulment of the bidding process.

4.9 The selected Bidder shall be issued the Letter of Intent (LoI) by SOUTHCO.

5. Evaluation

5.1 Responsiveness

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

- 5.1.1 It is not received by the due date and time for submission specified in the RFP. SOUTHCO 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 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 copy of tender document purchase fee receipt.
- 5.1.5 It is not accompanied by a valid and required Earnest Money Deposit.
- 5.1.6 The bidder is seeking deviations on the principles of DFA.
- 5.1.7 It is not accompanied by the draft DFA signed and accepted by the bidder.

5.2 Technical Proposal

The objective of Technical Proposal evaluation is to select Bidders with:

- 5.2.1 The experience and track record to undertake the distribution of electricity and related activities in the Franchise Area.
- 5.2.2 The financial capability to undertake O&M and other required expenditure to perform its obligation under DFA.
- 5.2.3 Motivation to the Existing employees of the Franchisee area in terms of cash incentive.
- 5.2.4 The Technical Proposal should clearly specify the Lead Partner in case of the Bidder being a consortium. The Lead Partner shall necessarily have the

maximum equity participation in the Project; and this equity contribution shall necessarily be more than 26%.

5.2.4 Technical Proposal would be evaluated based on following weightages assigned to Experience, Financial capabilities and motivation to the existing employees of the Bidders.

Sl. No.	Parameter	Weightage
1.	Experience and Track Record	40 %
2.	Financial Capability	40 %
3.	Motivation to the existing employees in the Franchisee area in terms of cash incentive over and above the 15 % of the Basic Pay.	20 %

5.2.5 Experience and Track Record (40%)

The Bidder/its Promoter shall be evaluated as follows:
Bidder or its Promoter to qualify for either (a) or (b) criteria along with criteria (c) listed below.

a) Experience in handling consumer base

The Bidder or its Promoter must have a minimum of 2 (two) years of experience in handling at least 1000 retail consumers.

OR

b) Experience in employee handling

The Bidder must have a minimum of 2 (two) years of experience in employing and managing a workforce of more than 15 employees.

c) Proposal of key Personnel

The Bidders should have (or have the ability to source) at least five individuals on a full time basis with minimum diploma in electrical engineering from a recognized institution. Further, the Bidders shall have a valid electrical contractor license. The Bidder shall provide documentary evidence of the same in the form of an attested copy of the said license. The Bidder shall submit adequate documentary evidence for a, b & c.

5.2.6 Financial Capability Criteria (40%)

This parameter evaluates the capability of the Bidder to manage finances required to run the operation and to make necessary investments to perform

its obligation & commitment under DFA. In this regard, the Bidder shall be evaluated as follows:

a) *Net worth*

Net worth in the last financial year (FY 2006-07) should be at least equal to 25% of the Base Year Annual Collection from the Franchise Area. In this regard, the Bidder shall attach documentary proof in the form of a letter from bank certifying its net worth.

b) *Turnover*

Average annual turnover for the preceding two financial years (i.e. FY 2005-06 & FY 2006-07) should be at least equal to 25% of Base Year Annual Collection. In this regard, the Bidder shall attach documentary proof in the form of audited Annual Reports for the respective years.

5.2.7 Motivation to the Existing Employees of SOUTHCO

This parameter evaluates the Franchisees willingness to work with the existing employees.

5.2.8 The methodology of evaluation in respect of the above mentioned parameters, the detailed Weightage in respect of each component are given below:

Financial capability (100 marks, Weightage 40%)

S. No.	Parameter	Indicator	Marks
1.	Size of operations	<ul style="list-style-type: none"> • Net Worth • Annual Turn over 	40 10
2.	Support from internal accruals	Cash Flow from operations	10
3.	Corporate Governance	Listing on a recognized Stock Exchange	40

Experience and Track Record (100 Marks, Weightage 40 %)

S. No.	Parameter	Indicator	Marks
1.	Experience in handling retail consumer base or experience in employee handling	<ul style="list-style-type: none"> • No. of Consumer OR • No. of employees 	50
2.	Proposal of key personnel	Experience in power distribution sector related activities.	50

Motivation to the Existing Employees (100 Marks, Weightage 20 %)

S. No.	Parameter	Indicator	Marks
1.	Cash Incentive	15 % of Basic Pay	40
2.	Cash Incentive	Additional % on basic pay over and above Sl. No.1, on grading basis.	60

5.2.8 SOUTHCO reserves the right to decide the minimum cut-off as a benchmark to evaluate the Bids. On each of the above-mentioned parameters, the best bidder will get full marks against respective parameters and the subsequent bidders will be indexed to the best bidder's marks for the respective parameter. The Bids achieving a minimum cut-off in each of the parameters mentioned above shall be qualified for evaluation of Financial Proposal.

5.2.9 For evaluation of Bids submitted by Bidding Company under the financial capability criteria, either the strength of the Bidding Company and/or the consolidated strength of any one of its Promoters may be considered.

5.2.10 For evaluation of Bids submitted by Bidding Company under the experience and track record criteria, the same of either the Bidding Company or that of the Promoters and/or Affiliates of the Bidding Company may be considered.

5.2.11 For evaluation of Bids submitted by a Bidding Consortium under the Financial Capability criteria, the consolidated strength of the single corporate entity acting as the Lead Partner or the consolidated strength of any one of its promoters shall be considered.

5.2.12 For evaluation of Bids submitted by a Bidding Consortium under the Experience and Track Record criterion, only the experience and track record of the Member Companies, proposing to hold not less than 10% equity in the consortium, or the Experience and Track Record of the Promoters and/or Affiliates, of such a Member Company shall be considered.

5.2.13 The experience for a particular project can be claimed by only one of the following:

5.2.13.1 Bidding Company/Member Companies;

5.2.13.2 Promoter(s) of the Bidding Company/ respective Member Companies;
and

5.2.13.3 Affiliate (s) of the Bidding Company/ respective Member Companies

5.3 Financial Proposal

- 5.3.1 The Bidders are required to bid for annualized Input Rate for power injected by SOUTHCO 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 6 and 7.
- 5.3.2 The annualised Input Rate, as quoted by the Bidders shall factor a minimum 5% reduction in Distribution losses every year and improvement in 5% collection efficiency for the respective year as below.
- 5.3.3 The Bidder shall consider the Distribution Losses and Collection Efficiency of FY 2006-07 (Jan-07 to March-07) and FY 2007-08 (Apr-07 to Dec-07) as base for estimating the improvement in performance during the term of DFA.
- 5.3.4 The Bidders shall consider the Average Revenue Realization per unit in Base Year as base Input Rate for quoting annualized Input Rates for entire term of DFA as stipulated in Clause 5.3.1.
- 5.3.5 SOUTHCO, based on its assessment of improvements of various network parameters, has projected annual internal benchmarks for revenue per unit input for the duration of the Franchisee Agreement. These projections would serve as a benchmark to evaluate the Financial Proposals. If any proposals fail to meet these benchmarks in any of the year (s) or at the overall level for the franchise period, SOUTHCO reserves the right to reject the proposal without assigning reasons whatsoever.
- 5.3.6 The Evaluation of Financial Proposals submitted by the Bidders, committing minimum improvement in performance level as stipulated in clause 5.3.2, shall be carried out by comparing the levelised annualised Input Rate for entire term of DFA.
- 5.3.7 The objective of the evaluation of the Financial Proposal is to shortlist Bidders who have offered the maximum Input Rate over and above the 1.15 times of the base input rate for power injected by SOUTHCO at Input Points in the Franchise Area.
- 5.3.8 Obligation for making payment towards employee cost in the Franchisee area from the date of operation and Franchisee willing to work with the existing employees of SOUTHCO as per the terms and conditions mentioned here under.

S. No.	Month	Remuneration
1.	7 th month of operation in the Franchise area	25 % of the total employee cost associated with the Franchisee.
2.	9 th month of operation in the Franchise area	50 % of the total employee cost associated with Franchisee.
3.	11 th month of operation in the Franchise area	75 % of the total employee cost associated with Franchisee.
4.	13 th month onwards	100 % of the total employee cost associated with Franchisee.

5.3.8 The Bidders short-listed after evaluation of Technical Proposal, quoting the maximum Input Rate in the Financial Proposal and expenses towards employee cost to be borne by the Franchisee will be selected for awarding the Project.

5.3.9 Any conditional Financial Proposal may be liable for rejection.

6. Instructions to Bidders

The Bidders shall submit the Technical and Financial Proposals in separate sealed envelopes specifying the no. of areas/Sub Divisions interested.

6.1 Submission of Technical Proposal

6.1.1 The Technical Proposal, one original and two copies, 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 Buguda and Bellaguntha Sub Division under Bhanjanagar Electrical Division, Bhanjanagar (or specifying other Sub Division if any) under SOUTHCO”

Name of the Bidder: _____

To
The Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta, Brahmapur, Dist. : Ganjam,
Orissa, Pin-760004

6.1.2 The original of the Technical Proposal shall be clearly marked “ORIGINAL” and copies 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.

6.1.3 The Technical Proposal shall not contain any information related to the Financial Proposal of the Bidder.

6.1.4 There shall not be any cutting/ overwriting in the Technical proposal.

6.2 Submission of Financial Proposal

6.2.1 The Financial Proposal, one original and two copies, 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 Buguda and Bellaguntha Sub Division under Bhanjanagar Electrical Division, Bhanjanagar (or specifying other Sub Division if any) under SOUTHCO”

Name of the Bidder: _____

To

The Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta,Brahmapur,Dist. : Ganjam,
Orissa, Pin-760004

6.2.2 The original of the Financial Proposal shall be clearly marked “ORIGINAL” and copies 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. There shall not be any cutting/ overwriting in the Financial Proposal.

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 SOUTHCO. SOUTHCO shall not be responsible for any delay in receipt of the Proposal. Any Proposal received by SOUTHCO after the deadline for submission of the Proposal stipulated by SOUTHCO, shall not be opened. Each page of the Proposal should be initialled by the authorized signatory of the Bidder. The last date of submission of Bids shall be XXXXX upto 1300 Hrs.

6.3 Fees and Deposits

Fees for purchase of Tender Document:

- 6.3.1 The Bidder shall pay SOUTHCO a non-refundable amount of Rs 2000/- [Rupees two thousand only], towards processing fee, by way of Demand Draft/ Pay Order, in favour of the 'Southern Electricity Supply Company of Orissa Limited', payable at Brahmapur.
- 6.3.2 The processing fee shall be placed in a separate envelope clearly marked as Processing Fee on it, along with the Technical Proposal.
- 6.3.3 Bids, which are not accompanied by the above processing fee, shall be rejected by SOUTHCO 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. SOUTHCO shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.

Earnest Money Deposit (EMD)

- 6.3.5 Each Bidder shall submit an Earnest Money Deposit (EMD) of an amount Rs. 25000/- [Rupees Twenty five thousand only] per Sub Division in the form of a Demand Draft in favour of the Southern Electricity Supply Company of Orissa Limited, payable at Brahmapur.
- 6.3.6 EMD shall be placed in a separate envelope clearly marked as EMD on it, along with the Technical Proposal.
- 6.3.7 Bids, which are not accompanied by the above EMD, shall be rejected by SOUTHCO as non-responsive.
- 6.3.8 For unsuccessful Bidders, the EMD shall be refunded within 30 days of issuance of Lol to the selected Bidder.
- 6.3.9 The following shall cause the forfeiture of EMD.
 - 6.3.9.1 If the Bidder modifies/ withdraws it's Proposal except as per the provisions specified in the RFP;
 - 6.3.9.2 If the Bidder withdraws it's proposal before the expiry of the validity period of the Proposal;
 - 6.3.9.3 If the successful Bidder fails to provide the performance guarantee and execute the DFA within the stipulated time or any extension thereof provided by SOUTHCO;
 - 6.3.9.4 If the successful Bidder fails to sign the DFA within 30 days of issuance of Lol by SOUTHCO;

6.3.9.5 If any information or document furnished by the Bidder turns out to be misleading or untrue in any material respect.

6.4 Draft Distribution Franchise Agreement

The draft distribution franchise agreement must be signed and accepted by the bidder and such signed DFA should be delivered as part of the bid.

6.5 Time Table and Milestones

Milestone	Date and Time
Commencement of Sale of bid document	11.03.2008
Last date for sale of the bid document	31.03.2008 up to 12.00 Hrs
Pre-Bid Conference	27.03.2008 at 15.00 Hrs
Last date of submission of bids	31.03.2008 up to 13.00 Hrs
Opening of Technical Proposal/ Bids	31.03.2008 at 15.00 Hrs
Opening of Financial Proposal/Bids	will be intimated separately

6.6 Opening of Technical Proposal

The Technical Proposal shall be opened on 25.03.2008, at 15.00 Hrs, SOUTHCO at the address to be intimated at the time of pre-bid conference, in the presence of one representative from each Bidder. The details regarding the Technical Proposal, as provided in the Exhibit 4 would be read out.

6.7 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 SOUTHCO in due course of time. The details regarding the Financial Proposal, as provided in the Exhibit 7 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. SOUTHCO 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. SOUTHCO 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.

6.8 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, SOUTHCO may solicit the Bidder's consent for extension of the period of validity. A Bidder accepting SOUTHCO's request for extending the period of validity shall not be permitted to modify its Proposal.

6.9 Language of the Bid

The bid and all associated documents shall be in English.

6.10 Signature of Bid

The person authorized to act on behalf of the Bidder shall sign the completed Bid and all related documentation at each page.

6.11 Sealing of Bids

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

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

6.11.3 If the envelopes and /or the packages are not sealed SOUTHCO 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 Strict adherence to formats, wherever specified, is required. Non adherence to formats may be a ground for declaring the Proposal non responsive.

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

- 6.11.4 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. There shall not be any cutting or overwriting.
- 6.11.5 No change in, or supplementary information to a Proposal shall be accepted after its submission. However, SOUTHCO 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 SOUTHCO, may be a ground for rejecting the Proposal.
- 6.11.6 The Bids shall be evaluated as per the criteria as specified in this RFP. However, within the broad framework of the evaluation parameters as stated in this RFP, SOUTHCO reserves the right to make modifications to the stated Evaluation Criteria, which would be uniformly applied to all the Bidders.
- 6.11.7 For a Bidding Consortium, the Proposal submitted by the Consortium should contain signed letters submitted by each of the Member Companies, stating that the entire Proposal has been examined and each key element of the proposal is agreed to, as specified in Exhibit 4 & 5.
- 6.11.8 For a Bidding Consortium, no change in the membership of the consortium, in responsibilities, or in equity commitments of any Member Company shall be allowed after submission of the bids.
- 6.11.9 For a final short listed Consortium, if a change in membership pattern or responsibilities is desired, it must be communicated to SOUTHCO in writing for its approval. SOUTHCO reserves the right to reject such a request for change in the Consortium structure, which, in their opinion, adversely affects the consortium strength. However, the Lead Partner shall not be allowed to change its equity contribution in the Bidder Company/ Companies if it results in its equity holding becoming
- Less than or equal to 26%; or
 - Less than the equity holding of any other Member Company.
- 6.11.10 A company cannot propose to be member of more than one Consortium for submission of the Bids for the Project.
- 6.11.11 The Bidder should designate one person (“Contact Person” and “Authorised Signatory”) to represent the Bidder in his dealings with SOUTHCO. 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.

- 6.11.12 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 SOUTHCO, is found to be incorrect or is a material misrepresentation of facts, then the Proposal may be liable for rejection.
- 6.11.13 The Bidder shall be responsible for all the costs associated with the preparation of the proposal. SOUTHCO shall not be responsible in any way for such costs, regardless of the conduct or outcome of this process.
- 6.11.14 SOUTHCO reserves the right to reject any or all the Proposals without assigning any reasons whatsoever.

6.12 Pre-bid Conference

- 6.12.1 The official representative of the Bidders may attend the pre-bid conference on 27.03. 2008 at 15.00 Hrs, which will take place at the following address:

Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta, Brahmaipur, Dist. : Ganjam,
Orissa, Pin-760004

- 6.12.2 The purpose of the meeting will be to clarify any issues regarding the bid process.
- 6.12.3 The Bidder is requested to submit questions in writing by post/ email/ fax to reach SOUTHCO at the address indicated at least one week before the pre-bid meeting.
- 6.12.4 Record notes of the meeting including the text of the questions raised and responses given will be transmitted to all the purchasers of the RFP. The clarifications that could not be furnished during pre-bid conference will be separately communicated to all the purchasers of the RFP.
- 6.12.5 Non-attendance at the pre-bid meeting will not be a cause for rejection of a Bidder.

6.13 Enquiries:

Clarifications, if any, can be sought from:

Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta, Brahmaipur, Dist. : Ganjam,
Orissa, Pin-760004
Ph. No- (0680)2212011, Fax No.-(0680)2202261

7. Formats for Submission of Bids

(a). 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 processing fee.
 - c) Demand draft for EMD
2. Section 2 :
 - a) Description of the Bidding Company /Bidding Consortium as per the format specified in Exhibit 4
3. Section 3 :
 - a) Letters of Acceptance, as per the format specified in Exhibit 3, from all the Member Companies
 - b) Letter of Commitment as per the format specified in Exhibit 2.
4. Section 4:
 - a) Information Requirements as per the formats specified in Exhibit 5
 - b) Audited Annual Reports for the last two years for all the corporate entities that are desired to be considered for evaluation of the Proposal for Pre-Proposal along with bank's certificate for net worth.

(b). 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 6
- 2 Section 2: Financial Proposal as per the format specified in Exhibit 7

8. Exhibit 1: Covering Letter for Technical Proposal

(The covering letter is to be submitted by the Bidding Company or the Lead Partner of a Bidding Consortium along with the Technical Proposal. This should be on the company's letterhead.)

Date :

Place :

Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta,Brahmapur,Dist. : Ganjam,
Orissa, Pin-760004

Dear Sir,

Sub: Distribution Franchisee for Sub Division (Name of the Sub Division) of SOUTHCO.

Please find enclosed one (1) original + two (2) copies of our Technical Proposal in respect of the Distribution Franchisee for Sub Division (Name of the Sub Division) ("Project"), in response to the Request for Proposal ("RFP") document issued by the Southern Electricity Supply Company of Orissa Limited, ("SOUTHCO") on _____2008. We hereby confirm the following:

1. The Proposal is being submitted by _____ (name of the Bidding Company) who is the Bidding Company/ the Lead Partner of the Bidding Consortium comprising _____(mention the names of corporate entities who are the Member Companies), 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 SOUTHCO and in any subsequent communication sent by SOUTHCO. Our Technical Proposal is consistent with all the requirements of submission as stated in the RFP or in any of the subsequent communications from SOUTHCO.

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) and/or Affiliate(s). Our Technical Proposal includes (only if desired to be credited for Promoter(s)/ Affiliate(s)' strength the Letter(s) of Commitment in the format specified in RFP, from _____(mention name of the corporate entities that are Promoter(s) /Affiliate(s), who is/are the Promoter(s) /Affiliate(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, from all the Member Companies. (Required only in case of a Bidding Consortium)

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/ Lead Partner, 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) and/or Affiliate(s), if any, the strengths of which are desired to be considered for the purpose of evaluation of the Technical Proposal)

Date:

Place:

Dy. General Manager (Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta, Brahmapur, Dist. : Ganjam,
Orissa, Pin-760004

Dear Sir,

Sub: Distribution Franchisee for Sub Division (Name of the Sub Division) under SOUTHCO.

This has reference to the Technical Proposal being submitted by _____ (name of the Bidding Company/ Lead Partner), in respect of Distribution Franchisee for Sub Division (Name of the Sub Division) ("Project"), in response to the Request for Proposal ("RFP") document issued by the Southern Electricity Supply Company of Orissa Limited ("SOUTHCO"), on _____ 2008.

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 SOUTHCO;
- All subsequent communications between SOUTHCO and the Bidder, represented by _____ (name of the Bidding Company or of the Lead Partner in case of a Bidding Consortium);
- The Technical Proposal being submitted by _____ (name of the Bidding Company or of the Lead Partner in case of a Bidding Consortium).

2. We undertake to support _____ (name of the Bidding Company / Member Company, for which the Letter of Commitment is being furnished) as detailed in the Technical Proposal being submitted by _____ (name of the Bidding Company or of the Lead Partner in case of a Bidding Consortium).

3. We therefore request SOUTHCO 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: Letter of Acceptance

(The letters of Acceptance are to be submitted by the Member Companies of the Bidding Consortium).

Date :
Place :

To,

Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta,Brahmapur,Dist. : Ganjam,
Orissa, Pin-760004

Dear Sir,

Sub: Distribution Franchisee for Sub Division (Name of the Sub Division) under SOUTHCO.

This has reference to the Technical Proposal being submitted by _____ (mention the Lead Partner of the Bidding Consortium), as Lead Partner of the Bidding Consortium comprising _____ (mention name(s) of the Member Companies) in respect of the Distribution Franchisee for Sub Division (Name of the Sub Division) ("Project"), in response to the Request for Proposal ("RFP") issued by the Southern Electricity Supply Company of Orissa Limited ("SOUTHCO") on _____, 2008.

We hereby confirm the following:

1. We _____ (name of the Member Company furnishing the Letter of Acceptance), have examined in detail and have understood and satisfied ourselves regarding the contents mainly in respect of the following:

- The RFP document issued by SOUTHCO;
- All subsequent communications between SOUTHCO and the Bidder, represented by _____ (Mention name of the Lead Partner); and
- The Technical Proposal being submitted by _____ (name of the Lead Partner)

2. We authorise _____ (name of the Lead Partner), as the Lead Partner and authorise the same to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the consortium etc, in respect of this Project.

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

For and on behalf of:

Signature:

(Authorised Signatory)

Name of the Person:

Designation:

11. Exhibit 4: Description of the Bidding Company / Bidding Consortium

Name of the Bidding Company/ Bidding Consortium	
Name of the Lead Partner	

Sl. No.	Name of the Member Company	Proposed % Equity Participation	Role Envisaged

12. Exhibit 5: 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 shall attach the Audited Annual Reports for the preceding two years of all the corporate entities along with the bank's certificate for net worth which would be evaluated under Financial Capability and Experience and Track record in accordance with the information submitted by the Bidder.

FINANCIAL CAPABILITY

Under this head, either the consolidated financial strength of the Bidding Company / Lead Partner or the consolidated financial strength of any one of the Promoter(s) of the Bidding Company / Lead Partner 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
Bidding Company / Lead Partner	
Promoter of the Bidding Company / Lead Partner	

If the Bidding Company / Lead Partner require 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 / Lead Partner 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, 2007 of the Bidding Company or the consolidated financial strength of any one of the Promoter(s) of the Bidding Company would be considered. In case of consortium, the financial strength of the Lead Partner or any one of its promoter 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	Tangible Financial net worth as on March 31, 2007 (Rs. Crores)#
Bidding Company /Lead Partner		
Promoter of the Bidding Company/ Lead Partner		

2. Annual Turnover

Under this head, the annual turnover (i.e. Sales from core business) in the year 2005-06 and 2006-07 of the Bidding Company or Promoter would be considered. In case of consortium, the Annual Turnover of the Lead Partner or its Promoter 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) 2005-06#	Annual turnover (Rs. Crores) 2006-07#
Bidding Company /Lead Partner			
Promoter of the Bidding Company / Lead Partner			

#To be supported with documentary evidence in the form of Annual Reports.

EXPERIENCE AND TRACK RECORD

In this section the Bidding Company /Bidding Consortium should clearly mention the corporate entities that should be considered for evaluation under various parameters. The experience and track record of only those Member Companies or their Promoters and / or Affiliates, proposing to hold not less than 10% equity in the

consortium, would be considered for evaluation. Name of the corporate entities whose experience would be evaluated

3. Experience in handling retail consumer base

The Bidder or its Promoter must have a minimum of 2 (two) years of experience in handling at least 1000 retail consumers.

	Equity stake in the Consortium (%)	Number of consumers as on March 31, 2006	Number of consumers as on March 31, 2007
Name of the corporate entities whose experience would be evaluated			

4. Experience in employee handling

The Bidder should have a minimum two years of experience in employing and managing a workforce of more than 15 employees.

Particulars of the company	Equity stake in the Consortium (%)	Number of employees as on March 31, 2006	Number of employees as on March 31, 2007
Names of the corporate entities whose experience would be evaluated			

5. Proposal of Key Personnel

Further, they should have (or have the ability to source) at least five individuals on a full time basis with minimum diploma in electrical engineering qualification from recognized Institutions. Further, the Bidders should have valid electrical contractor license. The Bidder shall provide documentary evidence of the same in the form of a copy of his said license..

<p>Particulars of the company</p>	<p>Equity stake in the Consortium (%)</p>	<p>Number of individuals on a full time basis with Diploma in Electrical Engineering as on March 31, 2007 Electrical Contractor License No. & Expiry Date#</p>
<p>Names of the corporate entities whose experience would be evaluated</p>		

The Bidder shall attach documentary proof in the form of a copy of the licence.

MOTIVATION TO THE EXISTING EMPLOYEES OF SOUTHCO ASSOCIATED WITH FRANCHISEE:

<p>Sl. No.</p>	<p>Cash Incentive on Basis Pay (%)</p>		
	<p>15 % minimum</p>	<p>Addl. Incentive offered (%)</p>	<p>Total</p>
<p>1.</p>	<p>Yes/No</p>		

13. Exhibit 6: 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 :

Dy. General Manager(Commerce)
Southern Electricity Supply Co. of Orissa Ltd.
Corporate Office: Courpeta,Brahmapur,Dist. : Ganjam,
Orissa,Pin-760004

Dear Sir,

Sub : Distribution Franchisee for Sub Division(Name of the Sub Division) under SOUTHCO.

Please find enclosed one (1) original + two (2) copies of our Financial Proposal in respect of the Distribution Franchisee for Sub Division(Name of the Sub Division) ("Project"), in response to the Request for Proposal ("RFP") document issued by the Southern Electricity Supply Company of Orissa Limited , ("SOUTHCO") on _____2008.

We hereby confirm the following:

1. The Proposal is being submitted by _____ (name of the Bidding Company) who is the Bidding Company/ the Lead Partner of the Bidding Consortium comprising _____(mention the names of corporate entities who are the Member Companies), 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 SOUTHCO and in any subsequent communication sent by SOUTHCO.
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 SOUTHCO.
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 :

14. Exhibit 7: Format for Financial Proposal

Year	1	2	3
Input Rate (Rs/ kWh) (Excluding the employee cost as mentioned in para 5.3.8 above.)			
Reduction of T&D loss (%)			
Improve in Coll. Efficiency (%)			

Note: The input rate quoted shall factor in reduction of T&D loss and improve in coll. Efficiency of each year.

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

15. Annexure-3 : SOUTHCO's Rules of existing Employee Utilisation by the Franchisee.

1. Period of Utilization:

The period of utilization of the Employees of SOUTHCO selected by the Franchisee shall be in line with the period of contract with the Borrowing Organization.

Provided, in case the services of transferred Employees of SOUTHCO is required by the SOUTHCO, the Company has a right to recall the transfer employees prior to the completion of period of transfer, by serving due notice.

2. Pay and Allowances:

During the period of transfer, the employee shall draw the pay in the pay scale which he is holding prior to the transfer, with all other allowances or any increase in the pay and allowances from time to time for whatsoever reasons, had he been continued with the SOUTHCO. The expenditure on this account shall be borne by the Borrower.

3. Traveling allowance:

The transfer employee shall be entitled to Travelling Allowance and Daily Allowance for journey while on Tour as per the rules of the Borrower OR as per the rules applicable to the employees in SOUTHCO for which the employee shall have to intimate to the Borrower within one month otherwise he shall be governed under SOUTHCO rules.

4. Leave Travel Concession:

The transfer employee shall opt either for the Leave Travel Concession Rules pertaining to the Borrowing Organization OR SOUTHCO within one month. Otherwise he shall be governed under SOUTHCO rules. The expenditure on this account shall be borne by the Borrower.

5. Medical Reimbursement:

The transfer employee shall have liberty to opt for the Medical Reimbursement Scheme, pertaining to the Borrowing Organization OR of the scheme prevailing in SOUTHCO. The expenditure on this account shall be borne by the Borrower.

6. Incentives:

The transfer employee shall be paid minimum of 15 % incentive or the agreed incentive as per Exhibit-5 calculated on the basis of the Basic pay on monthly basis during the period of transfer over and above the normal monthly Salary.

6. Contributions:

(A) Leave Salary Contribution:

During the period of transfer, the leave Salary contribution of the transfer employee shall be borne by the Borrowing Organization and remitted to SOUTHCO as per the prevailing rules of SOUTHCO.

(B) Contributory Provident Fund Contribution:

During the period of transfer, the CPF/EPF Subscription @ 12% / 10 % of the monthly emoluments shall be recovered from the emoluments of the transfer employee as per the Contributory Provident Fund/Employees Provident Fund Regulations of the SOUTHCO and remitted to the SOUTHCO every month by the Borrower along with additional equal matching amount of contribution, as a Employer's share.

(C) Gratuity Contribution:

The Gratuity Contribution pertaining to the period of transfer shall be borne by the Borrower as per the existing regulations of the SOUTHCO as amended from time to time.

The terms shown at (A) to (C) above towards various contributions shall be sent by the Borrower by separate Demand Draft for each item in favour of SOUTHCO every month. In case of default in remittance on the part of the Borrower, the interest @ 12% shall be levied by SOUTHCO.

7. Leave:

During the period of transfer, the employee shall be governed by the leave rules of the SOUTHCO, except casual leave for which the transfer employee shall be at liberty to opt for the rules prevailing with Borrower or of SOUTHCO.

The Borrower shall also be liable to pay leave salary and allowances in respect of special Disability Leave, if any, granted to the transfer employees on account of any disability incurred in and through the service under the Borrowing Organization, even if such disability manifests it self, after termination of the service with the Borrowing Organization.

8. Vehicle Facility:

The transfer employee, during the period of transfer, may be provided suitable vehicle by the Borrower for official use, if he is entitled for the same under SOUTHCO.

9. Substitute arrangement against Leave and Training period during the period of transfer:

If the transfer employee proceeds on leave or deputed for training or as per the rules of SOUTHCO and if the substitute is arranged against such vacancy, the expenditure towards salary, additional charge etc., shall be borne by the Borrower.

10. Travel in India or Abroad while on transfer:

The transfer employee may travel anywhere in India on tour for the works of Borrower without intimation to SOUTHCO. If, however, he is required to travel abroad, the permission of the SOUTHCO shall be obtained in advance.

11. Recoveries:

Accommodation / quarter:

If Residential Accommodation / Quarter is provided by the SOUTHCO, the rent under the rules of SOUTHCO towards the Accommodation / Quarter shall be recovered from the transfer employee from his monthly salary .

Loan and Advances:

The Borrower may grant any loan or advance to the transfer employees. However, the recovery towards the same shall be made by the Borrower, only during the period of transfer of the concerned Employee. SOUTHCO shall not be liable for any un-recovered portion or any loan or advance or interest, granted to the transfer employees by the Borrower.

General Recoveries:

The amount towards recoveries from the transfer employees such as Life Insurance Premium, Loan from Credit Societies, Housing Loans, Vehicle Loans from SOUTHCO or any Bank etc., shall be remitted by the Borrower after its recovery from the salary of the transfer employees, directly to the concerned Organisation i.e. SOUTHCO, Bank, LIC or Credit Society etc., as the case may be.

12. Insurance Coverage:

During the period of transfer, the transfer employee shall be covered under Insurance Policy. The risk coverage and other facilities under the policy shall be in line with the provisions of Workmen's Compensation Act, 1923 and any other Labour Law, if any, in force or coming in existence in future. The amount of premium paid towards the policy to be borne by the borrower.

13. Retirement Benefits:

The transfer employee shall continue to be governed for retirement benefits as per the rules applicable to the employees in SOUTHCO.

14. General:

1. The Borrowing Organization shall furnish the Confidential Reports in respect of the transfer employee to maintain Seniority in SOUTHCO, in the prescribed form every year.
2. The transfer employee shall be entitled for the benefits of the next higher scale/post as per the rules of SOUTHCO OR promotion as per due turn according to the rules under SOUTHCO.
3. If departmental enquiry is to be instituted against the transfer employees for major acts of misconduct he shall be repatriated to the SOUTHCO and the departmental action will be taken by the concerned Competent Authority in SOUTHCO.
4. If the transfer employees submits resignation or seeks voluntary retirement then such application shall be forwarded by the Borrower to SOUTHCO for taking decision in the matter.
5. The Borrower may frame / revise the rules / regulations regarding the service conditions, financial matters and other pecuniary benefits pertaining to its organization. However, the same shall not in any way, be inferior to those applicable to the transfer employees immediately before his transfer.

Annexure 4: Principles of Distribution Franchisee Agreement

The following terms and conditions are only indicative of the broad principles of the DFA under which the Distribution Franchisee shall be appointed and which may form the basis of the DFA required to be entered into by a successful bidder with SOUTHCO.SOUTHCO, however, reserves the right to amend any of the terms thereof at the time of drafting the DFA.

ARTICLE -1: DEFINITIONS OF KEY TERMS:

Capitalized terms used in this document shall carry the same meaning as set out in the Request for Proposal.

1.1 Interpretation :

In this agreement, unless the context otherwise requires;

- (a) Any express reference to an enactment includes references to:
 - (i) That enactment as amended, extended or applied by or under any other enactment before, on or after the date of this Agreement;
 - (ii) Any enactment which that enactment re-enacts (with or without modification); and
 - (iii) Any subordinate legislation (including regulations) made (before, on or after the date of this Agreement) under that enactment, as re-enacted, amended, extended or applied as described in paragraph (i) above, or under any enactment referred to in paragraph (ii) above.
- (b) References to a “person” shall be construed so as to include any individual, firm, company, trust, unincorporated association of persons, government, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality);
- (c) Reference to “including” and “include” shall be construed to mean “including without limitation” and “include without limitation” respectively;
- (d) Reference to “INR” or “Indian Rupees” are to the lawful currency from time to time of the Republic of India;
- (e) Words importing the singular shall include the plural and vice versa;
- (f) Any reference to day shall mean a reference to a calendar day;
- (g) Any reference to a month shall mean a reference to a calendar month;
- (h) The headings are for the purpose of identification and shall not affect the interpretation of the provisions and schedules;

- (i) Any schedule to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its schedules;
- (j) Any reference at any time to any agreement, deed, instrument, license or document of any description, shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) Reference to Recitals, Articles, Sub-articles, Clauses or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sub-articles, clauses and schedules of or to this Agreement;
- (l) Unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till or until” a specified day or date shall include both such days or dates.

1.2 Definitions :

Average Revenue Realisation

Shall mean the total revenue collected per unit energy supplied by SOUTHCO at Input Points on annualised basis. The same shall be computed as:

Average Revenue Realisation = (Total Revenue Collected during the period) / (Total energy input during the period)

Base Year

Shall mean the financial year, which has registered the maximum Average Revenue Realisation per unit of energy injected in Sub Division at Input Point between FY 2006-07(Jan-07 to Mar-07) and 2007-08(Apr-07 to Dec-07).

Collection Efficiency

For a particular period shall mean the ratio of revenue actually realized from consumers in that period (exclusive of ED) and amount of energy billed to consumers in that period in percentage terms and shall be calculated as below:
Collection Efficiency= (Revenue realized from consumers / Amount of Energy Billed to consumers)*100

Consumer

Means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Electricity Act'2003 or any other law for the time being in force and includes any person whose premises are for the time being

connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

Complaint

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

Distribution

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

Distribution Assets

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

SOUTHCO's Distribution Assets :

Shall mean the assets created and employed by SOUTHCO in the Franchisee area for distribution of electricity.

Franchisee Distribution Assets:

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

Distribution Licensee

Shall mean the Southern Electricity Supply of Company Orissa Limited "SOUTHCO" and its successors and permitted assigns.

Distribution Losses

For a particular period shall mean the difference between energy supplied at the Input Points for the period and Energy Billed to consumers for the period in percentage terms and shall be computed as below: $Distribution Losses = \frac{(Energy Intake at Input Points - Energy Billed to consumers)}{(Energy Intake at Input Points)} * 100$

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.

Effective Date

Shall mean the date of handing over of the business operations of Franchise area by SOUTHCO to the Distribution Franchise pursuant to this agreement after the conditions precedent are satisfied. Such date shall be indicated by the Distribution Franchisee and accepted by SOUTHCO.

Encumbrance

Means any mortgage, charge, standard security, assignment or assignation by way of security, right of possession or other form of security interest.

Expiry Date

Shall mean the 3rd anniversary of the effective date.

Distribution Franchisee

Shall mean a successful Bidder appointed by SOUTHCO to act as an agent of SOUTHCO to distribute electricity in the Franchise Area.

Distribution Franchisee Agreement “DFA”

Shall mean the agreement to be entered into by the successful bidder and SOUTHCO

Franchise Area

Shall mean the area as mentioned in Section 2 of the RFP in respect of which Distribution Franchisee shall act as an agent of SOUTHCO

Input Point

Shall mean the Substation/Feeder as specified in Section 2.3.2 and any such point of interconnection from which crossover facility may be provided.

Input Rate

Shall mean Rupees per unit of electricity supplied by SOUTHCO at the Input Point, as quoted in the accepted Financial proposal of the bidder.

Law

Means, in relation to this agreement, all laws and electricity 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 OERC.

OERC

Shall mean the Orissa Electricity Regulatory Commission, or its successors, administrators and permitted assigns;

SOUTHCO

Shall mean the Southern Electricity Supply Company of Orissa Limited, Company registered under the Companies Act'1956 having its registered office at Plot No.-123, Sector-A, Zone-A ,Mancheswar Industrial Estate,Bhubaneswar-751010 and shall also include its successors and permitted assigns.

Open Access

Shall mean open access as defined in the Electricity Act,2003 and Open Access Regulation as per the OERC.

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.

ARTICLE 2.1: CONDITIONS PRECEDENT TO BE SATISFIED BY THE DISTRIBUTION FRANCHISE AND SOUTHCO.

2.1.1 Submission of Performance Guarantee

The Distribution Franchisee shall secure the performance guarantee by providing Bank Guarantee issued by a scheduled Bank for an amount equivalent to two months' estimated amount payable to SOUTHCO by Distribution Franchisee based on energy input at Input Points in Franchise Area in FY 2006-07(Jan-07 to Mar-07) and FY 2007-08(Apr-07 to Dec-07) and Input Rate quoted by the Distribution Franchisee for first year of Franchisee term.

2.1.2 Infrastructure Roll-out Plan

The Distribution Franchisee shall submit an Infrastructure Roll-out plan to SOUTHCO stating the investments to be carried out in the Franchise Area to lower the Distribution Losses and improve the quality of supply and SOUTHCO shall facilitate the Distribution Franchisee in approaching the OERC for approval of the Infrastructure Roll out Plan. Any investment by the Distribution

Franchisee which is not approved by the OERC shall not be compensated by SOUTHCO at the expiry / termination of the Franchise.

2.1.3 Completion of Audit of Various Parameters

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

- 2.1.3.1 Opening level of Distribution Losses and Collection Efficiency;
- 2.1.3.2 Opening Asset Register;
- 2.1.3.3 Opening level of Inventory
- 2.1.3.4 Ongoing Contracts as on Effective Date; and
- 2.1.3.5 Determination of average tariff for the base year for the purpose of Article-7.

In the cases where the opening levels cannot be ascertained, suitable mutually agreed procedures should be laid out to compute the same.

2.1.4 Calibration of Meters

The authorized representatives of SOUTHCO and the Distribution Franchisee shall conduct a joint Calibration of the interface meters at the Input points.

2.1.5 Methodology for application of price variation clause for Article 5.2.7 shall be jointly finalised.

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

2.1.7 The Distribution Franchisee has been authorized under Section 126, Section 135 (2), and Section 152 of Electricity Act 2003 for taking necessary action to prevent the unauthorized use, theft & pilferage of electricity in Franchise Area.

2.1.8 All the conditions precedent stated herein above shall be satisfied within 30 (thirty) 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 2.1.1 above, within the stipulated duration, SOUTHCO 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 SOUTHCO

2.2.1 Arrears Determination:

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

2.2.1.1 Opening level of arrears;

2.2.1.2 Segregation into permanently disconnected and current live arrears;

2.2.1.3 Ageing analysis of current live arrears;

2.2.1.4 Credit Balance from Consumers; and

2.2.1.5 Joint verification of permanently disconnected Consumers.

2.2.2 Methodology to compute average tariff for each billing period for the purpose of Article-7 during the term of this Agreement shall be jointly finalised.

2.2.3 SOUTHCO shall identify the Consumers for which Service Connection Charges (SCC) have been received by it, but connections have not been provided. The Distribution Franchisee shall be responsible for providing connection to these Consumers. The installation material for such connections shall be issued by SOUTHCO 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 three 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 three (3) years from the Effective Date.

3.2 Renewal of Agreement

At the instance of the Distribution Franchisee, SOUTHCO may consider renewing the duration of Franchisee at its discretion for such period or periods as may be considered appropriate by SOUTHCO, provided the Distribution Franchisee applies formally in writing for renewal one year prior to the expiry of the Franchise. SOUTHCO shall communicate its decision in this respect within a period of three months of such application by the Distribution Franchisee.

The terms and conditions of such Renewal shall be decided with mutual consent.

3.3 Early Termination

This agreement can be terminated before the expiration of the Franchisee Period as per the provisions of Article-18 and Article-3.4 of this Agreement.

3.4 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 SOUTHCO, then SOUTHCO 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.

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 SOUTHCO harmless against the same as provided in Articles 12.1.2. The Distribution Franchisee shall compensate SOUTHCO for the losses suffered by SOUTHCO, if any, as provided in Article 12.1.3.

3.5 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, the survival of, 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, SOUTHCO agrees to sell/supply electricity to the Distribution Franchisee at agreed annual Input 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 SOUTHCO 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 SOUTHCO Distribution Assets and all other rights, powers and authorities available to SOUTHCO as a Distribution Licensee to perform its obligation under this Agreement. Distribution Franchisee however shall not be the owner of SOUTHCO Distribution Assets.

4.2 Legal Status of Distribution Franchisee

The Distribution Franchisee shall be a franchisee of the SOUTHCO as defined under the Section 2(27) of the Electricity Act,2003 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 SOUTHCO 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 SOUTHCO.

It is however clarified that the Distribution Franchisee alone shall be liable and responsible to SOUTHCO 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 shall be the Buguda and Bellaguntha Sub Division under Bhanjanagar Electrical Division, Bhanjanagar or may be extended to other Sub Divisions as identified by SOUTHCO and notified subsequently.

4.5 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 and OERC Regulation.

4.6 Directions

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

4.7 **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 SOUTHCO Distribution Assets**

- 5.1.1 The Distribution Franchisee shall be entitled to use the SOUTHCO Distribution Assets to perform its obligation under this Agreement. SOUTHCO 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 SOUTHCO.
- 5.1.4 If any such asset is scrapped, the same shall be deposited at the store of the SOUTHCO at Brahmapur by the Distribution Franchisee at its cost. SOUTHCO shall duly identify the scrap against its Asset register for Transformers & accessories and HT network.
- 5.1.5 SOUTHCO has to prepare an Asset Register of the Franchise Area, which shall be verified and signed by both the parties in compliance to the provisions of Article 2.1.2.2.
- 5.1.6 On termination/ expiry of this agreement, the Distribution Franchisee shall without demur hand over physical possession/ custody of SOUTHCO Distribution Assets as well as assets created by the Franchisee during his period of operation. same condition, subject to normal wear and tear and Article 5.1.4.
- 5.1.7 Any shortfall in the quantity of SOUTHCO 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.
- 5.1.8 If the Distribution Franchisee intends to utilize other services of SOUTHCO 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 SOUTHCO.

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 with approval of SOUTHCO.
- 5.2.2 Such capital expenditure implemented by the Distribution Franchisee would include replacement of Distribution Assets.
- 5.2.3 The cost of all such capital investment shall be borne by the Distribution Franchisee. The distribution franchisee must commit a capital expenditure for the duration of the term of Franchise Agreement.

- 5.2.4 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.
- 5.2.5 Upon expiry/ termination of this Agreement, Distribution Franchisee shall hand over all the SOUTHCO and Franchisee Distribution Assets of Franchise Area, to SOUTHCO 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 SOUTHCO in terms of the Agreement.
- 5.2.6 On the Expiry/ Termination of this Agreement, SOUTHCO shall compensate Distribution Franchisee for the Distribution Assets added by Distribution Franchisee, at the depreciated value of such asset or may take on lease as decided mutually with the Franchisee.
- 5.2.7 If not only, such assets in normal working condition shall be transferred to SOUTHCO at the depreciated value, computed as per the costs and depreciation rates applicable. The applicable revision of the schedule of costs shall be used for calculating the transfer value. The schedule of costs shall be adjusted for the price variation clause as per SOUTHCO procurement contracts for the relevant period.
- 5.2.8 If any new asset added by the Distribution Franchisee, the cost of the same shall be ascertained quarterly by an independent agency mutually appointed for the purpose. The cost of such an agency shall be shared equally by both the parties. The depreciation rate for such asset shall be taken as per the prevailing rate of SOUTHCO or OERC regulations or as per the Companies Act, 1956 in that sequence.
- 5.2.9 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 SOUTHCO as acceptable in terms of Article 5.2.7 and Article 5.2.8. Such certification shall be done within a period of 90 (ninety) days.

5.3 Inventory of O&M Spares

- 5.3.1 SOUTHCO will hand over the inventory of O&M spares in the Franchise Area to the Distribution Franchisee on the Effective Date of this Agreement.
- 5.3.2 Upon termination/expiration of this Agreement, Distribution Franchisee shall return the inventory of O&M spares to SOUTHCO in the same form and quantity as specified in previous article.
- 5.3.3 Distribution Franchisee shall compensate SOUTHCO 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 SOUTHCO 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.

5.4 Supply of Energy

- 5.4.1 SOUTHCO shall supply the power at Input Points, which shall not be less than the corresponding input units of FY 2006-07(Jan-07 to Mar-07) and FY 2007-08(Apr-07 to Dec-07) subject to OERC Directives on load shedding.

- Without prejudice to the foregoing, SOUTHCO shall not discriminate in the supply of power between the Franchise Area and its other Distribution areas.
- 5.4.2 The Distribution Franchisee may procure the power from other sources for expected shortfall in supply with the concurrence of SOUTHCO and OERC and subject to the regulatory provisions.
 - 5.4.3 SOUTHCO will facilitate the Distribution Franchisee to approach OERC for approval of such procurement scheme.
 - 5.4.4 Such scheme will be implemented only after approval of OERC. SOUTHCO will have no responsibility or liability if such scheme is not approved/ rejected by OERC.
 - 5.4.5 In case any cross-subsidy surcharge is applicable on purchase of power from any scheme, SOUTHCO shall represent the matter at appropriate forum for abolishment of the same at Distribution Franchisee's cost.
 - 5.4.6 In case of procurement of power from sources other than SOUTHCO, the wheeling charges shall be payable by Distribution Franchisee for using the distribution network of SOUTHCO for distribution of power in the Franchise Area and shall be levied as per OERC regulations.
 - 5.4.7 The Distribution Franchisee shall not sell the Input Energy to anyone outside the Franchise Area.
 - 5.4.8 The Distribution Franchisee shall strictly adhere to the planned load shedding schedule of SOUTHCO based on directives issued by OERC. The Distribution Franchisee shall also follow the instructions of OPTCL / State Load Dispatch Centre for grid discipline.

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 SOUTHCO, in compliance with the Law, Regulations and Directives of OERC issued from time to time as if they were to apply to licensee and directives of SOUTHCO for compliance of laws, regulations, orders and directives of OERC. The broad scope of work would be as follows:

- 5.5.1 Undertake distribution & supply of power to the Consumers of SOUTHCO in the Franchise Area.
- 5.5.2 Undertake all Operation & Maintenance related activities in Franchise Area.
- 5.5.3 SOUTHCO shall cancel or may authorize the Distribution Franchisee to cancel the ongoing contracts, if requested by the Distribution Franchisee. In such an event, SOUTHCO will bear all the liabilities and third party claims accrued prior to Effective Date.

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 SOUTHCO.

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 SOUTHCO.

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 OERC Dist. Conditions of 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 OERC.
- 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 OPTCL's 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.

5.6.4 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 OERC.
- 5.6.4.2 The Distribution Franchisee shall be responsible for complying with all Indian Electricity Rules, OERC Standards, Regulations and other Directives as issued and modified from time to time and as applicable to any distribution licensee. Any penalty imposed by OERC or any other Government Authority on account of failure of the Distribution Franchisee in compliance shall be borne by the Distribution Franchisee.
- 5.6.4.3 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.

- 5.6.4.4 The Distribution Franchisee must ensure continuous supply of power, without any load shedding, for those feeders which have less than 15% distribution loss for three continuous months at any time during the term of the Franchise Agreement by purchasing the additional power from sources other than SOUTHCO. SOUTHCO shall facilitate the purchase including regulatory approval involved.

5.6.5 Consumer Service

(A) OERC Distribution (Conditions of Supply) Code

The Distribution Franchisee shall:

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

(B) Consumer Complaint Handling

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

- a) Establish within a period of Six month from the Effective Date, a Consumer service centre 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 Consumer courts under Consumer Protection Act'1986.

(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 within one month of the application requiring such supply subject to provisions of the Electricity Act 2003 and applicable Regulations.
- 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 form a part of the Franchisee Distribution Assets to be compensated in terms of Article-5.2.6.
- c) Subject to the provisions of the Electricity Act 2003, and OERC Dist.(Conditions of Supply) Code 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 SOUTHCO.
- e) The Distribution Franchisee shall collect the Security Deposit from the Consumers for giving new connections, which shall be transferred to SOUTHCO.
- f) The applicable interest on these deposits shall be borne by SOUTHCO 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, SOUTHCO 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 SOUTHCO unless arrears have been recovered from them and remitted to SOUTHCO. SOUTHCO 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 OERC from time to time.
- 5.7.2 Collections from the Consumers as per the billing and remitting to SOUTHCO very day.
- 5.7.3 Collection of arrears on behalf of SOUTHCO.
- 5.7.4 Make timely payments to SOUTHCO 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 OERC Regulations and Directives.
- 5.7.8 Discharge all duties and responsibilities of SOUTHCO as the distribution licensee as required by the License Regulations of the OERC except such of the conditions, which cannot be complied with by the Distribution Franchisee alone.
- 5.7.9 Undertake any other activity as may be notified from time to time by OERC to the distribution licensee.

5.8 Duties and Responsibilities of SOUTHCO

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

- 5.8.1 SOUTHCO shall ensure the supply of power to Distribution Franchisee of acceptable quality standards as per Article 5.4.
- 5.8.2 SOUTHCO shall communicate to Distribution Franchisee any shortfall or inability to supply, the power requirements of the Distribution Franchisee.
- 5.8.3 SOUTHCO shall carry out meter reading jointly with Distribution Franchisee on a monthly basis at Input Points of the Franchise Area.
- 5.8.4 SOUTHCO shall support the Distribution Franchisee initiatives to adopt innovative practices to bring about effectiveness and efficiency in electricity distribution business.

ARTICLE 6: METERING AND MEASUREMENT:

6.1 Metering

6.1.1 Installation of Meters at Input Points

Interface Meters would be installed at Input Point of Supply at 11 KV line and any other Inputs Points (if any). For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the “SOUTHCO shall follow the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, and OERC Dist.(Conditions of Supply),Code as amended and revised from time to time and as applicable to this Agreement. The metering system shall be having backup system like Check Meters to be provided by SOUTHCO

6.1.2 Joint meter reading at Input Points

“SOUTHCO” shall carry out the meter reading jointly with the Franchisee on a monthly basis at each Input point within the Specified area. In the event of a defect in the Interface Meter the accounting of energy shall be considered on the basis of data recorded in the Check Meter.

ARTICLE 7: BILLING AND PAYMENT:

7.1 BILLING :

7.1.1 The rate at which the Franchisee shall be charged for the energy made available by “SOUTHCO” at the Input Point (s) shall be Rs._____ per unit for energy input in the first year of the Term of Agreement (“Input Rate”); The Input rates shall be escalated on expiry of the present term of agreement or based on the OERC tariff order on mutually agreed terms.

7.1.2 In case of any change in the tariff structure by the OERC during the Distribution Period, each of the Input Rate will be revised as below. The revised Input Rates would be applicable from the date when tariff changes become applicable on consumers.

$$R \times \left\{ \left(\frac{D2}{D1} \times \frac{BAD}{BAD+BAA+BAND+BAI} \right) + \left(\frac{A2}{A1} \times \frac{BAA}{BAD+BAA+BAND+BAI} \right) + \left(\frac{ND2}{ND1} \times \frac{BAND}{BAD+BAA+BAND+BAI} \right) + \left(\frac{I2}{I1} \times \frac{BAI}{BAD+BAA+BAND+BAI} \right) \right\}$$

Here,

R = Accepted Input Rate at the beginning of the Distribution Period

D1 = Base year tariff for domestic category (for the sub-category with the maximum number of consumers in the last one year)

D2 = Revised tariff for domestic category (for the same category as considered for D1)

A1 = Base year tariff for agriculture category (for the sub-category with the maximum number of consumers in the last one year)

A2 = Revised tariff for agriculture category (for the same category as considered for A1)

ND1 = Base Year Tariff for Non Domestic Category (for the sub-category with the maximum number of consumers in the last one year)

ND2 = Revised Tariff for Non domestic category (for the same category as considered for ND1)

I1 = Base year Tariff for Industrial category (for the sub-category with the maximum number of consumers in the last one year)

I2 = Revised Tariff for Industrial category (for the same category as considered for I1)

BAD = Total billed amount for the last one year for domestic category (for all the sub-categories under domestic)

BAA = Total billed amount for the last one year for agriculture category (for all the sub-categories under agriculture)

BAND = Total Billed amount for last one year for Non Domestic Category (for all the sub-categories under non-domestic)

BAI = Total Billed Amount for last one year for Industrial category (for all the sub-categories under industrial)

Base Year refers to the first year of the Distribution Period

The tariff for all consumer categories used in the formula is net of subsidy.

The above formula proportionately adjusts the pre-agreed Input Rate for the change in tariff for domestic, non-domestic, industrial and agriculture categories. As other categories form an insignificant percentage of the total consumption, they have not been considered in the adjustment above.

7.2 Delivery of Monthly Bills

7.2.1 On the basis of the meter reading as per Article 6.1.2 above, "SOUTHCO" shall, through its Engineer-in-charge, issue and deliver the bill to the Franchisee ("Franchisee Monthly Bill") within 5 days of joint reading of the Interface Meter and making necessary adjustment as mentioned in para 7.3.4 below.

7.2.2 Franchisee Bill shall be raised by "SOUTHCO" on the Franchisee on a monthly basis on the basis of the units recorded at the Interface Meter(s) at the input point or of export point if any jointly taken on the last day of the month. Units recorded would be equal to the difference in the Interface meter(s) reading between two successive readings ("Input Energy"). For example, Input Energy units recorded for October, 2007 would be equal to the difference in the meter reading taken at the end of October, 2007 and September, 2007. The total amount billed to the Franchisee would be computed by multiplying the Input Energy recorded for the month with the Input Rate. The franchisee will remit the payment to SOUTHCO or

SOUTHCO shall make the payment of bill within 5 days from delivery of the bill to the franchisee as per para 7.3.4 after making necessary adjustment(s).

7.3 Payment of Franchisee Monthly Bills

7.3.1 The Franchise shall pay to “SOUTHCO” the entire Billed Amount as per para 7.3.4, without any deduction, within the Bill Due Date. Provided however, that “SOUTHCO” credit the Franchisee’s Billed Amount to the extent of any payment made by a Consumer to “SOUTHCO”, (not being on account of connected or disconnected Arrears) through the collection counters of “SOUTHCO”.

7.3.2 In case, full payment is not made by the Franchisee within the Bill Due Date, an interest rate as per the OERC guidelines or any nationalized Banks working capital prime lending rates, which ever is higher shall additionally become payable on the diminishing balance (of the bill amount) by the franchisee.

7.3.3 After the Bill Due Date, in addition to any other right available under this Agreement, “SOUTHCO” shall have the right to recover any amount outstanding including amount pertaining to previous bills or dues by invoking and appropriating the Performance Security, after giving the due legal notice of the intention to all the concerned parties.

7.3.4 The payment of the Franchisee’s monthly bill shall be adjusted as under.

(i)	Bill amount raised by SOUTHCO for the consumption of energy during a month (Energy Input x agreed input rate)	=	xxxxxxx
(ii)	Payment towards employee cost and incentive	=	xxxxxxx
(iii)	Other Charges if any (Establishment cost including rent,telephone,electricity etc.)	=	xxxxxxx

	Total Billed amount (A)		xxxxxxx
			=====
	Less : Payment Received		
(i)	Collection from the Consumers deposited in SOUTHCO		xxxxxxx
	Less : (a) Electricity Duty		xxxxxxx
	(b) Meter Rent		xxxxxxx
	(c) Security Deposit		xxxxxxx
	(d) Arrear Collection		xxxxxxx

	Sub Total		xxxxxxx

	Net Collection		xxxxxxx
(ii)	Incentive on collection of arrears & theft detection		xxxxxxx

	Total (B)		xxxxxxx
			=====
	Net amount payable/receivable by the Franchisee(A-B)		xxxxxxx
			=====

- 7.3.5 In the event that the Billed Amount or any part thereof remains unpaid by the Franchisee for a period in excess of 30 days from the Bill Due Date in respect of any Franchisee Monthly Bill, "SOUTHCO" shall be entitled to suspend and/or terminate this Agreement with 30 days prior notice and step in to carry on all the activities under this Agreement by itself.

7.4 Taxes and Duties:

The Franchisee shall be responsible for the payment of all taxes, duties, and statutory /local levies applicable and assessed to the commercial transaction under this Agreement and "SOUTHCO" shall not be responsible for any tax related liability. However, the Franchisee will be entitled to reimbursement of Service tax, from SOUTHCO if applicable.

ARTICLE 8: CONSUMER SERVICES:

The duties and responsibilities of the Franchisee shall include the following:

8.1 Consumer Meter Reading

- 8.1.1 The Franchisee shall be responsible for the meter reading at all the Consumers premises (including temporary) in the Specified Area. Initially, for a period of 6 (six) months from the Effective Date, the frequency of meter reading shall be in accordance with the present practice of the "SOUTHCO".
- 8.1.2 Thereafter, meter reading shall be carried out on a monthly basis from 10th to 20th of every month or mutually agreed period as per OERC guidelines. The Franchisee shall be responsible for correctness of reading.
- 8.1.3 While doing of monthly spot billing or handing over of specified area for meter reading, the disputes if any arising will be solved by SOUTHCO and necessary working Instructions will be issued by SOUTHCO for public and SOUTHCO staff.

8.2 Consumer Billing and Delivery:

- 8.2.1 Billing and delivery of bills will be carried out on the same day using Spot Billing Machines. Franchisee shall be permitted to use the existing Spot Billing system of SOUTHCO; however the payment to Spot Billing agency shall be taken care by Franchisee.
- 8.2.2 Notwithstanding the provisions of Clause 8.2.1, the Franchisee shall be free to issue spot bills to the Consumer ("Consumer Bills") provided appropriate systems are agreed to and implemented the necessary MIS reports are made available by franchisee.

8.3 Collection

- (i) From the Effective Date to end of term of agreement, the Franchisee will be responsible for the collection of payment of Consumer Bills in the Specified Area. The amount collected during the month will be deposited by franchisee in SOUTHCO on very day and the same shall be adjusted against the first bill raised by SOUTHCO vide clause No. 7.2.2.
- (ii) The collection counters of "SOUTHCO" shall continue up to a period of three months from the Effective Date. Thereafter, the Franchisee shall have the option to continue with the Departmental Counters of "SOUTHCO". The charges for water, electricity, telephone, etc. in such premises of "SOUTHCO" shall be borne by the Franchisee to the extent of its use by the Franchisee.
- (iii) The franchisee will be free to collect the payment of Consumer Bills through any other channel.
- (iv) The receipt to be issued against the payment made by the Consumers shall be on printed receipt books / computer stationery, as approved by "SOUTHCO".The receipt format contains the details of SOUTHCO and printed books will be supplied by SOUTHCO.
- (v) The Franchisee shall submit cash stubs, CCB register and correction forms etc. related to previous month to SOUTHCO as per fixed programme by not later than 3rd of succeeding month. In case spot billing is implemented the consumer ledger data shall be maintained and made available by franchisee by 22nd of succeeding month and MIS report will be filed in place of Meter Readings.

8.4 Collection of Arrears

8.4.1 With effect from the Effective Date, the Franchisee shall be authorized to collect all the arrears under previously issued Consumer Bills in the Specified Areas. Arrears have been classified in two categories:

- (i) **"Connected Arrears"** - Arrears due prior to Effective Date from the Consumers which are connected to the distribution network.
- (ii) **"Disconnected Arrears"** - Arrears due prior to Effective Date from permanently and temporarily disconnected Consumers who are no longer connected with the distribution network.

The Franchisee shall maintain and furnish to "SOUTHCO" monthly accounts of the collection of Arrears from connected and disconnected consumers separately.

- 8.4.2 Connected or Disconnected Arrears, which are under litigation on Effective Date, shall not be dealt by the Franchisee. The responsibility to recover such arrear shall rest with "SOUTHCO".
- 8.4.3 The Franchisee shall not issue connections to such consumers where the Superintending Engineer in charge of distribution Circles of the concerned area is of the view that issuing such connection will hamper the efforts of "SOUTHCO" to recover arrears from the consumers or hamper the proceedings taken under Dues Recovery Act (DRA). In case any actual recovery is made through proceedings under the DRA, the SOUTHCO shall pay the Franchisee 25% of the amount so recovered, so far as the dues pertain to the Franchisee. The Franchisee shall not be entitled to any payment on this account if the recovery takes place after the Expiry/termination of this Agreement ever if the dues recovered pertain to the Franchisee.
- 8.4.4 The Franchisee shall receive an incentive, 15 % of the Connected Arrears and 25% of the Disconnected Arrears, as the case may be, collected by it in any calendar month. The Franchisee shall deposit the amounts collected on account of Connected and Disconnected Arrears in each calendar month, to "SOUTHCO" within seven days of the succeeding month along with the relevant accounts. The incentive as indicated above will be credited to the franchisee in the next month bill.

8.5 Disconnection

- 8.5.1 The Franchisee shall serve disconnection notices to defaulting consumers and generate the disconnection list themselves and implement the same as per the Electricity Act and OERC guidelines.

8.6 New Connection

- 8.6.1 The Franchisee shall be responsible to collect process and sanction all applications for new connection, including those for temporary connections. However, the Franchisee shall seek prior written approval of "SOUTHCO" before providing LT permanent and temporary connections to the prospective consumers of the newly electrified locality, village, habitation and in case of individual HT consumer with connected load more than 70 KVA.
- 8.6.2 The consumer shall execute an Agreement with SOUTHCO for new connection as per Article 8.6.1.
- 8.6.3 Formalities for new connection shall be completed as per prevailing practice of SOUTHCO. The franchisee shall make arrangements for releasing connection as per provisions contained in Orissa Electricity Supply Code, 2004 as in force from time to time.
- 8.6.4 Expenditure for providing infrastructure for giving new connections (where no infrastructure is available) will be done by the SOUTHCO as per provisions contained in Orissa Electricity Dist. (Conditions of Supply) Code, 2004 as in force from time to time.

- 8.6.5 The Franchisee shall be entitled to make payments to SOUTHCO on every new permanent connection as under.

Apportionment of the amount received from the consumer for new connection shall be done in the following manner:

- (i) Where the Franchisee, incurs any capital expenditure for providing a new connection, the franchisee shall be entitled to retain the full costs of works recovered from the consumer as per the standard procedure laid down by SOUTHCO or OERC guidelines including the supervision charges.
- (ii) Where such capital expense for providing a new connection is borne by "SOUTHCO", amount recovered from the Consumer, if collected by the Franchisee, shall be remitted to "SOUTHCO" deducting the labour and supervision charges
- (iii) The service connection charges as prescribed by OERC, from time to time, shall be credited to the SOUTHCO's account by the franchisee on monthly basis. Labour cost for installation of meter and connecting the service line with the distribution mains of SOUTHCO shall be credited back to the franchisee in the next month. Above labour charges shall be paid at the rate of Rs. 100/- per single phase connection and Rs.150/- per three phase connection subject to revision from time to time.
- (iv) The Security Deposit for a new connection collected by the Franchisee shall be remitted to SOUTHCO.

8.7 Reduction of T&D loss and improvement of Collection Efficiency:

The Franchisee shall reduce the T&D loss minimum by 5 % and improve coll. Efficiency minimum by 5 % w.r.t the base year. Failure of achieving the minimum of T&D loss and Coll. Efficiency shall attract penalty @ Rs. 0.01 per kwh energy consumed during a month irrespective of the achievement on annual basis excluding the force majeure condition.

8.8 Prevention of theft and malpractices

- 8.8.1 The Franchisee shall coordinate with "SOUTHCO" and initiate necessary actions and proceedings, in accordance with the Electricity Laws to prevent theft of power, interference with meters and extinguishing public lamps, theft of electric lines, material etc.
- 8.8.2 "SOUTHCO" shall extend all necessary assistance for dealing with the matter under Chapter XII (Assessing officer shall be of "SOUTHCO") or lodging complaint in the Court of Law under Chapter XIV of the Act.

- 8.8.3 The Franchisee may consider the use of innovative operating systems and technical solutions for loss reduction, theft prevention, credit control, etc. Before implementing such a system the Franchisee will submit such plans, processes and procedures to "SOUTHCO". "SOUTHCO" may intervene to modify the plans, processes and procedures submitted by Franchisee, only in the event that they are likely to lead to the violation of certain Regulatory or licensee conditions. These innovating operating system and solution as described above are the sole property of Franchisee. However SOUTHCO may keep these system after the completion of agreement period after paying a price to Franchisee mutually agreed by both parties.
- 8.8.4 Franchisee shall be paid 50% of any amount realized from a consumer pursuant to an assessment or recovery made from the Consumer for unauthorized use of electricity under Section 126/127, theft of electricity under section 135 and due to interference with meters or works of licensee under section 138 of the Act.

8.9 Consumer Service

- 8.9.1 The Franchisee shall at its own cost, establish a Consumer Service Centre for acknowledgement and redressal of consumer complaints.
- 8.9.2 The Consumer Service Centre shall provide for complaint handling system wherein the consumer can lodge and receive acknowledgment of complaint by phone or approaching in person.
- 8.9.3 The Franchisee shall maintain the roster of complaints in his office and shall redress the complaints on first come first serve basis. The procedure of addressing complaints on first come first serve basis shall not be deviated without just and proper cause.
- 8.9.4 The Franchisee shall provide "SOUTHCO" with monthly MIS of Consumer Complaints and action taken to be prepared in accordance with the prevailing practice of "SOUTHCO".
- 8.9.5 The Electricity Consumers Grievance Redressal Forum established under Section 42 of the Electricity Act, 2003, having jurisdiction at Brahmapur or Jeypore as the case may be shall continue to have the jurisdiction in the Specified Area and the decisions taken by the said Forum shall be binding on the Franchisee.

8.10 MIS and IT support

- 8.9.1 The Franchisee shall provide sufficient number of computers and employ adequate number of persons who can operate computers to provide data in compatible format to meet MIS reporting requirements of OERC/ Assembly questions/ Audit queries/ "SOUTHCO" / Other purposes as per the prescribed formats.

- 8.9.2 The Franchisee shall make endeavour to extend the IT related activities in the specified area to facilitate better service with the consumers such as payment, registration of complaint etc.
- 8.9.3 Franchisee will facilitate "SOUTHCO" for obtaining approval of ARR petition by providing data with respect to the specified area as per format provided by OERC or "SOUTHCO". The requisite data shall be made available within 15 days of intimation forwarded to the Franchisee by the EE (O&M) of respective divisions. Franchisee shall submit to the "SOUTHCO" information in the formats as specified by "SOUTHCO" and in line with the reporting requirements prescribed by OERC from time to time.
- 8.9.4 The Franchisee shall submit information / data for preparation of (Revenue Returns) to Computer Section on 22nd of the every month and collect printed Revenue Return on 25th of the every month. Franchisee shall submit Revenue Return with all revenue related formats (complete revenue return) to the "SOUTHCO" up to 30th of every month.
- 8.9.5 The Franchisee shall continue to maintain and update necessary records and database in respect of the Specified Area in the same format as used by "SOUTHCO".

8.11 Use of SOUTHCO Facilities:

The Franchisee may request for the use of the building and telephone belonging to "SOUTHCO" in the Specified Area during the Term of Agreement. The charges for rent, telephone, water, and electricity at such premises shall be borne by the Franchisee to the extent of its use by Franchisee.

ARTICLE 9: ELECTRICITY DUTY

The Electricity Duty shall be governed as below:

- 9.1 Any change in taxes and duties as notified by GoO, so collected by Distribution Franchisee from the Consumers in Franchise Area shall be paid to SOUTHCO.

ARTICLE 10: UTILISATION OF SOUTHCO EMPLOYEES

The existing employees in the Franchise Area will be given an option to join the Distribution Franchisee on transfer basis.

- 10.1 After expiry of three months from the effective date, Franchisee at its discretion, may keep selected or all the SOUTHCO employees associated with him on his roll.
- 10.2 SOUTHCO employees on transfer with the Distribution Franchisee shall be governed by the Distribution Franchisee's working terms and conditions. However, the Distribution Franchisee shall make those terms and conditions available upfront to all willing employees opting for transfer. For employees on transfer from SOUTHCO, the employment terms and conditions shall be

SOUTHCO's terms & conditions of transfer as attached in Annexure-3 would be applicable. Distribution Franchisee would have the right to send any SOUTHCO employee back to SOUTHCO with one month's notice to the SOUTHCO with assigning the reasons.

- 10.3 The cost of employees on transfer would be borne by Distribution Franchisee. The Distribution Franchisee will compensate the SOUTHCO employee on transfer with the Franchisee towards all the benefits available to him/ her as per his/ her employment terms of SOUTHCO 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 SOUTHCO employee on transfer with the Franchisee.
- 10.4 In addition to usual Salary and other allowances as per the SOUTHCO rules from time to time, Franchisee shall make minimum additional 15 % incentive calculated on the basis of Basic pay of the employees to SOUTHCO which shall be pass on to the employees. The present employee cost in the Franchisee area is as under.

Sl. No.	Name of the Sub Division	Basic Pay(Approx.) (Rs.)	Monthly Avg. Employee Cost in (Rs.)
1.	Buguda	2,72,000	4,35,000
2.	Bellaguntha	3,30,000	5,25,000

The Salary and allowances of the Franchisee area of the existing employees shall be borne by Franchisee on 25 %, 50 %, 75 % and 100 % of the employee cost on 7th, 9th, 11th and 13th month onwards respectively. The same shall proportionately be applicable in respect of unselected employees or repatriated employees from franchisee after expiry of three months.

- 10.5 At the end of the period of transfer or the Franchisee Agreement whichever is earlier, the employees on transfer will return to SOUTHCO. Such employees will not lose their seniority in SOUTHCO due to transfer with the Distribution Franchisee as they have the lien with the SOUTHCO.
- 10.6 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.
- 10.7 However, Distribution Franchisee's employees shall not become either permanent or contract employees of SOUTHCO 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 SOUTHCO 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. SOUTHCO will not be responsible or liable for the claims raised by the employees of the Distribution Franchisee and the Distribution Franchisee shall indemnify SOUTHCO in respect there of.

ARTICLE 11 : PERFORMANCE SECURITY

- 11.1 The Franchisee shall, in order to secure the performance of its obligation under this Agreement deposit with "SOUTHCO", unconditional and irrevocable Bank Guarantee from a Scheduled Bank in favour of SOUTHCO (proforma for BG shall be made available within a week) for an aggregate amount of Rs. ----- Lakhs only based on the base year (Last 12 months monthly average collection or current financial year average monthly realization).
- 11.2 The performance guarantee will be provided equal to the 2 times of the average monthly bill collection based on the previous 12 months data or current financial year data (Jan-07 to Dec-07) after expiry of this agreement while renewing for further term.
- 11.3 In case of the Franchisee commits any breach of the terms and conditions of this Agreement or defaults in the performance of its payment obligations, "SOUTHCO" shall be entitled forfeit or draw on the Performance Security or any part thereof, at the sole discretion of SOUTHCO".
- 11.4 In case "SOUTHCO" forfeits or draws on the Performance Security or any part thereof, the Franchisee shall replenish the Performance Security amount available with "SOUTHCO" so as to fully comply with the provisions of clause 11.1 above, within 7 working days of such forfeiture or drawl, as the case may be, by "SOUTHCO".
- 11.5 The amount of Performance Security shall be revised at the beginning of each year during the Term of Agreement so as to bring it up to the requirement provided in Clause 11.1 above. The additional amount of Performance Security, if any, shall be deposited by the Franchisee within seven days.
- 11.6 The Bank Guarantee component of the Performance Security shall be kept valid for a period of 180 days from the expiry of the Term of this Agreement.

ARTICLE 12: INDEMNIFICATION

Indemnity

- 12.1 The Distribution Franchisee during the term of this Agreement shall indemnify, defend and hold SOUTHCO harmless against:
- 12.1.1 Any acts of omissions/commission of Distribution Franchisee with regard to the electricity services provided by SOUTHCO. In such event Distribution Franchisee shall have no claim for compensation, incentive or any other claim against SOUTHCO.
- 12.1.2 Claims against SOUTHCO made by any third party for any act of commission or omission by Distribution Franchisee, Distribution Franchisee shall indemnify and hold SOUTHCO harmless and compensate all the losses so caused to SOUTHCO. SOUTHCO shall also be entitled to defend any action with third parties at the cost and expenses of Franchisee.
- 12.1.3 All monetary obligations or losses or implications arising out of such action of Distribution Franchisee in the nature of costs, expenses or damages. SOUTHCO 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.

- 12.1.4 Claims on all the employees of SOUTHCO on transfer against any loss/implication arising out of the actions of Distribution Franchisee.
- 12.1.5 Non-payment of all taxes, duties, and statutory /local levies arising as a result of this commercial transaction as required under Article 7.2.18
- 12.1.6 Non-compliance of the Laws, Regulations, Orders and Directives of OERC by the Distribution Franchisee.
- 12.1.7 Any penalty imposed on account of non-compliance as stated hereinabove.
- 12.1.8 This Indemnification shall survive the term of this Agreement.

12.2 SOUTHCO shall indemnify, defend and hold the Distribution Franchisee harmless against:

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

12.2.2 Third party claims on account of SOUTHCO 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 SOUTHCO during the said period of six months in respect of all such claims shall be limited to Rs. 50 Lakhs. Provided, however that such indemnity shall be limited only to legally established claims.

Procedure for claiming indemnity

Third party claims

- (a) Where either party is entitled to indemnification from the other party pursuant to Article 12.1, it shall promptly notify the other party of such claim, proceeding, action or suit referred to in Article 12.1 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 12.2.1(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 12.1 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 defence 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 defence, and employs an independent legal counsel at its own cost.

Indemnifiable Losses

Where either party is entitled to Indemnifiable Losses from the indemnifying party pursuant to Article 12.1, 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 13: INSURANCE

13.1 The Distribution Franchisee at its own discretion shall insure the assets purchased during the term of this Agreement.

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

ARTICLE 14 : REPRESENTATION AND WARRANTIES

14.1 Representations and Warranties of the Franchisee

The Franchisee represents and warrants to "SOUTHCO" that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- (ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) It has taken all necessary corporate and other action under the law and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) It has the financial standing and capacity to undertake the Distribution, Operations and Management of the Distribution Assets and Network in the Specified Area;
- (v) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

- (vii) All the information furnished in the Bid submitted by the Franchisee are, and shall be, true and correct as on the Effective Date
- (viii) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of the Memorandum and Articles of Association of the Franchisee or any laws or any covenant, Agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;
- (ix) There are no actions, suits, proceedings, or investigations pending or, to the Franchisee's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Franchisee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- (x) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any Material Adverse Effect or impairment of the Franchisee's ability to perform its obligations and duties under this Agreement;
- (xi) It has complied with all laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (xii) The Franchisee is duly authorized under the laws of the jurisdiction of its incorporation and has full power and authority to consent and has validly consented to and requested "SOUTHCO" to enter into this Agreement with the Franchisee pursuant to its Memorandum and Articles of Association and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xiii) No representation or warranty by the Franchisee contained herein or in any other document furnished by it to "SOUTHCO", contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (xiv) Franchisee warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Franchisee, to any person by way of Price, commission or otherwise for securing the Agreement or entering into this Agreement or for

influencing or attempting to influence any officer or employee of Franchisee and GoO in connection therewith.

14.2 Representations and Warranties of “SOUTHCO”

“SOUTHCO” represents and warrants to the Franchisee that:

- (i) “SOUTHCO” has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) “SOUTHCO” has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (iii) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) “SOUTHCO” is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

14.3 The failure of either party to comply with the Representations and Warranties herein contained shall constitute breach of this Agreement.

ARTICLE 15. DISCLAIMERS

15.1The Franchisee acknowledges that it has found the Specified Area suitable for carrying on the activities under this Agreement and has carried out its due diligence.

15.2The Franchisee acknowledges that prior to execution of this Agreement, the Franchisee made a careful and complete examination as well as independent evaluation of proposed business /activities under the Agreement and has determined to the Franchisee’s satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Franchisee in the course of performance of its obligations hereunder.

15.3The Franchisee acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause [12.2] above and hereby confirms that “SOUTHCO” shall not be liable for the same in any manner whatsoever to the Franchisee.

ARTICLE 16. FORCE MAJEURE

16.1 As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 14.2, 14.3 and 14.4 respectively, if it affects the performance by the Party claiming the benefit

of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and (iii) has Material Adverse Effect on the Affected Party.

16.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) Act of God, epidemic or plague, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Specified Area;
- (b) Any event or circumstances of a nature analogous to any of the foregoing.

16.3 Indirect Political Event

An indirect Political Event shall mean one or more of the following acts or events:

- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) Industry-wide or State-wide strikes or industrial action;
- (c) Any civil commotion, boycott or political agitation which prevents operation of the POF (Prevention Operation of Franchisee) by the Franchisee for an aggregate period exceeding 30 (thirty) days in a Calendar Year;
- (d) Cancellation of the Distribution License of "SOUTHCO"; or
- (e) Any event or circumstances of a nature analogous to any of the foregoing.

16.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law
- (b) Expropriation or compulsory acquisition of the Distribution Assets or rights of the parties therein;
- (c) Any event or circumstance of a nature analogous to any of the foregoing.

16.5 Duty to report Force Majeure Event

16.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 16 with evidence in support thereof;
- (b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) Any other information relevant to the Affected Party's claim.

16.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

16.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 16.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

16.6 Effect of Force Majeure Event on the Agreement

Upon occurrence of a Force Majeure event neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto, except –

- (a) As provided in Article 16.7; and
- (b) As soon as practicable, "SOUTHCO" shall be responsible for the restoration and replacement of the Distribution Assets and Network in the Specified Area, which are damaged due to the occurrence of a Non-Political.

16.7 Excuse from performance of obligations

Subject to Article 16.6, if the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

16.8 This Agreement shall not be terminable on account of occurrence and subsistence of a Force Majeure Event. The Agreement Period shall be extended by the duration for which the Force Majeure Event affects the performance of the Affected Party. This extension shall be at the option of the Franchisee.

16.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

ARTICLE 17: ASSIGNMENTS, CHARGES AND SUB-CONTRACTING

17.1 The Franchisee shall not assign or sub-let any of its rights or obligations under this Agreement.

17.2 The Franchisee shall neither create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement.

17.3 Notwithstanding anything to the contrary contained in this Agreement, "SOUTHCO" may assign any of its rights and benefits and/or obligations under this Agreement pursuant to any direction of OERC or by operation of law or in the course of its business.

17.4 Subcontracting: The Franchisee may with prior intimation to "SOUTHCO" engage a sub-contractor to carry out some of its activities, provided the Franchisee shall continue to remain liable to "SOUTHCO" for the discharge of all its obligations under this Agreement.

ARTICLE 18. EVENTS OF DEFAULT AND TERMINATION

18.1 Termination for the Franchisee's Event of Default

18.1.1 Franchisee's Event of Default: The following events shall constitute an event of default by the Franchisee (a "Franchisee Event of Default") unless such Franchisee Event of Default has occurred as a result of "SOUTHCO"'s Event of Default or a Force Majeure Event;

- (i) If the Franchisee fails to pay any amount(s) as and when the same become due to "SOUTHCO" in accordance with the Agreement;
- (ii) If the Franchisee fails to provide, renew or replace the Performance Security as provided in Clause [11.1] to [11.4] of this Agreement;
- (iii) If the Franchisee fails to improve the T&D and Coll. Efficiency performance @ 5% per annum from the baseline at the first anniversary of the Effective Date;
- (iv) The Franchisee commits any Material Breach of the terms and conditions of this Agreement or the Electricity Laws;
- (v) Any representation or warranty made by the Franchisee is found to be false and misleading;
- (vi) Franchisee has unlawfully repudiated the Distribution Agreement or has otherwise expressed an intention not to be bound by this agreement.
- (vii) The transfer, pursuant to law of either-
- (viii) (a) The rights and/or obligations of the Franchisee under this Agreement, or
- (ix) (b) All or material part of the assets or undertaking of the Franchisee except where such transfer, in the opinion of "SOUTHCO" does not affect the financial technical capability of the Franchisee to perform its obligations under this Agreement;
- (x) The Franchisee is adjudged bankrupt or insolvent; or if a trustee or receiver is appointed for the Franchisee or for any of its property that in the opinion of "SOUTHCO" has a Material Adverse Effect on the

financial technical capability of the Franchisee to perform its obligations under this Agreement;

- (xi) Any petition for winding up of the Franchisee is admitted by a court of competent jurisdiction or the Franchisee is ordered to be wound up by court,
- (xii) The Franchisee suffers an execution being levied on any of its assets/equipment causing a Material Adverse Effect on the performance of the Franchisee's obligations under this Agreement and allows it to be continued for a period of 15 (fifteen) days;

18.1.2 On the occurrence of a "Franchisee's Event of Default" under any of the provisions of 18.1.1 hereof, "SOUTHCO" shall be entitled to immediately suspend this Agreement by issuing a "Suspension Notice" to the Franchisee and carry on the Distribution in the Specified Area by itself. In the event that Franchisee's Event of Default continues to exist beyond a period of 15 days from the date of issuance of the "Suspension Notice", SOUTHCO shall be entitled to terminate this Agreement by issuing a Termination Notice to the Franchisee and this Agreement shall stand terminated from the 30th day of issue of the Termination Notice to the Franchisee.

18.2 Termination for "SOUTHCO"'s Event of Default

18.2.1 "SOUTHCO"'s Event of Default

The Franchisee may after giving 60 (sixty) days notice in writing to "SOUTHCO", terminate this Agreement upon the occurrence and continuation of any of the following events (each a "SOUTHCO"'s Event of Default"), unless any such "SOUTHCO"'s Event of Default has occurred as a result of Franchisee's Event of Default or due to a Force Majeure Event.

- (i) "SOUTHCO" is in material breach of this Agreement and such breach has a Material Adverse Effect on the Franchisee and "SOUTHCO" has failed to cure such breach or take effective steps on receipt of notice from the franchisee for curing such breach(s) as specified in the notice within the Cure Period;
- (ii) "SOUTHCO" repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;

18.3 Consequences of Expiry or Termination:

18.3.1 Upon expiry or Termination of this Agreement the Franchisee shall forthwith cease to have any right to collect any payment from the Consumer in the Specified Area.

18.3.2 The Franchisee shall be liable to account for and make all payments due to "SOUTHCO" under this Agreement;

18.3.3 Handing over of Distribution Assets:

- (i) The Franchisee shall account for and hand over to “SOUTHCO” all Distribution Assets in accordance with the Distribution Asset Inventory prepared under Article 7.7 as updated from time to time;
- (ii) Thirty (30) days prior to the Expiry Date or upon the earlier Termination of this Agreement, the parties shall carry out a final Joint Asset Inspection of the Distribution Assets.
- (iii) Any defects and deficiencies in the Distribution Assets pointed out by “SOUTHCO” during the course of final Joint Inspection shall be removed and rectified by the Franchisee at his own cost within 15 days, failing which “SOUTHCO” shall remove/ rectify the defects and deficiencies and recover all costs and expenses thereof from the Franchisee, including recourse to the Performance Security and proceedings under the Dues Recovery Act;

18.3.4 The Franchisee shall forth with deliver to “SOUTHCO” all papers including the forms used, partially used and unused receipts books, all promotional materials and documents which may have come into its position or custody under the terms of this Agreement or otherwise;

ARTICLE 19. SURVIVAL OF RIGHTS

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 20. DISPUTE RESOLUTION

20.1 Amicable Resolution

20.1.1 Save where expressly excluded in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 20.1.2 provided further that the Party requiring conciliation of a Dispute shall issue a notice in writing of at least thirty (30) days to the other Party informing it of its intention of initiating Conciliation procedure.

20.1.2 In the event of any Dispute between the Parties, such Dispute shall be first referred to the Executive Engineer (O&M) of respective Divisions or representative of “SOUTHCO” and the Chairman of the Board of Directors or the person notified of the Franchisee, for amicable settlement. Upon such

reference, the said two individuals shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute.

20.1.3 If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Clause 20.2 shall apply.

20.2 Save where expressly excluded in this Agreement, any Dispute, which is not resolved amicably as provided in Clause 20.1 shall be finally decided by reference to the OERC.

20.2.1 The Franchisee and "SOUTHCO" undertakes to carry out any decision without delay. Decision relating to any Dispute shall be final and binding on the Parties as from the date they are made.

20.2.2 The Franchisee and "SOUTHCO" agree that any decision may be enforced against the Franchisee and/or "SOUTHCO", as the case may be and their respective assets wherever situated.

20.2.3 This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the decision under clause 20.2.

ARTICLE 21. MISCELLANEOUS

21.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Brahmapur, Orissa, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

21.2 Waiver

21.2.1 Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement: -

- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (iii) shall not affect the validity or enforceability of this Agreement in any manner.

21.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

21.3 Survival

21.3.1 Termination of this Agreement:

- i. shall not relieve the Franchisee or "SOUTHCO" of any obligations hereunder which expressly or by implication survives Termination hereof, and
- ii. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such termination.

21.3.2 All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive such Termination or expiry of this Agreement.

21.4 Notices

21.4.1 Any payment, notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- i. In the case of the Franchisee, be given by letter delivered by hand to the following address

_____.

- ii. In the case of "SOUTHCO", be given by letter delivered by hand to the

_____.

21.4.2 Copies of all notices shall also be sent by facsimile and by registered acknowledgement through pre-paid post or courier.

21.5 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

21.6 Independent Contractor

Each Party hereto is an independent contractor and nothing contained in this Agreement shall be construed to be inconsistent with this relationship or status. Neither Party owes a fiduciary duty to the other. Nothing in this Agreement shall be in any way construed to constitute either Party as the agent, employee or representative of the other. As an independent contractor, each Party has relied on its own expertise or the expertise of its legal, financial, technical or other advisors.

21.7 Assumption of Risk

Each Party hereto acknowledges (i) the risks of its undertakings hereunder, (ii) the uncertainty of the benefits and obligations hereunder, and (iii) its assumption of such risks and uncertainty. Each Party has conducted its own due diligence and requested and reviewed business plans, financial documents and other written material as in such Party's opinion shall be the basis of that Party's decision to enter into this Agreement.

21.8 Reliance

21.8.1 Each Party has consulted such legal, financial, technical or other expert it deems necessary or desirable before entering into this Agreement. Each Party represents and warrants that it has read, knows, understands and agrees with the terms and conditions of this Agreement. All discussions, estimates or projections developed by a Party during the course of negotiating the terms and conditions of this Agreement are by way of illustration only, and unless specifically contained in this Agreement or one of its Schedules, are not binding or enforceable against other Party in law or in equity.

21.8.2 Each Party agrees and acknowledges that in entering into this Agreement it is not relying on any representation, warranty or statement made by or on behalf of the other Party, whether orally or in writing, unless the same is expressly set out herein

21.9 Proprietary Rights

All correspondence, records, reports, presentations and other forms of information developed by the Franchisee under this Agreement, whether electronic or physical, shall become the property of "SOUTHCO". The "SOUTHCO", without limitation, have the right to use and adopt procedures, forms and productivity enhancement methods developed under this Agreement, as its own.

21.10 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

21.11 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

In Witness Whereof the, Parties have executed and delivered this Agreement as of the date first above written.

Signed Sealed and Delivered

For and on behalf of
Southern Electricity Supply Company of Orissa Limited.

By

_____ (Signature) In the presence of:
1.
2.
_____ (Name)
_____ (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of
FRANCHISEE by:

_____ (Signature) In the presence of:
1.
2.
_____ (Name)
_____ (Designation)

