

THIS MEMORANDUM OF AGREEMENT made on the day of the Christian era

BETWEEN

BHARAT PETROLEUM CORPORATION LIMITED a Company incorporated under the Indian Companies Act, 1913 having CIN L23220MH1952GO1008931 and having its Registered Office at Bharat Bhavan, 4 & 6, Currimbhoy Road, Ballard Estate, Mumbai 400 001 and its regional office amongst other places, at Bharat Bhavan, Plot No. 31, KIT Scheme No. 118, Prince Gulam Md. Shah Road, Golf Green, Kolkata – 700 095 hereinafter referred to as 'BPCL' which expression shall unless excluded by or repugnant to the context mean and include its successors and assigns) on the ONE PART - hereinafter referred to as 'BPCL' (which expression shall unless excluded by or repugnant to the context mean and include its successors and assigns) on the ONE PART

AND

XXXX – a company incorporated under the laws of XXX and having address at XXXXXXXX hereinafter referred to as XXXX (which expression shall unless excluded by or repugnant to the context mean and include all its successors and assigns) of the OTHER PART.

WHEREAS

- a) BPCL is a petroleum products refining and marketing company.
- b) XXXX is in the business of XXXXXX and now intends to enter into distribution and marketing of Bharat Petroleum range of I & C products detailed in this agreement in the country of Bangladesh.
- c) In order to enhance its presence in the specified range of products detailed in this agreement in Bangladesh market, BPCL is desirous of selling this specified range of products to XXXX for the purpose of use and /or resale of the same in Bangladesh ONLY either by itself and/or by bagging orders for direct supplies to various parties in Bangladesh.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. **Purchase and sale of BPCL's I & C range of products :**

BPCL agrees to sell to XXXX and XXXX agrees to buy from BPCL, petroleum products mentioned below, which is treated as a part of this agreement, and/or any other product as may be introduced by BPCL from time to time, on the terms and conditions contained hereinafter.

- a) Bitumen (Packed & Bulk) of all specifications
- b) Furnace Oil
- c) Mineral Turpentine Oil
- d) Hexane

2. **Geographic Territory for XXXX for marketing of the above mentioned products :**

2.1 XXXX is being appointed by BPCL as the Sole Selling Agent for marketing & distribution of the above mentioned products of BPCL in the country of Bangladesh. During continuance of this agreement, XXXX shall deal exclusively with the products of BPCL in these product categories.

2.2 If BPCL receives any business inquiry from any party from Bangladesh, BPCL shall refer or forward such inquiry to XXXX with advice to contact SSA and in an event of SSA not being able to cater or customer wishes to take supplies directly from BPCL in such case BPCL shall execute the order directly. Also BPCL can directly participate in any tender business, if direct participation from the manufacturer is a mandatory condition in the tender. No commission shall be payable in such cases of direct supply unless agreed in writing in advance.

3. **Sales Volumes target :**

3.1 XXXX shall promote the sales of BPCL's products to the satisfaction of BPCL. In order to ensure effective marketing of BPCL's products in Bangladesh, the following time bound sales volumes targets have been agreed for XXXX

| Product | 1st Year | 2nd Year | 3rd Year |
|-------------------|----------------------------|----------------------------|----------------------------|
| Bitumen | | | |
| Furnace Oil | | | |
| MTO | | | |
| Food Grade Hexane | | | |

The quantity mentioned above is as per the present market potential & requirement of XXXX. XXXX undertakes to further enhance the re-sale of the said product to the best of his ability and to use his utmost endeavor to extend the business in the said products.

Performance evaluation and review shall be carried out by BPCL every 3 months to ensure achievement of targets.

3.2 As far as possible, the sale and purchase of these petroleum products agreed hereinabove will be prorated uniformly throughout the year.

4. **Quality :**

The specifications of the said Products to be sold is mentioned in Annexure-1 and the same is being treated as a part of this AGREEMENT.

5. **Prices :**

5.1. The Sale Price of the said Product will be the price as may be fixed by BPCL from time to time and prevailing on the date of supply.

5.2. It is hereby expressly declared that XXXX will be at the liberty to charge prices which may be lower than the prices fixed by the Company, but any reduction made by XXXX will be to his own account and will not be recoverable from the BPCL.

5.3. Duties, taxes and statutory levies would be as per applicable rates on the date of supply and as per Notification issued by Government of India.

6. **Sales Process** :

- 6.1 XXXX shall sell the said Products in specified markets as mentioned in this agreement for appointment of SSA.
- 6.2 XXXX shall supply products to actual end users of the product. Any further sale to resellers/traders shall be subject to approval of the Company.
- 6.3 XXXX will provide his monthly demand 30 days in advance.
- 6.4 XXXX is required to place indent along with payment for billing based on the PO received from the end user.
- 6.5 Purchase orders / indents to clearly indicate requirement of Product and documentation involved.
- 6.6 XXXX should ensure that the Product physically moves to intended destination. Tax Documents, Entry / Exit Check Post documents and any other applicable document to be collected by SSA and kept for future verification.
- 6.7 Monthly reconciliation of all transactions shall be undertaken by Company and signed off with the SSA.
- 6.8 Copy of all types of returns as per provisions of control orders, as Applicable, to be retained by XXXX.
- 6.9 XXXX will place indents upon BPCL from time to time to BPCL's Kolkata I & C Territory office at Bharat Bhavan , Plot No. 31, KIT Scheme, 118, Prince Gulam Md. Shah Road, Golf Green, Kolkata – 700 095 or at any other office as mutually agreed.
- 6.10 XXXX will ensure all relevant supply documents (Like ARE-1, Shipping Bill, Bill of Export etc.) are duly cleared at the Border, endorsed by respective Customs Office of India and Bangladesh and submitted back in original to BPCL at their Kolkata I&C Territory Office at Bharat Bhavan , Plot No. 31, KIT Scheme, 118, Prince Gulam Md. Shah Road, Golf Green, Kolkata – 700 095 or at any other office as mutually agreed address and acknowledgement obtained.
- 6.11 The above documents are required to be submitted back within a

period of maximum 1 (one) months of executing the supplies and necessary acknowledgement may be obtained for receipt of documents at the appropriate address and appropriate authority.

- 6.12 To ensure all statutory requirements, as applicable, inside Bangladesh in case of sale of these specified products are complied with. There should not be any obligations/ liabilities on part of BPCL.

7. **Payment :**

The preferred terms of payment by XXXX would be full payment in Advance. However, payment by confirmed LC too, may be considered at the sole discretion of BPCL.

- 7.1 If given on advance , XXXX will pay the price of the product indented with BPCL through advance in USD pursuant to which supplies shall be made by BPCL.
- 7.2 If given on LC – when terms are of credit, XXXX at the time of placing the indent will pay the price of the product indented, determined in terms of clause 5.1 here in above in USD through irrevocable, confirmed letter of credit (without recourse to BPCL) in advance in favor of Bharat Petroleum Corporation Ltd. payable at sight LC opened through 1st class Multinational Bank as approved by BPCL.
- 7.3 XXXX to follow-up for payments against LCs opened by XXXX or other direct customers if any. All payments against LC at sight need to be cleared immediately and ensure that payments are not delayed beyond XXXX days of BILL submission to BPCL Bank, proof of which will be forwarded to XXXX by e-mail.
- 7.4 If for any reason whatsoever, upon placement of the order, for want of availability of the product, BPCL is unable to supply the said product, the amount paid by XXXX against the said supply shall be adjusted against the payment of next indent placed by XXXX. BPCL shall not be liable to pay any interest on such amount in any event whatsoever.
- 7.5 No discrepancy charges/ bank charges shall be deducted against BPCL's LC claims. All Bank charges/ discrepancy charges/reimbursement charges/confirmation charges or any other charges in relation to the LC which is arising/ inside and outside Bangladesh shall be on XXX account.

- 7.6 To ensure that all LCs opened by individual customers if any are '**CONFIRMED LCs**'. The confirmation charges as applicable are on account of XXXX or the individual customer as the case may be. BPCL will not bear any charges pertaining to LC confirmation.
- 7.7 LCs are opened as standard format provided by BPCL. Also the documents required to be submitted should not exceed the following
- a. 1 No Original Copy of Commercial Invoice
 - b. 1 No Original Copy of Truck Receipt (in case of Railway movement 1 no photocopy of RR documents)
 - c. 1 No Original ' Certificate of Origin'
 - d. 1 No Original 'Packing List'
- 7.8 To ensure LCs opened favoring BPCL should comply with the following requirements
- 'DISCREPANCIES IN TRANSPORT DOCUMENTS IS ACCEPTABLE UNLESS IT CHANGES THE UNDERLINE GOODS OR VALUE OF CREDIT'
- 'TT REIMBURSEMENT ALLOWED. THE NEGOTIATING BANK IS AUHTHORISED TO DEBIT THE LC ISSUING BANK'S ACCOUNT HELD WITH THE NEGOTIATING BANK'
- 'IN CASE OF DISCREPANCIES NOTED IN THE DOCUMENTS SUBMITTED, NEGOTIATING BANK IS AUTHORIZED TO NEGOTIATE THE DOCUMENTS'
- 7.9 In case of any delay in payment beyond the agreed terms ; penal interest @ MCLR + 7% will be levied by BPCL
- 7.10 In case of technical difficulties/ exigencies XXXX shall make payment by RTGS/ Demand draft in favour of Bharat Petroleum Corporation Limited, Kolkata or as directed by BPCL, I&C, Kolkata territory after prior approval from BPCL.
- 7.11 In case of substitution or replacement or any amendment of existing law pertaining to taxes, duties, cess etc, respective provisions of the Agreement shall be amended accordingly and buyer agrees to reimburse the Supplier all such said statutory taxes, duties, levies based on documentary evidence to be submitted by the Supplier.

- 7.12 Any statutory variation in the taxes, duties, levies, cess etc. specified herein above and / or imposition of revision in taxes, duties, levies, cess, octroi, entry tax etc. during the execution period of the Agreement shall be to Buyer's account and payable at actual against documentary evidence.
- 7.13 In case of credit notes to be given to the Buyer by Suppliers for product price or any other related modifications etc the Supplier shall raise credit notes and the buyer confirms that they shall comply with their applicable laws.
- 7.14 The Buyer agrees to indemnify the Supplier unconditionally for any subsequent levies in the form of taxes, penalties, interest etc. on the supplier due to any non-compliance of any law by the Buyer or any subsequent levies by Statutory Authorities.

8. **Use of product :**

The permanent condition of this AGREEMENT is that:

- 8.1. XXXX shall follow all the regulations / policies laid down by the statutory bodies and the Govt. pertaining to handling, storage, marketing & distribution of these specified petroleum products in Bangladesh.
- 8.2. Further XXXX hereby also indemnifies BPCL forever against all the loss and damage, cost, taxes, charges, penalties and any other expenses and penal action taken by the statutory authorities against BPCL or its employees due to irregularity and discrepancy, if any being found at a later date and XXXX shall be fully responsible for all the consequences related to the same.
- 8.3. XXXX will be exclusively responsible and liable for non – use / misuse of all the products that will be purchased by his customers.
- 8.4. XXXX shall use and/or sale the product purchased by it from BPCL in Bangladesh ONLY and shall ensure that such product does not come back to India for the purpose of any use or sale in India in any manner whatsoever.
- 8.5. XXXX have also undertaken to submit copies of any other documents like end use certificate, invoice copies bearing border check post stamps, transport lorry receipt, en route toll tax receipts etc. confirming the receipt and use of material in Bangladesh to BPCL.

- 8.6. If at any time it is found that the product sold and supplied to XXXX by BPCL under this agreement is being sold or used in India in any manner whatsoever, it shall be construed as breach of this agreement by XXXX and in that eventuality, BPCL shall be within its rights to take such steps as it may deem fit and proper including compensation/ damages for the loss caused/ suffered to the BPCL.
- 8.7. Further if at a later date, any irregularities are found in regard to product misuse, XXXX, would be fully responsible for the same and authorizes BPCL to debit the security amount (if any) submitted with BPCL during any time within the period of agreement.
- 8.8. By virtue of being the supplier of products as per this AGREEMENT, BPCL will not be under any legal compulsion to ensure supplies of petroleum product on termination of this AGREEMENT.

9. **Purchase of Petroleum Products from other sources :**

During the term of this agreement the XXXX shall deal exclusively with the product of BPCL and shall not deal with any other Oil Companies. This condition shall be strictly applicable at all times.

10. XXXX shall not make any representation on behalf of BPCL except in conformity with the written instructions issued by BPCL in this regard.

11. **Point of Sale / Delivery :**

- 11.1. The sale of the product will take effect at BPCL's Depot / Installation and title of the product shall pass on to the XXXX as soon as the said product is transferred to XXXX's vehicles/receptacle.
- 11.2. XXXX undertakes to make all necessary arrangements to take delivery of the said product.
- 11.3. XXXX will provide tank lorries at the Company Installation at _____ or at such other location as may be advised by BPCL to XXXX from time to time for collecting the said product to be sold by BPCL to XXXX. The tank lorry provided by the XXXX to BPCL for the said purchase / resale of the product should be duly calibrated by the Legal Metrology Deptt.

11.4. XXXX shall arrange its own transport to lift the product sold to it by BPCL and shall check the quality and quantity of product before lifting the product. XXXX shall not make any claim of any nature regarding quality or quantity of products once XXXX takes the delivery of the product.

12. **Infrastructure / Premises by the Sole Selling Agent :**

12.1. XXXX undertakes to provide and maintain good and sufficient licensed infrastructure/ premises for storage and resale of the said product to the satisfaction of BPCL.

12.2. XXXX shall display or cause to be displayed prominently upon any premises, in or upon which the business in the said product is carried on, an inscription notifying to the public as conspicuously as possible the fact that he is selling the said product supplied by the BPCL.

13. **Inspection :**

13.1. BPCL by its officers or any other authorized representatives shall at all times and in any circumstances have free and unrestricted access to all premises of XXXX used in connection with the business of these products and to inspect and take account of all product in his possession.

13.2. Proper and separate accounts shall be maintained by the XXXX in such form and manner as may be specified by the BPCL for the business done by XXXX under this Agreement and such accounts and all other papers and documents in the possession or custody of XXXX relating to this business shall at all times be open to the inspection of the BPCL, its officers or any other authorized representatives who shall have in all circumstances free and unrestricted liberty and power to check and to copy out the same or any part thereof.

13.3. BPCL, its officers or any other authorized representatives shall at all times have the right to collect and test samples of the said product stored at the premises of XXXX as part of routine quality procedures or to resolve any customer complaint or feedback served by XXXX as and when reported to BPCL.

14. **Measurement :**

14.1. Supplies in the tank lorries will be made in accordance with the Metric System in so far as they become applicable to the Petroleum Industry.

14.2. Measurement of the quantity delivered by BPCL to XXXX will be determined by a dip of the tank lorries / weight of the tank lorries (as the case may be) at the BPCL's installation. BPCL's measurement will remain binding for the transaction.

15. **Incentive :**

BPCL will consider giving volume linked incentive to XXXX at a rate as BPCL may determine at their sole discretion and such incentive will be calculated at the end of the year based on the sales volume achieved in that particular year.

16. **Storage :**

16.1 XXXX shall not adulterate the petroleum products purchased by it From BPCL under this agreement and at all times shall take all reasonable precautions to ensure that quality of such petroleum products is not contaminated in any manner whatsoever.

16.2 If for any reason whatsoever the said product is contaminated and the said contaminated product is sold by XXXX in the market causing prejudice to goodwill of BPCL, XXXX shall be responsible to keep BPCL indemnified against any third party claim arising out of sale and/or use of such contaminated product besides to pay such compensation as may be determined by BPCL at its sole discretion for the damage caused to its goodwill and products.

17. **Laws, Rules Regulations and Directions :**

17.1 XXXX shall comply with all laws, rules, regulations and requisitions of the Govt. of Bangladesh and of all authorities appointed by them or either of them including the Chief Controller of Explosives, Legal metrology Department, and / or Municipal and /or any local authority in Bangladesh, as applicable, with regard to vehicles and the storage and transport of Petroleum Products and connected equipment and vehicles and directions given by BPCL in connection with the business arising out of this agreement.

17.2 XXXX shall obtain / renew all licenses and / or permits for the erection and / or use of the storage of petroleum products and/ or accommodation , as applicable, at its own cost.

18. **Terms of Agreement :**

This agreement will be deemed to have commenced on _____ and will continue till _____ unless the same is renewed for subsequent period at the sole discretion of BPCL.

19. **Termination :**

19.1 This AGREEMENT may be terminated by either party by giving three months advance written notice to the other party.

19.2 Notwithstanding anything contained hereinabove this AGREEMENT can be terminated by BPCL at their sole discretion upon the happening of any of the following events :-

- i. If default is committed by XXXX in the performance of the covenants and / or terms of the AGREEMENT.
- ii. If any voluntary winding up resolution is passed or winding up petition is presented in respect of XXXX.
- iii. If XXXX shall commit or suffer to committed any act which in the sole discretion of Company shall be prejudicial to the good name of the Company or its products.

20. **Force Majeure :**

20.1 The term Force Majeure in this Agreement means act of God, war, riot, tempest, flood, earthquake, lightening, direct or indirect consequences of war (declared / undeclared), sabotage, fire, hostilities, natural calamities, national emergencies, civil disturbances, commotion, embargo or any law or promulgation, regulation or ordinance or executive order whether central or state or local or municipal authorities, strike / explosion in the BUYER's or SELLER's plant / installation. Upon occurrence or termination of such an event the Party rendered unable to fulfill the contractual obligation as aforesaid shall notify the other Party in writing within 24 (Twenty four) hours of the beginning and ending, giving full particulars and satisfactory evidence thereof.

- 20.2 The parties to this AGREEMENT shall not be responsible for failure of performance or delay in performance of their obligations hereunder if such failure or delay shall be as a result of any Government directive relevant to this AGREEMENT or due to war, hostility, act of public enemy, riots or civil commotions, strikes, lock-out, fire, floods, epidemic, or acts of God, arrests and restraints of rulers and peoples, political or administrative acts or recognized or de-compliance with orders of any Governmental/ Local authority or any other cause or causes beyond their control.
- 20.3 If Force Majeure applies, dates by which performance obligations are scheduled to be met will be extended for period of time equal to the time loss due to any delay so caused, upto a maximum period of two weeks.
- 20.4 In the event of Force Majeure conditions continuing beyond two weeks thereafter, the Parties shall discuss various aspects of Agreement and decide future action in consultation with each other.
- 20.5 Both Parties will diligently work together fullest to resume operations overcoming the Force majeure conditions at the earliest.

21. **Applicable Law** :

Indian Law shall be the law applicable to this agreement.

22. **Arbitration** :

22.1 Any dispute or difference whatsoever arising out of or in connection with this Agreement including any question regarding its existence, validity, construction, interpretation, application, meaning, scope, operation or effect of this contract or termination thereof shall be referred to and finally resolved through arbitration as per the procedure mentioned here in below :

- i. The dispute or difference shall, in any event, be referred only to a Sole Arbitrator

- ii. The appointment and arbitration proceedings shall be conducted in accordance with SCOPE forum of Arbitration Rules for the time being in force or as amended from time to time
- iii. The Seat of arbitration shall be at Kolkata.
- iv. The proceedings shall be conducted in English language
- v. The cost of the proceedings shall be equally borne by the parties, unless otherwise directed by the Sole Arbitrator
- vi. The language of the proceedings shall be English

22.2 The parties hereby agree that the courts in the city of Kolkata, West Bengal , India alone shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this AGREEMENT and any award or awards made by the Sole Arbitrator hereunder shall be filed (if so required) in the concerned courts in the city of Kolkata, West Bengal, India only.

23. **Notice :**

23.1 Any notice required to be given to XXXX by BPCL shall be deemed to be duly received and served on XXXX, if such notice has been addressed to XXXX at his last known address as communicated to BPCL and sent by airmail / registered post / courier / fax and such notice shall be deemed to be validly given and will be binding and legal.

23.2 Any notice required to be given to BPCL by XXXX shall be deemed to be duly received by and served on BPCL if such notice has been addressed to BPCL at its office at Kolkata and has been sent by airmail / registered post / courier / fax.

24. **Assignment :**

This AGREEMENT shall not be assigned or transferred or by either party without the written consent of the other party.

25. **Counterparts** :

This agreement shall be executed in two counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Pleading or providing any provisions of this agreement, it shall not be necessary to produce more than one such counterpart.

IN WITNESS WHERE OF the said parties have hereunto set their hands the day and year first herein above written.

SIGNED FOR & ON BEHALF OF
BHARAT PETROLEUM CORPN.LTD.

SIGNED FOR & ON BEHALF OF
XXXX (NAME)

WITNESSES :

WITNESSES :

1)

1)

2)

2)

