**LONG TERM BIPARTITE PURCHASE AGREEMENT WITH DEDICATED ETHANOL PLANT**

This Long term Bipartite Purchase Agreement (“BPA”) is made and entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_at \_\_\_\_\_\_\_\_\_\_\_

BETWEEN

1. **Bharat Petroleum Corporation Limited**, a company incorporated under the laws of India having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as “BPCL” (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successor and permitted assigns);
2. **INDIAN OIL CORPORATION LIMITED (IOCL)**, a company registered under the Companies Act, 1956 and having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai-400051 (hereinafter referred to as **“IOCL”** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns);
3. **HINDUSTAN PETROLEUM CORPORATION LIMITED (HPCL),** a company registered under the Companies Act, 1956 and having its registered office at Petroleum House, 17, Jamshedji Tata Road, Mumbai, Maharashtra-400020 (hereinafter referred to as **“HPCL”** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns);

Sl no. 1, 2 & 3 together are hereinafter called as **“BUYER/ OMCs”** (which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the **ONE PART**

AND

*Name of Ethanol Seller/ Supplier*, a Project promoter/ proponent desirous of setting Dedicated Ethanol Plant and having its registered office/ principal place of business at …………………………, hereinafter referred to as **“SELLER/ SUPPLIER”** (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successor) of the OTHER PART.

Hereinafter, Buyer/ OMCs and Seller/ Supplier shall be collectively referred to as “Parties” and individually as “Party”.

**WHEREAS:**

1. Buyer/ OMCs are acting as implementing agency/ enablers of the Ethanol Blended Petrol (EBP) Program under aegis of MoP&NG and have signed a Memorandum of Understanding for Cooperation dated \_\_\_\_\_\_\_\_\_\_ in this regard, hereinafter, termed as “Cooperation MOU”. As per said MOU, BPCL has been appointed as Coordinator to perform various roles defined in the “Cooperation MOU” for implementation of the EBP Program on behalf of OMCs.
2. Buyer/ OMCs are desirous to procure Ethanol from such Seller/ Supplier as a part of the EBP Program under the aegis of MOPNG.
3. Buyer/ OMCs have formulated “Guidelines for Signing Agreements with Ethanol plants in deficit States” (hereinafter referred to as **“Guidelines”)**
4. Buyer/ OMCs, as per said Guidelines, have invited applications for supply of Ethanol under the EBP program from project promoter(s)/ proponent(s).
5. Pursuant to the same, the Project promoter / proponent M/S \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who are in the process of setting up an Ethanol plant have submitted an application dtd \_\_\_\_\_\_\_\_\_.
6. Based on evaluation of the application by OMC Ethanol Procurement Group (OEPG), the project promoter/ proponent M/S \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been shortlisted for signing of Long term Bipartite Agreement with Buyer/ OMCs for supply of Ethanol under EBP Program
7. The project promoter/ proponent M/S \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_desirous of setting up a Dedicated Ethanol Plant (DEP) for supply of Ethanol to Buyer/ OMCs under EBP Program, in his capacity as Seller/ Supplier has expressed an interest to sell/ supply Ethanol to OMC`s from such proposed Ethanol Plant to be set up at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (complete address of the plant).

1. Bharat Petroleum Corporation Limited, a “Maharatna Company” in India having established marketing and distribution network and infrastructure in India for sale of Petroleum Products, is desirous to, in its role and capacity as Coordinator under EBP Program; allocate Ethanol to be procured from the Seller/ Supplier amongst Buyer/ OMCs.

**NOW, THEREFORE, THIS LONG TERM BIPARTITE PURCHASE AGREEMENT (BPA) WITNESSETH AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION:** 
   1. **Definitions:**

In this BPA, unless the subject or context otherwise requires, the following words and expressions shall have the following meanings:

* + 1. **Dedicated Ethanol Plant (DEP)**: These ethanol plants will only produce ethanol (as per prevalent BIS specifications) and all of the quantity produced in this unit would be supplied to OMCs only. In case a new dedicated ethanol plant is setup in the same premises where the existing distillery is operating (or is set up as a new distillery), the dedicated ethanol plant should be clearly identifiable as a separate unit. Processing units and storage area of ethanol have to be separate for the dedicated ethanol plant. The non-production facilities, however, can be shared. Necessary certification of such plants by appropriate authorities is required.
    2. **“Business”** means sale and purchase of Ethanol by Seller/ Supplier and Buyer/ OMCs respectively through DEP on mutually agreed terms and conditions.
    3. The **“Ethanol Procurement Process”** is the process followed by OMCs for procurement of ethanol. The process is guided by the directions / advice issued by MOPNG / Govt. of India from time to time.
    4. **ESY** means Ethanol Supply Year i.e. from 1st Dec to 30th November of following year.
    5. **“Purchase Agreement”** means supply agreement made by individual OMC with the supplier for the purchase of ethanol as per allocation made in each ESY.
    6. **“Allocation”** means OMC supply location-wise quantity of ethanol to be supplied by the Seller/Supplier as per prevalent Ethanol procurement process
    7. **“Supply Price”** means the price at which Ethanol shall be purchased by Buyer/ OMCs from Seller/ Supplier.
    8. **“Taxes”** means all forms of taxation and statutory, governmental, supra-governmental, state, principal, local governmental or municipal impositions, duties, contributions and levies, imposts, tariffs and rates and all penalties, charges, costs and interest payable in connection with any failure to pay or delay in paying them and any associated deductions or withholdings of any sort, and as may revised from time to time by statutory authorities.
    9. **"Standards"** shall include applicable national or international standards relevant to Ethanol business.
  1. **INTERPRETATION:** 
     1. Unless the context otherwise requires, a reference to a singular shall include a reference to plural thereof and vice-versa; and a reference to any gender shall include a reference to the other gender.
     2. Unless the context otherwise requires, a reference to any article, clause, appendix, schedule, attachment or annexure shall be to an Article, Clause, Appendix, Schedule, Attachment or Annexure of this Agreement as may be amended, modified, supplemented and extended from time to time.
     3. The appendices, schedules, annexures and/or attachments to this Agreement shall form an integral part of this Agreement.
     4. Reference to any law includes a reference to that law as from time to time amended, modified, supplemented, extended or re-enacted.
     5. Reference to this Agreement shall include a reference to this Agreement as may be amended, modified, supplemented, and extended from time to time.
     6. Reference to any other agreement shall include a reference to that agreement as may be amended, modified, supplemented, and extended from time to time.
     7. Any reference to time shall, except where the context otherwise requires, be construed as a reference to the Indian Standard Time and reference to any Month shall mean to refer to a Gregorian English calendar month.
     8. The headings and side-headings/notes of Clauses, Appendices, Schedules, Attachments and Annexures in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
     9. The words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases.
     10. Unless the context otherwise requires, any period of time referred to shall be deemed to expire at the end of the last date of such period.
     11. The terms “Seller/ Supplier” and “Buyer/ OMCs” shall include their respective officers, managers, employees and their authorized representatives.
     12. This Agreement is made and executed in English Language, which shall be the governing text for all purposes.
     13. In the event of any conflict between any provisions of main body of this Agreement and the provisions of the Appendices, Schedules, Annexures and Attachments; the provisions of the main body of this Agreement shall prevail.
     14. All terms and conditions mentioned in the Notice Inviting Expression of Interest \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (NIEOI) and Letter of Intent (LOI) issued by OMCs/ Buyer in relation to signing of this agreement shall be deemed to be included in this Agreement by reference.
     15. In the event of any conflict between any provisions of this Agreement and the provisions of LOI and / or NIEOI, the provisions of this Agreement shall prevail.

1. **SCOPE OF AGREEMENT:**
   1. The Seller/ Supplier agrees to supply and the Buyer/ OMCs agree to purchase Ethanol under the terms of this Agreement in the quantities, and at Supply Price determined in accordance with, and subject to, the terms and conditions of this Agreement.
   2. The Ethanol Plant from which the Ethanol shall be supplied under this Agreement is located at…………………………………………………… (complete address of the Ethanol plant) and has a design capacity to produce \_\_\_\_\_\_\_\_\_\_\_ KL per annum of Ethanol.
   3. The Seller/ Supplier shall deliver Ethanol at the designated location(s) of Buyer/ OMCs.
   4. The Buyer/ OMCs are entitled to appoint other suppliers for the supply of Ethanol at the designated location(s). Seller/ Supplier agrees not to dispute, object or challenge the appointment of other sellers / suppliers of Ethanol for the designated location(s) by the Buyer/ OMCs. The Seller/ Supplier shall not be entitled to any compensation, remuneration, commission or allowance whatsoever for such appointments / purchase by the Buyer / OMCs.
2. **ETHANOL PLANT AND ITS OPERATIONS:**
   1. The Ethanol Plant and any facilities installed therein shall be installed, commissioned, operated and maintained by the Seller, at his own cost, and the Buyer/ OMCs shall not be entitled to claim any right, title or interest therein. Nothing herein contained shall be deemed to create any lease, license or other right in Buyer/ OMCs with respect to the Ethanol Plant and facilities at the Ethanol Plant, except as provided in this Agreement.
   2. The Seller/ Supplier shall be responsible for planning, preparation (including arranging the entire land, capital and finance), engineering, execution, installation, testing, commissioning, continuous operation and maintenance, of the Ethanol Plant including storage of raw material, at its own cost and expense.
   3. The Seller/ Supplier shall, at no cost or expense to the Buyer/ OMCs, obtain and maintain, or cause to be obtained and maintained, all approvals required from government/ statutory/concerned authorities under applicable laws, for its Ethanol Plant and other facilities installed by it for the purposes of this Agreement.
   4. The Seller/ Supplier shall ensure that the facilities installed at the Ethanol Plant meet the requirements laid under the Standards at all times.
   5. The Seller/ Supplier shall be responsible for arranging the feedstock and other material required for running the Ethanol Plant on continuous basis.
   6. The Seller/ Supplier shall have to create sufficient storage capacity for feedstock as well as Ethanol for optimal supply chain management.
   7. Seller/ Supplier shall be responsible for managing the by-products and wastes from the Ethanol Plant as per existing central / state norms.
   8. All approvals required from the government/ statutory/ concerned authorities with regard to Ethanol Plant shall be the responsibility of Seller/ Supplier. The Seller/ Supplier shall ensure to obtain any other statutory license (or amendment of existing license if applicable) for commencing and carrying on production and supply of Ethanol and its renewal from time to time.
3. **COMMERCIAL SUPPLY:**
   1. Seller / Supplier shall immediately upon signing of this Agreement, notify the Buyer / OMCs the likely month and year when the Ethanol Plant is expected to start commercial supply of Ethanol. The Seller/ Supplier shall also provide Quarterly progress status of the establishment of Ethanol plant to Buyer/ OMCs.
   2. The Seller/ Supplier shall positively intimate Buyer/ OMCs about expected date of commissioning two months prior to the beginning of next ESY.
   3. The Seller/ Supplier shall commence actual supply within 3 (three) years from the date of signing of this agreement or such other period as may be extended by the Buyer/ OMCs provided the Seller/ Supplier approaches the Buyer/ OMCs for extension before expiry of the 3 (three) years timeline.
   4. In the event that the Commercial Supply does not occur within the aforesaid timeline, due to any failure or non-performance of the Seller/ Supplier, then without prejudice to any other right or remedy available to the Seller, the Buyer/ OMCs shall be entitled to terminate this agreement at their sole discretion.
4. **TRANSPORTATION:**
   1. The Seller/ Supplier shall be responsible for transportation of Ethanol from the Ethanol Plant to the designated location(s) of the Buyer/ OMCs.
   2. Transportation rate of Ethanol will be as per rates decided and declared by Buyer/ OMCs from time to time.
5. **Quantities and Allocations:** 
   1. Seller/ Supplier will register himself with OMCs/ BPCL through a vendor registration process in order to participate in EOI floated for quantity bid(s). After successful registration, the Seller/ Supplier will participate in quantity bid(s) floated by OMCs for their location-wise requirement of ethanol.
   2. Buyer/ OMCs offer an annual offtake assurance of \_\_\_\_\_KL of Ethanol and the Seller/ Supplier commits to supply the same by participating in the vendor registration process and EOI floated for quantity bidding. In case, the Seller/ Supplier intends to participate in the quantity bidding process after the first round of allocation for the ESY is concluded, offtake assurance will be limited to the requirement of Buyer/ OMCs for the balance period of that ESY.
   3. Offtake assurance from Buyer/ OMCs is subject to the Seller/ Supplier complying with the condition under clause 6.1.
   4. EOI for quantity bids for the full requirement of the ESY shall be floated prior to the start of ESY to the registered vendors only. There after EOI for quantity bids shall be floated for the shortfall quantity/ additional requirement, if any, purely based on requirements of Buyer/ OMCs.
   5. Location-wise, individual OMC-wise quantity to be supplied in each ESY quarter shall be allocated to the Seller/ Supplier as per prevalent allocation criteria.
   6. All allocations including any subsequent re-allocation will be at the sole discretion of the Buyer/ OMCs.
   7. LOI will be issued by individual OMCs for the allocated quantity to the Seller/ Supplier.
   8. Seller/ Supplier will sign Purchase Agreement with each OMC for the allocated quantity after submitting Security Deposit as per the terms and conditions of the LOI. All terms and conditions of the Purchase Agreement will be binding on the Seller / Supplier.
   9. The responsibility of execution of allocations/ re-allocations made as per this BPA in relation to procurement of ethanol and related activities will lie with the respective OMCs to whom allocation has been made as per procurement process and the parties will keep each other indemnified in respect of any dispute arising between them or with any third party after such allocations/ re-allocations has been done.
6. **Quality of Ethanol:** 
   1. The quality of Ethanol supplied by the Seller/ Supplier shall be confirming to relevant BIS standards applicable to Automotive grade.
   2. Test reports/ quality certificates/ excise certificate/ any other approvals or permissions as required from time to time, duly certified by the competent authority, shall be accompanied with every Ethanol supply.
   3. If the Ethanol offered is not as per Specifications ("Off-Spec"), the Buyer/ OMCs shall have the right to reject such Off-Spec Ethanol.
7. **Delivery:** 
   1. The Supplier will effect delivered supply through sealed calibrated tank-trucks (calibrated by statutory agencies and also complying to all statutory regulations) to Buyer/ OMCs designated location(s) as per Buyer/ OMCs delivery schedule and ensure desired quantity and quality at the time of delivery.
   2. The Supplier will ensure that no malpractice with respect to Ethanol being carried takes place en-route.
   3. The custody of material will transfer from Seller/ Supplier to Buyer/ OMCs at OMC’s Delivery Location (subject to quantity & quality checks).
8. **Price :** 
   1. The Supply Price of Ethanol will include basic Price, transportation and taxes. Basic Price of Ethanol and transportation will be published at the beginning of every ESY. The prevailing prices are given in Annexure 1.
   2. In case of any revision in the prices, the same shall remain binding on the Seller/ Supplier.
9. **Payments:**
   1. Buyer/ OMCs shall make payments to the Seller/ Supplier’s Account / Escrow Account, as the case may be, in Indian Rupees, under this Agreement.
   2. 100% payment shall be made within 21 days from date of receipt and acceptance of materials at Buyer/ OMC’s location(s) & submission of all required documents.
10. **Taxation:**
    1. It would be the responsibility of the Seller/ Supplier to get the registration with the respective tax authorities. Any taxes/duties/levies being charged by the Seller/ Supplier would be claimed by issuing proper tax invoice indicating details/ elements of all taxes charged and necessary requirements as prescribed under respective tax laws and also to mention correct and valid registration number(s) on all invoices raised on the Buyer/ OMCs.
    2. The Seller/ Supplier would be liable to reimburse or make good of any loss/claim by the Buyer/ OMCs towards tax credit rejected /disallowed by any tax authorities due to non-deposit of taxes or non-compliance of tax laws by the Seller.
    3. The Seller/ Supplier will be under obligation for charging correct rate of tax as prescribed under the respective tax laws. Further the Seller/ Supplier shall avail and pass on the benefits of all exemptions/ concessions/ benefits/ waiver or any other benefits of similar nature or kind available under the tax laws. In no case, differential tax claims due to wrong classification of goods and/or services or understanding of law or rules or regulations or any other reasons of similar nature shall be entertained by the Buyer/ OMCs.
    4. Modalities for tax payment under GST;

Currently, GST @ 5% is applicable on Ethanol which is used for blending in Petrol under the EBP Program. Reimbursement of tax will be done on the basis of submission of Tax Invoice. The Sales Invoice of Ethanol shall be uploaded by the Seller/ Supplier in GSTN portal for claiming input Tax Credit. Any loss of Input Tax Credit due to non-submission of invoice or non-uploading of the tax details, within the prescribed time limits as per GSTN portal shall be deductible from the running bills of the Seller/ Supplier.

1. **Bank Guarantee:**
   1. The Seller/ Supplier has to provide an unconditional and irrevocable bank guarantee ("Bank Guarantee") for a sum of Rs. 2 (Two) lakh from a bank accepted by the Buyer/ OMCs and in such form and substance as accepted by the Buyer/ OMCs for the performance of its obligations under this Agreement i.e. supply of Ethanol. The Bank Guarantee shall remain valid until six (6) months after the expiry of the Term.
   2. The Buyer/ OMCs shall have the right to enforce and encash the Bank Guarantee without any demur or protest by the Seller/ Supplier or its bank and without any notice to the Seller/ Supplier in the event of:
      1. The Commercial Supply of Ethanol does not start within a maximum period of 3 years from the date of signing of this Agreement, due to any failure or non-performance of the Seller/ Supplier.
      2. Agreement is terminated upon breach by the Seller/ Supplier of any provision(s) of this Agreement.
2. **Compliance with Safety and Laws:**
   1. The Seller/ Supplier shall follow Safety Procedures and Standards while supplying Ethanol to the Buyer / OMCs.
   2. The Seller/ Supplier shall at all times, observe, perform and carry out the directions, instructions and guidelines on safe practices, operation and functioning including those given by the Buyer / OMCs or its representative(s), from time to time.
   3. The Seller / Supplier shall not contravene any laws or legal requirements which could reasonably be expected to have an adverse effect on its ability to meet its obligations under this Agreement or cause it to be in breach in any material respect of its obligations under this Agreement.
3. **Term:**
   1. This Agreement shall be valid for a period of 10 years from the date of signing, unless earlier terminated, due to the events hereinafter mentioned.
   2. Prior to the expiry of the Agreement, both the Parties may agree to extend the agreement period for such further period and on such terms and conditions as may be mutually agreed upon.
4. **LIABILITY FOR EXPENSES**

Each party shall bear its own costs/expenses incurred in connection with this Agreement and the subject matter, whether such costs/expenses were incurred before or after the date of this Agreement in negotiating, preparing and signing this BPA or any amendment there of (including expenses incurred in obtaining any legal, financial or other advice).

1. **CONFIDENTIALITY**

The Parties agree not to disclose the Confidential Information of the other Party/disclosing Party acquired through or in pursuance of this BPA.

For the purpose of this BPA, the term “Confidential Information” shall mean and include without limitation, with respect to either party, any and all information in written, representational, electronic, verbal or other form, directly or indirectly to the present or potential business, operation or financial condition of or relating to the disclosing party (including but not limited to information identified as being proprietary and/or confidential or pertaining to pricing, volumes, services rendered, customers and suppliers lists, financial or technical or service matters or data, employee/agent/consultant/officer/director related personal or sensitive data and any information which might reasonably be presumed to be proprietary or confidential in nature excluding any such information which:

1. has become part of the public domain, other than by breach of this clause
2. is lawfully acquired by the receiving party from an independent source having no obligation to maintain the confidentiality of such information
3. was known to the receiving party prior to its disclosure under BPA.
4. was or is independently developed by the receiving party without breach of BPA and which can be proved by sufficient documentary evidences; or
5. is required to be disclosed by any law, governmental or judicial order or other regulation made in accordance with the order of any court, arbitral panel or other regulatory, statutory or administrative body, in which case the receiving party shall give the disclosing party a prompt written notice, wherever possible, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment and also to enable such disclosing party to seek a protective order or other appropriate remedy.
6. is required to be disclosed to Buyer’s /OMC’s Affiliates and professional advisors;
7. is required to disclose to any bona fide prospective transferee of the Buyer’s /OMC’s rights and obligations under this Agreement (including a prospective transferee with whom a Party and/or its affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an affiliate's shares), and any consultant retained by such prospective transferee, in order to enable such prospective transferee to assess such Party's rights and obligations;
8. **Representations and Warranties:**

These representations and warranties shall survive the execution and delivery of this Agreement.

* 1. The Seller/ Supplier represents and warrants to the Buyer / OMCs that:
     1. The Seller/ Supplier is and shall continue to be in compliance with all applicable laws.
     2. The Seller/ Supplier has obtained all licenses, permissions, consents, approvals and authorizations from any government / statutory authorities required under law, and all management and shareholder approvals necessary to enable the Seller/ Supplier to perform its obligations under this Agreement and all such necessary approvals, licenses, permissions, consents, approvals and authorizations are valid and effective, and covenants that the same shall remain valid and effective through the Term and shall obtain any additional approvals, licenses, permissions, consents and authorizations that are required to enable the Buyer/ OMCs to perform its obligations under this Agreement i.e., operation of the Plant and manufacture and sale to Buyer/ OMCs of the Ethanol under this Agreement and shall be solely responsible for and indemnify Buyer/ OMCs against any costs, liabilities or fines arising out of Seller’s failure to comply with any applicable requirements of such licenses, consents and approvals.
     3. The Seller / Supplier and the Ethanol Plant is not under any liquidation, court receivership, or any similar legal proceedings nor any other steps have been taken or notice received for its winding-up or dissolution.
     4. The Seller/ Supplier has in place /shall have the requisite infrastructure, facilities to perform its obligations under the Agreement, and shall maintain the adequacy of its infrastructure during the period of this Agreement, without any cost to Buyer / OMCs.
     5. The Seller/ Supplier is the rightful owner of or has sufficient right, title and interest in its Ethanol Plant, the facilities installed at its Ethanol Plant.
     6. The Seller/ Supplier has clear title to the Ethanol being sold under this Agreement and the OMCs/ Buyer shall acquire the same, free from any encumbrances.
     7. The Seller/ Supplier shall supply and tender for delivery at the designated depots(s) of the OMCs/ Buyer in the quantities, at the times and at the prices determined in accordance with, and subject to, the terms and conditions of this Agreement, and that it has necessary ability to do so.
     8. There is no restriction or impediment preventing the Seller/ Supplier from selling Ethanol to the Buyer / OMCs and from performing its obligations hereunder.
     9. The Seller/ Supplier shall not without the prior written consent of Buyer/ OMCs, undertake or allow any ‘Change in Constitution’. ‘Change in Constitution’ shall mean; (a) change in sole proprietor of a sole proprietorship, (b) change in partner(s) of partnership firm or a limited liability partnership, (c) change in member of a one person company, (d) change in shareholder of a private limited company or unlisted public limited company, (e) change in ‘promoter’ or any member of the ‘promoter group’ of a listed public limited company, (f) change in committee representative (person identified as ‘committee representative’ in case of a registered co-operative society at the time of making an application for appointment as CS) of registered co-operative society, or (g) change in karta of a hindu undivided family, or (h) change in legal status.
  2. The Seller/ Supplier further represents and warrants to the Buyer/ OMCs that:
     1. it is duly incorporated and validly existing under the laws of its place of incorporation and has the power, capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated herein;
     2. this Agreement has been duly executed by it and is a legal, valid and binding document enforceable against it in accordance with its terms;
     3. the execution of this Agreement does not violate any law, or any document constituting the Party, or any permit granted to such Party or any agreement to which such Party is a party;
     4. it shall always act as a reasonable and prudent operator;
     5. it confirms that all its representations and warranties set forth in this Agreement are independent of each other and true, complete and correct in all respects at the time as of which such representations and warranties were made or deemed made, and shall continue to have full effect during the period of this Agreement; and
     6. It has the necessary power to perform its respective obligations under this Agreement.
     7. The Seller/ Supplier covenants that it will maintain accurate and complete production and delivery records in a prudent and businesslike manner in accordance with sound commercial practices in respect of Ethanol produced by Seller/ Supplier at the Plant.
  3. The Buyer / OMCs Represents and Warrants to the Seller / Supplier that:
     1. The Buyer / OMCs is and shall continue to be in compliance with all applicable laws.
     2. The Buyer / OMCs has obtained all governmental licenses, permissions, consents, approvals and authorizations from any government/ statutory authorities and all management and shareholder approvals as necessary to enable the Buyer to perform its obligations under this Agreement and all such necessary approvals, licenses, permissions, consents and authorizations are valid and effective and covenants that the same shall remain valid and effective through the Term and shall obtain any additional approvals, licenses, permissions, consents and authorizations that are required to enable the Buyer to perform its obligations under this Agreement.
     3. The Buyer/ OMCs has in place /shall have the requisite infrastructure, facilities to perform its obligations under the Agreement, and shall maintain the adequacy of its infrastructure during the period of this Agreement, without any cost to Seller.
     4. The Buyer/ OMCs shall take delivery of Ethanol at the designated depot (s), in the quantities, at the times and at the prices determined in accordance with, and subject to, the terms and conditions of this Agreement.
     5. The Buyer/ OMCs is not under any liquidation, court receivership, or any similar legal proceedings, nor any other steps have been taken or notice received for its winding-up or dissolution.
  4. The Buyer/ OMCs further represents and warrants to the Seller/ Supplier that:
     1. it is duly incorporated and validly existing under the laws of its place of incorporation and has the power, capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated herein;
     2. this Agreement has been duly executed by it and is a legal, valid and binding document enforceable against it in accordance with its terms;
     3. the execution of this Agreement does not violate any law, or any document constituting the Party, or any permit granted to such Party or any agreement to which such Party is a party;
     4. it shall always act as a reasonable and prudent operator;
     5. it confirms that all its representations and warranties set forth in this Agreement are independent of each other and true, complete and correct in all respects at the time as of which such representations and warranties were made or deemed made, and shall continue to have full effect during the period of this Agreement; and
     6. It has the necessary power to perform its respective obligations under this Agreement.

1. **Indemnity and Liability:**
   1. The Seller/ Supplier shall at all times be liable and responsible for all losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer/ OMCs, its directors, employees, Dealer and Dealer's employees and representatives due to the quality of Ethanol not meeting the Specifications, non-compliance of statutory duty or non-payment of taxes by the Seller/ Supplier.
   2. The Seller/ Supplier shall indemnify and keep indemnified Buyer/OMCs, its Director, employees and its Dealer, their Directors and employees, against any losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer/ OMCs on account of loss or injury to any person in connection with performance of this Agreement, unless such losses, damages, claims, actions, proceedings, costs, charges and expenses arise due to gross negligence of the Buyer/ OMCs.
   3. The Seller/ Supplier shall indemnify and defend Buyer/ OMCs, its Directors, employees, and its Dealers and their employes against expenses actually and reasonably incurred in connection with the defense of any Proceeding (civil, criminal, arbitrative etc.), in which Buyer/ OMCs and/or its Directors, employees, or Dealers and their employees are made a party by reason of Seller/ Supplier and/or its employees’, members’, managers’, officers’ or agents’ commission of an act or omission that involves negligence, intentional misconduct or a violation of the law.
   4. The indemnity provisions herein contained shall survive the expiry or termination of this Agreement.
   5. Unless otherwise provided in this Agreement, neither Party shall be liable for any remote, consequential, punitive and indirect loss or damage sustained by it as a result of any act or omission in the course of or in connection with the performance of this Agreement.
2. **TERMINATION:**
   1. **Event of Termination:**
      1. The Seller/ Supplier may at any time, by rendering a thirty (30) days written notice to Buyer/ OMCs, terminate this Agreement, if
         * 1. The Buyer/ OMCs fail to comply with any of its obligations or undertaking or commits any breach of the covenants or conditions that shall be observed, performed or fulfilled on its part; or
           2. Any representation or warranty by the Buyer/ OMCs given herein or in pursuance of this Agreement is found to be incorrect; or
           3. The Buyer/ OMCs cease to carry on its business or suspends all or substantially all of its operations; or
           4. The Buyer/ OMCs are unable to pay its debts or becomes unable to pay its debts as and when due or makes any composition or arrangement with or for the benefit of its creditors; or
           5. A liquidator, receiver or administrator or any beneficiary under an encumbrance takes possession of or is appointed over the whole or any part of the assets of the Buyer/ OMCs; or
           6. A resolution for winding up of the Buyer/ OMCs is passed or a petition for its winding up is filed against the Buyer/ OMCs; or
           7. There is any material adverse change or any change in applicable law, rules, regulations, directives or guidelines which prevent the purchase/ sale of Ethanol; or
           8. Any consent, approval, license or permission required by the Buyer / OMCs to enable it to carry on its business or to sell Ethanol is suspended, canceled or withdrawn or expires and is not renewed despite efforts by the Buyer/ OMCs.
      2. The Buyer/ OMCs may at any time, by rendering a thirty (30) days written notice to the Seller, terminate this agreement if;
         * 1. The Seller/ Supplier fails to comply with any of its obligations or undertakings or commits any breach of the covenants or conditions, representations and/or warranties that shall be observed, performed or fulfilled on its part or fails to make regular supply of Ethanol and as per the quality Specifications.
           2. The Seller/ Supplier fails to commence supplies within a period of 3 years from the date of LOI (unless extended by the Buyer/ OMCs).
           3. The Seller/ Supplier fails to supply the allocation as per the procurement process in a ESY. If the Seller partcipates in the bidding process after first round of allocation, the failure to supply if any under the clause shall be considered from the ESY, commencing immediately thereafter.
           4. The Seller/ Supplier ceases to carry on its business or suspends all or substantially all of its operation; or
           5. A liquidator, receiver or administrator or any beneficiary under an encumbrance takes possession of or is appointed over the whole or any part of the assets of the Seller/ Supplier or initiation of corporate insolvency resolution process; or
           6. A resolution for winding up of the Seller/ Supplier is passed or a petition for its winding up is filed against the Seller/ Supplier; or
           7. Any consent, approval, license or permission required by the Seller to enable it to carry on its business or to sell Ethanol is suspended, cancelled or withdrawn or expires and is not renewed despite efforts by the Seller/ Supplier.
           8. The Seller/ Supplier causes or permits any Change in its Constitution without prior written consent of the Buyer/ OMCs.
           9. If bank guarantee is not submitted/ renewed by the Seller/ Supplier within the stipulated time frame.
           10. An event of force majeure or its effect, affecting the performance of this Agreement, persists beyond a period of one hundred and twenty (120) days from the date when such event of force majeure occurred.
      3. Notwithstanding anything contained above, if there is any material adverse change or any change in applicable law, rules, regulations, directives or guidelines which prevent the sale / supply of Ethanol, then in that case, without prejudice to any other right or remedy available to the Buyer/ OMCs, the Buyer/ OMCs may terminate this Agreement immediately by giving seven (7) days notice to the Seller.
      4. Notwithstanding what is stated in Clause 20.1.1(a), 20.1.2(a), 20.1.2(b), no such termination shall be effected by either Party, unless it gives to the other Party a notice specifying the grounds/ breach on which it intends to terminate the agreement, and giving a thirty (30) days’ notice period to the other Party to cure such breach/ remove the grounds for termination.
   2. **Effect of Termination:**
      1. Unless termination is on account of clause 20.1.2(a), 20.1.2(b) or 20.1.2(c), upon the termination of this Agreement, the Buyer/ OMCs shall forthwith pay to the Seller/ Supplier the Supply Price for all Ethanol supplied from the date of the last invoice by the Seller/ Supplier to the Buyer/ OMCs till the date of termination of this Agreement in accordance with the provisions of Clause 7.
      2. In the event the Agreement is terminated on account of clause 20.1.2(a) or 20.1.2(b), without prejudice to its other rights, the Buyer shall also be entitled to continue to make sales of the unsold Ethanol at the risk and cost of the Seller.
   3. **Obligations to Survive Termination:**

The termination of this Agreement for any reason shall not relieve or affect the rights or remedies of either Party in relation to any accrued rights or unperformed obligations, arising prior to or upon the date of such termination and shall not affect any claims which a Party may have against the other Party with respect to any antecedent breach.

Further, any provision of this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, shall survive any such termination or expiry, such as Indemnity, Confidentiality, Governing Law, Dispute Resolution, Jurisdiction.

1. **Force Majeure:** 
   1. Definition: The term Force Majeure means any event or circumstance or combination of events or circumstances that affects the performance by the vendor of its obligations pursuant to the terms of this Agreement (including by preventing, hindering or delaying such performance), but only if and to the extent that such events and circumstances are not within the vendors reasonable control and were not reasonably foreseeable and the effects of which the vendor could not have prevented or overcome by acting as a Reasonable and Prudent person or, by the exercise of reasonable skill and care. Force Majeure events and circumstances shall in any event include the following events and circumstances to the extent they or their consequences satisfy the requirements set forth above in this Clause: the effect of any element or other act of God, including any storm, flood, drought, lightning, earthquake, tidal wave, tsunami, cyclone or other natural disaster;(ii) fire, accident, loss or breakage of facilities or equipment, structural collapse or explosion; epidemic, plague or quarantine; air crash, shipwreck, or train wreck; acts of war (whether declared or undeclared), sabotage, terrorism or act of public enemy (including the acts of any independent unit or individual engaged in activities in furtherance of a programme of irregular warfare), acts of belligerence of foreign enemies (whether declared or undeclared), blockades, embargoes, civil disturbance, revolution, rebellion or insurrection, exercise of military or usurped power, or any attempt at usurpation of power; (vi) radioactive contamination or ionizing radiation;
   2. Notice and Reporting:

The Supplier shall as soon as reasonably practicable after the date of commencement of the event of Force Majeure, but in any event no later than seven (7) days after such commencement date, notify the Buyer/ OMCs in writing of such event of Force Majeure and provide the following information:

reasonably full particulars of the event or circumstance of Force Majeure and the extent to which any obligation will be prevented or delayed; such date of commencement and an estimate of the period of time required to enable the vendor to resume full performance of its obligations; and all relevant information relating to the Force Majeure and full details of the measures the vendor is taking to overcome or circumvent such Force Majeure.

The Supplier shall, throughout the period during which it is prevented from performing, or delayed in the performance of, its obligations under this Agreement, upon request, give or procure access to examine the scene of the Force Majeure including such information, facilities and sites as the other Party may reasonably request in connection with such event. Access to any facilities or sites shall be at the risk and cost of the Party requesting such information and access.

* 1. Mitigation Responsibility:

The Supplier shall use all reasonable endeavours, acting as a Reasonable and Prudent Person, to circumvent or overcome any event or circumstance of Force Majeure as expeditiously as possible, and relief under this Clause shall cease to be available to the Vendor claiming Force Majeure if it fails to use such reasonable endeavours during or following any such event of Force Majeure.

The Supplier shall have the burden of proving that the circumstances constitute valid grounds of Force Majeure under this Clause and that it has exercised reasonable diligence efforts to remedy the cause of any alleged Force Majeure. The Supplier shall notify OMCs when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur and shall resume performance as expeditiously as possible after such termination or abatement.

Consequences of Force Majeure. Provided that the Supplier has complied and continues to comply with the obligations of this Clause and subject to the further provisions:

1. the obligations of the Parties under this Agreement to the extent performance thereof is prevented or impeded by the event of Force Majeure shall be suspended and the Parties shall not be liable for the non-performance thereof for the duration of the period of Force Majeure; and
2. the time period(s) for the performance of the obligations of the Parties under this

Agreement to the extent performance thereof is prevented or impeded by the event of Force Majeure shall be extended for the duration of the relevant period of Force Majeure except as provided herein.

* 1. Force Majeure Events Exceeding 60 Days

If an event or series of events (alone or in combination) of Force Majeure occur, and continue for a period in excess of 60 consecutive days, then OMCs shall have the right to terminate this agreement, whereupon the Parties shall meet to mitigate the impediments caused by the Force Majeure event.

* 1. Special instructions for Force Majeure Clause as appearing in Purchase Agreement shall be binding on the Seller/ Supplier.

1. **Governing Law and Jurisdiction:**

This Agreement shall be governed and construed in accordance with the laws of India including without limitation, the relevant Central and State acts and the rules, regulations and notifications issued and amended there under from time to time; and subject to Clause 23 below, the courts of Mumbai shall have exclusive jurisdiction in relation to all disputes arising from or relating to the Agreement.

1. **Dispute Resolution:**
   1. A Dispute shall be deemed to have arisen under this Agreement, when either Party notifies the other Party of any issue, difference or dispute in writing to that effect. ("Dispute").
   2. Any Dispute arising out of this Agreement shall be resolved amicably through discussions in good faith with a view to expeditiously resolve such Dispute. In the event the Dispute cannot be resolved amicably within a period of thirty (30) days from the date of its occurrence, either Party may refer the Dispute for resolution through conciliation in accordance with provisions of Buyer/ OMCs Conciliation Rules, if applicable or available.
   3. In the event of non-resolution of Dispute by conciliation within a period of sixty (60) days (or any period thereafter, which the Parties may agree to mutually extend) or on non-applicability of Conciliation Rules applicable to OMCs/ Buyer or on non-availability of Conciliation Rules with the OMC then in the event the dispute cannot be resolved amicably within a period of 30 days from the date its occurrence, the Parties agree to settle the Dispute by arbitration in accordance with the Rules of SCOPE Forum of Conciliation and Arbitration (SFCA). The venue for arbitration shall be Mumbai and the language of arbitration shall be English. The arbitrator shall pass a reasoned award and the award of arbitrator shall be final and binding on the Parties.
   4. 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 herein below:

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

b. The appointment and arbitration proceedings shall be conducted in accordance with the SCOPE Forum of Arbitration Rules for the time being in force or as amended from time to time

c. The Seat of arbitration shall be at Mumbai

d. The proceedings shall be conducted in English language.

e. The cost of the proceeding shall be equally borne by the parties, unless otherwise directed by the Sole Arbitrator

* 1. When a matter is referred to resolution under this Clause 22, it shall not prevent or constitute a valid excuse for either Party from performing their respective obligations (to the extent possible) under this Agreement.

1. **Miscellaneous:**
   1. **Relationship:**

Nothing contained in this Agreement shall constitute partnership, agency or joint venture between the Parties nor shall any relationship of employer or employee be deemed to be created between Seller/ Supplier and Buyer/ OMCs. Neither Party shall be liable for the acts of commission or omission of other Party or its employees, personnel or representatives.

* 1. **Benefits of this Agreement:**

This Agreement and the respective rights and obligations of the Parties hereto under this Agreement shall inure to the benefits of and be binding on their respective successors and permitted assigns.

* 1. **Assignment:**

Neither Party shall assign this Agreement or all or any of its rights or obligations hereunder to any person, without the prior written consent of the other Party.

* 1. **Costs and Expenses:**

Each Party shall bear its own expenses in connection with negotiation and finalization of this Agreement.

* 1. **Partial Invalidity:**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of the Agreement shall not be affected thereby.

* 1. **Further Acts:**

Each of the Parties hereto undertakes to execute, do and take all such steps as may be required to give effect to the provisions of this Agreement.

* 1. **Modification:**

No term of this Agreement shall be amended, changed or modified unless such amendment, change or modification is mutually agreed to in writing by and between the Parties.

* 1. **Waiver:**

[The waiver](https://www.lawinsider.com/clause/waiver) by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach.

* 1. **Entirety of Agreement:**

This Agreement constitutes and contains the entire agreement between the Parties relating to the supply of Ethanol during the Term and, except for this Agreement, no prior promises, agreements, warranties, or understandings whether written or oral, shall be of any force or effect.

* 1. **Compliance with Laws:**

“Buyer/ OMCs” and “Seller/ Supplier” shall perform their obligations in strict compliance with all applicable laws in India, along with rules and regulations of duly constituted Governmental Authorities in India and shall obtain all licenses, registrations or other approvals, if any, required by laws in India in connection with this Agreement.

* 1. **Exclusivity:**

Subject to the terms and conditions of this Agreement, during the Term of this Agreement, the Seller/ Supplier shall not enter into any similar agreement with any third party pertaining to supply of Ethanol from the Ethanol Plant.

1. **AMENDMENTS**

This Agreement may be amended only upon mutual consent of the Parties in writing.

1. **NOTICES**
   1. All notices or demands or other communications given or made under this Agreement shall be in writing and be made in English language. A notice may be delivered personally, sent by prepaid registered post, or facsimile or an email. Oral communication, however, do not constitute notice for purposes of this Agreement.

To \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Any such notice, demand from the sender shall be deemed to have been duly served if given personally on delivery thereof to the address of the recipient or made by facsimile transmission immediately on receipt of the transmission report by the sender, by email after \_\_\_\_\_\_\_hour(s) of sending, or given by registered post three days after the date of posting the same by registered post.
  2. The above addresses may be changed by two (2) weeks written notice thereof to the other Party.

1. **Counter Parts:**

This Agreement may be executed in counter parts, each of which when executed and delivered shall constitute a duplicate original but each of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF the Parties hereto have executed these presents on the day and year first hereinabove mentioned.

**SIGNED FOR AND ON BEHALF OF BUYER/ OMCs (BHARAT PETROLEUM CORPORATION LIMITED / INDIAN OIL CORPORATION LIMITED/ HINDUSTAN PETROLEUM CORP. LTD)**

**By:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

**Name and Designation (BPCL):**

**By:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

**Name and Designation (IOCL):**

**By:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

**Name and Designation (HPCL):**

**SIGNED FOR AND ON BEHALF OF SELLER/ SUPPLIER**

**By:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

**Name and Designation:**

**Witness**

**1.**

**2.**

**ANNEXURE – I**

**SUPPLY PRICE OF ETHANOL / RATES OF ETHANOL**

1. In line with MoPNG notification dated 29th Oct 2020 the price of Ethanol for Ethanol Supply Year 2020-21 from 01 December 2020 to 30 November 2021 is fixed as below:

* The price of ethanol from **C heavy molasses route is fixed at Rs.45.69 per litre.**
* The price of ethanol from **B heavy molasses route is fixed at Rs.57.61 per litre.**
* The price of ethanol from **sugarcane juice/sugar/sugar syrup route is fixed at Rs.62.65 per litre.**

OMCs are guided by MOP&NG circulars/ PIB notifications regarding prices of ethanol for EBP Program. Rate for ethanol derived from **damaged food grains unfit for human consumption/Maize is Rs.51.55 per litre** and rate for ethanol derived from **Surplus Rice procured from FCI has been fixed as Rs.56.87 per litre** (in case of upward revision by FCI in the price of surplus rice, refer formula provided in Evaluation/Order Award Criteria for revised price)

Ethanol manufactured from Special Denatured Spirit (SDS), Extra Neutral Alcohol (ENA), Rectified Spirit (RS) etc. which have been manufactured from C-Heavy molasses are to be categorized in C-heavy molasses and to be quoted under the respective column in the price bid form accordingly. Similarly Ethanol manufactured from Special Denatured Spirit (SDS), Extra Neutral Alcohol (ENA), Rectified Spirit (RS) etc. which has been manufactured Sugarcane Juice/Sugar/Sugar Syrup or B-Heavy Molasses or from Damaged Food Grains, Maize/Surplus Rice procured from FCI are to be categorized and quoted under the respective column in the price bid form accordingly.

1. The following **transportation rates** shall be applicable and will be paid to bidders for supply of ethanol:

|  |  |
| --- | --- |
| **Slabs**  **(One way distance in km)** | **Transportation Rates (Rs./kl)** |
| **0 to 75** | 163 |
| **>75 to 200** | 373 |
| **>200 to 400** | 793 |
| **>400 to 600** | 1328 |
| **>600 to 800** | 1864 |
| **>800 to 1000** | 2632 |
| **>1000  to 1200** | 3451 |
| **>1200** | **Per kl rate shall be Rs. 3451+2.59 for additional KM beyond 1200 KM** |

\* Distance slabs of the distillery unit of Bidders is the one way distance in KM, between nearest OMC in gate and the Distillery unit’s out gate.

Escalation clause is applicable on transportation rates which is linked with HSD rate.

“The transportation slabs shall be revised by OMCs on quarterly basis. The rates would be escalated / de-escalated in subsequent quarters of FY”

The formula for the same shall be as under:

Diesel RSP Rs. 95.48 /L as of 20.06.21 of Mumbai. Inc. in Rs. /KL / Km = Increase/decrease in 1 Liter of HSD RSP at Mumbai incl. of taxes / 20 KL x 3.5.

The revised rates shall be reviewed / revised on quarterly basis (FY) if there is a variation of minimum 5% variation in Diesel rates from last revision benchmark rate.

Rate of HSD in Mumbai as on 20th of previous month shall be considered for rate revision for next quarter.

1. **Goods and Service Tax (GST) in %:** GST @5% is applicable for HSN code 2207 for Ethanol.
2. Delivered cost will be total of administered price/rate for Ethanol, transportation rates and GST as applicable. In case of revision in the Administered price of Ethanol by Govt. of India, effective date for implementation of new Administered price of Ethanol will be either the date of Press Information Bureau (PIB) release or as mentioned in PIB Note or as advised by Govt. of India to OMCs.

In the states where Industries (Development & Regulation) Amendment Act (IDR) Act is being implemented or will be implemented at future date, all the conditions mentioned by state government have to be complied by the successful bidders.