

AGREEMENT

THIS MEMORANDUM OF AGREEMENT made on the XX day of Month Year of the Christian era
BETWEEN

BHARAT PETROLEUM CORPORATION LIMITED a Company incorporated under the Indian Companies Act, 1913 and having its Registered Office at Bharat Bhavan, 4 & 6, Currimbhoy Road, Ballard Estate, Mumbai 400 001 and Lubes Headquarter, amongst other places, at 6th floor, Priyadarshini, Sion Trombay Road, Sion, Mumbai 400022- 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

ABC –a company incorporated under the laws of KENYA and having address at xxx hereinafter referred to as ABC (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 :
 - (i) Is a petroleum products refining and marketing company,
 - (ii) Owns and operates a marketing network for the sale of the said petroleum products, including lubricating oils
 - (iii) Owns and operates lubricating oil blending plants in various parts of India blending various ranges and brands of lubricating oil, and greases.
- b) ABC is in the business of XXX,XX and now intends to be distributor of MAK Lubricants of Bharat Petroleum
- c) In order to have a presence of MAK lubricants in Tanzania, BPCL are desirous of selling their lubricating oil to ABC for the purpose of resale in **KENYA** herein after

referred as **“Territory”** and **ABC** is desirous of purchasing various types of MAK and other select genuine industrial lubricating oil manufactured and/or blended by BPCL on the terms and conditions contained hereinafter.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Purchase and sale of MAK Lubricating Oil :

ABC will purchase from BPCL, MAK lubricating oils, greases, specialties, coolants etc. of various categories (hereinafter referred to as Lubricating Oil or product as the case may be) and BPCL will sell the same to **ABC** on the terms and conditions contained hereinafter.

PROVIDED THAT **ABC** would be responsible for selling BPCL Lubes only under BPCL packages/brand name or as authorized by BPCL. They cannot repack the same and sell, either packed or loose, under any other name. **ABC** should satisfy themselves about the compliance with local laws, including declarations to be made on packages and quantity of the produce in sealed packs before selling to any customer.

2. Geographic Territory for ABC for marketing of MAK and other select genuine industrial Lubricating Oils and greases :

2.1 **ABC** is being appointed by BPCL as the non-exclusive distributor for marketing of BPCL lubricants and greases in the Territory. During continuance of this agreement, **ABC** shall deal exclusively with the products of BPCL other than those specific segments that ABC is catering as on 22nd July 2021. This condition shall be applicable to the lubricants marketing to be conducted by **ABC** and their any other holding companies or through sub distributorship in the Territory.

2.2 If BPCL receive any business inquiry from any party from the Territory BPCL shall refer or forward such inquiry to **ABC** or any such distributor with advice to contact distributor and in an event distributor is unable to cater or customer wishes to take supplies directly from BPCL in such case BPCL shall execute the order directly, no commission shall be payable in such cases unless agreed in writing in advance

3. Sales Volumes target :

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

- 1st year: – Minimum of 200 KL (Kiloliters)
- 2nd year: – Minimum of 400 KL (Kiloliters)
- 3rd Year: - Minimum of 600 KL (Kiloliters)

Performance evaluation and review shall be carried out every 3 months to ensure achievement of targets on the basis of appropriate marketing strategies and projections supported by BPCL and which shall be drawn out on mutual discussions during these quarterly reviews.

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

4. Incentive :

If ABC purchases lubricating oil exceeding the quantity mentioned in clause 3 hereinabove, BPCL will consider giving an incentive to ABC at the rate as BPCL may determine at their sole discretion and such incentive will be calculated at the end of the year based on the product purchased in that particular year.

5. Point of Sale :

5.1 BPCL shall supply the product on **FOB Mumbai**.

6. Price :

6.1 The prices of BPCL products shall be revised from time to time. The price at which products will be sold by BPCL to **ABC** shall be discussed and mutually agreed.

7. Placement of orders and dispatches :

7.1 ABC will place indents upon BPCL from time to time at BPCL's Lube Head Quarter/Western Region Office at Mumbai for the lubricating oil to be purchased by giving at least 30 days time to BPCL to affect such supplies at the supply point mentioned hereinabove.

8. Payment :

- 8.1 ABC will pay the price of the product indented, determined in terms of clause 6 hereinabove in USD through irrevocable, confirmed letter of credit payable at ON SIGHT opened through 1st class Multinational Bank as approved by BPCL OR ADVANCED PAYMENT

9. Use of Product :

- 9.1 ABC shall use the lubricating oil purchased from BPCL either for their own use or resale of the same in the Territory only and will ensure that such product does not come back to India to be sold or used in India.
- 9.2 If the product supplied to ABC is sold or used in India, it will be deemed that such product has been sold and used in India due to the failure of ABC to comply with the terms of this Agreement and in such circumstances, BPCL will have the right to take such steps as it may deem fit and proper, including recovery of any financial cost / loss to BPCL and termination of this agreement.

PROVIDED THAT, ABC shall not be responsible for any products supplied to ABC by the BPCL but smuggled to any state of India. In case of such smuggling, both the party shall form a joint investigation committee to find solution to stop such smuggling.

10. Advertising / Sales Promotion

ABC shall advertise and display BPCL products to such an extent and in such manner as may be considered necessary and the nature and method of which shall be subject to BPCL's general approval, supervision and guidelines.

All expenses incurred for the advertisement, sales promotion and other schemes will be shared between BPCL and ABC based on mutual agreement duly recorded in writing at the beginning of each year.

11. Storage :

- 11.1 ABC will always ensure the proper storage of the product sold to ABC by BPCL for the purpose of their own use or resale as the case may be and will take all due care so that the quality of the product supplied by BPCL is not tampered and/or contaminated in any manner whatsoever.

11.2 If for any reason whatsoever, the said product is contaminated and the said contaminated product is sold by ABC in the market causing prejudice to the good will of BPCL, ABC will be responsible to keep BPCL indemnified against any third party claim that may be raised by any purchaser of the said lubricating oil and/or the user of the same and ABC will be liable to pay such compensation as may be determined by BPCL at their sole discretion for the damage of the goodwill of BPCL or its products. A proper investigation shall be conducted to ascertain the exact nature of failure to determine the extent of liability of ABC.

12. Setting up of Lube Shoppe:

12.1 In the event ABC sets up an exclusive Lube Shoppe for BPCL's lubricating oil, the design, specification and layout of the said lube shoppe will be decided by ABC in consultation with BPCL so that such exclusive design does not prejudice the brand name of BPCL.

12.2 ABC shall ensure that adequate sales network i.e. sub-dealers, retailers, lube shoppes, sales personnel are appointed by them in the Territory at their own cost for meeting the marketing requirements of BPCL brand lubricants.

13. Brand:

13.1 The BPCL shall take necessary steps in co-operation with ABC to register Copyright, Patent and Trade Mark if necessary, in the Territory to protect from infringements of rights of the BPCL by third party.

13.2 ABC shall not commit or omit to do any act whereby BPCL's rights in the trademarks and / or Brand name of LUBRICATING OILS or any trademarks or Brand name of BPCL is in any way jeopardized.

13.3 ABC shall not claim or have any right in such trademarks or Brand names of BPCL and shall promptly confide to BPCL any information obtained or received by ABC of any infringement thereof by any person, firm or body.

14. Design and Painting of Vehicles :

14.1 The design, paint work etc., of all vehicles used by ABC for the purpose of selling, distributing BPCL products shall be of the specification as may be agreed by BPCL and ABC from time to time.

15. Facilities that may be provided by BPCL are such as :-

15.1 BPCL may, at its discretion, entrust any product document , fixtures and any other equipment / material from time to time to ABC in connection with the business and ABC shall exercise due and proper care for the protection of all such properties so committed to their care, without claiming any lien or right to retain possession of the same in any circumstances whatsoever, and on demand deliver up to BPCL in the same good order in which it was received all property of BPCL, due allowance being made by BPCL for wear and tear of which BPCL shall be the sole judge.

15.2 ABC shall pay forthwith on demand to BPCL at its Head Office at Mumbai or at any Regional / Territory Office of BPCL whenever desired by BPCL the value of any property entrusted to them, which may be lost, broken, damaged or depreciated or used for purposes other than those for which it was supplied, of which BPCL shall be the sole judge.

15.3 ABC shall be required to submit to BPCL at its Office in Mumbai or at any of its Office as desired by BPCL periodically as may be indicated by BPCL, a signed inventory of all property of BPCL if any, entrusted to ABC by BPCL.

15.4 The equipment / property so supplied will be used only for the purposes for which they are meant and BPCL shall not be responsible for any liability due to misuse of BPCL's equipments.

15.5 In all transactions entered into by ABC with the customers for sale of lubricants, ABC shall act and shall always be deemed to have acted as a principal and not as an agent or on account of BPCL and BPCL shall not in any way be liable in any manner in respect of such contracts and/or transactions.

16. Laws, Rules, Regulations and Directions :-

16.1 ABC shall comply with all laws, rules, regulations and requisitions of the governments of KENYA and of all authorities appointed by them or either of them including the Chief Controller of Explosives, Weights and Measures

Authorities and / or Municipal and / or any local authority in the Territory with regard to vehicles and the storage and transport of Lubricating Oils and connected equipment and vehicles and directions given by BPCL in connection with the business arising out of this agreement.

16.2 ABC shall obtain / renew all licenses and / or permits required for the erection and / or use of the storage accommodation and / or for the storage therein of the Lubricating oils supplied by BPCL, and shall comply with the terms and conditions of such licenses or permits and hereby undertakes not to do or permit to be done any act or thing which may be contrary to the terms thereof.

17. Term of Agreement:

This agreement will be deemed to have commenced on **Date XXX** will continue till Date XXX unless the same is renewed subsequently based on performance of ABC vis a vis sales targets fixed in clause 3.1 and mutual agreement. Subsequent renewals shall also be subject to performance of ABC vis a vis sales volume targets to be fixed annually and on mutual agreement.

18. Termination:

Notwithstanding anything to the contrary herein contained, BPCL shall have liberty to terminate this agreement with a notice period of (3) three months forthwith upon or any time after the happening of any of the following events namely :

18.1 If ABC shall commit a delay, breach or default of any of the terms, conditions, covenants and stipulations contained in this agreement and fails to remedy such breach within fourteen days of the receipt of the written notice from BPCL in that regard

18.2 Upon liquidation, whether voluntary or otherwise, or the passing of an effective resolution for winding up of ABC.

- 18.3 If any attachment is levied and continued to be levied for a period of seven days upon the property of ABC.
- 18.4 If a Receiver shall be appointed of any property or asset of ABC.
- 18.5 If the license issued to ABC by the relevant authorities for the storage of LUBRICATING OILS products supplied by BPCL is cancelled or revoked.
- 18.6 If ABC does not adhere to the instructions issued from time to time by BPCL in connection with safe practices to be followed by ABC in the supply and storage of BPCL's products or otherwise.
- 18.7 If ABC is found to store or sell contaminated or tampered lubricating oil of BPCL
- 18.8 If ABC shall commit or suffer to be committed any act which, in the opinion of the Head of Business, Lubes SBU of BPCL for the time being at Mumbai or any other person looking after the lube business of BPCL, whose decision in that behalf shall be final is prejudicial to the interest or good name of BPCL or its products; the Business Head, Lubes SBU or such other person looking after the lube business of BPCL shall not be bound to give reasons for such decision.

19. Force Majeure :

- 19.1 It is in particular agreed that failure or omission to carry out or observe any of the stipulation or conditions of this agreement by BPCL shall not give rise to any claim against BPCL or be deemed a breach of this agreement if the same shall arise from any of the following causes, viz. the imposition or restrictions or onerous regulations, acts of God, insurrection, pirates, war declared or undeclared, strikes, lock outs, transport breakdown and/or combination or workmen, shortage of railway wagons, accidents to plant or machinery, non delivery of supplies either on account of stoppage or reduction of production at refineries, bottlenecks in transport facilities, shortages in supply of Lubricating oils etc., BPCL shall not be responsible for any failure to fulfill any of the terms of this agreement if such fulfillment has been delayed, hindered or prevented by any circumstances whatsoever beyond the control of BPCL

20. Consequence of Termination:

Upon termination of this agreement, ABC shall be liable:-

- 20.1 To immediately hand over, return and redeliver to BPCL or any person nominated by BPCL the entire property that may have been made available or entrusted or hired to ABC by BPCL during the currency of this agreement. For this purpose BPCL shall be entitled to take physical inventory of such stocks property lying in the possession or control of ABC from time to time belonging to BPCL and BPCL shall be entitled to enter upon the office, godown, premises etc., of ABC or any other place where ABC may have kept the same and take physical possession thereof.
- 20.2 To hand over to BPCL or such other person as may be nominated by BPCL all the records, reference books, other records which may be required by BPCL
- 20.3 To settle all accounts within seven days of such termination and in the event of ABC declining or neglecting or failing to settle accounts within such period, an account certified by one of BPCL's Officers, shall be absolutely final and conclusive for all purposes and BPCL will be entitled to adjust the amount due by ABC to BPCL out of any money that may be payable by BPCL either under this agreement or any other transaction with ABC.

21. Applicable Law:

This agreement shall be governed by the Indian Laws.

22. Arbitration:

22.1 Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA India Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrator shall be one.

The seat, or legal place, of arbitration shall be Mumbai, India.

The language to be used in the arbitration shall be English.

22.2 The parties hereby agree that the Courts in the city of Mumbai 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 in the concerned Courts in the city of Mumbai alone.

22.2 The language of the proceedings will be English and the place of the proceedings will be at a location in India to be decided by BPCL at that time.

23. Notice :-

23.1) Any notice required to be given to ABC by BPCL shall be deemed to be duly received and served on ABC, if such notice has been addressed to ABC 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 ABC shall be deemed to be duly received by and served on BPCL if such notice has been addressed to BPCL at its office at Mumbai and has been sent by airmail / registered post / courier / fax.

24. Counterparts:-

24.1 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 BY

SIGNED BY

For

For

Bharat Petroleum Corporation Ltd.

XXXXXXXXXX

Its Constituted Attorney in the presence of Signed by Messrs.

Signed by Messrs.

Executive Director (Lubes)

In the presence of

I)

II)

In the presence of

I)

II)