

# **BHARAT PETROLEUM CORPORATION LTD**



## **REQUEST FOR PROPOSAL**

### **Management of the Smart Card Host**

**CRFQ NO 1000216333 & RFQ NO. 6000763872  
dated 22th August 2014-08-22, Due date 27.8.14**

**Issuing Office : GM (IT & BI)  
Bharat Petroleum Corporation Ltd  
Retail Technology Centre,  
Sewree East  
Mumbai 400015**

**Contact Person: Ch. Manager Database -Retail  
Telephone: +9122 24176011**

Bharat Petroleum Corporation Limited invites sealed offers for Managing the Smart Card Host for its loyalty initiatives in the prescribed format under a two part bid -Technical and Price Bid system.

CLOSING DATE / TIME: August 27 2014 / 2.00 PM

Tender Document consists of the following:

**Section 1: Introduction**

**Section 2: Instructions to Vendors**

**Section 3: Approved Environment**

**Section 4: BPCL Requirements**

**Section 5: Pricing**

**Section 6: General Terms and Conditions:**

**Annexure I: Scope Of Work & Service Level Agreement**

**Annexure II: Agreement**

**Annexure III: Non Disclosure Agreement**

**Annexure IV: Arbitration Clause**

**Annexure V: Format for Bank Guarantee**

## **Section 1: Introduction**

### **1.1 About BPCL**

Bharat Petroleum Corporation Limited (hereafter referred to as “BPCL”), a vertically integrated Navaratna energy company in India, has an annual turnover of more than 35 billion USD with a place in the Fortune 500 Company for last many years. BPCL has a strong network of above 12,000 retail outlets spread across India with a market share of more than 25%. It has four Refineries (2 in Joint Venture), above 100 terminal Installations and depots, 50 LPG bottling plants, 3355 LPG distributors and 37 aviation stations.

### **1.2. BPCL’s Retail Vision, Mission and Values**

The downstream sector of the Indian oil industry has been making rapid strides towards offering customers an international experience with a multitude of never before benefits aided by latest retail techniques, CRM tools, superior technology making the fuelling occasion increasingly convenient for the consumer. Largely credited with having been instrumental in spearheading the changing face of fuel retailing in India, BPCL has embarked upon its chosen path of adding customer value through innovation in order to achieve its business vision of being the retailer of choice for the customer. Through a combination of customer focused initiatives encompassing both fuel and non-fuel business segments, BPCL multiplied the customer touch points and has ushered in an era hitherto unknown to the Indian consumer whose exposure was limited to traditional petrol and diesel retail outlets.

### **1.3. BPCL’s Retail Offerings:**

BPCL has been pursuing a retail strategy for creating a clearly differentiating value proposition for the fuelling customer. Acknowledging the diverse and fast changing needs of today’s motoring consumer, BPCL has clearly defined value proposition for the consumer.

Differentiation through Petro Card proposition: BPCL’s strategy through our “Petro Card” proposition the first to rollout a comprehensive rewards programme branded as “Petro Card” for the urban motorist. This programme offers the motorist an unbeatable convenience, security and a host of privileges.

Differentiation through Fleet Management proposition: With Highway retailing emerging as an area of vast opportunities and highway travel both for business and leisure being on the rise, this is one area with huge need gaps for convenience. BPCL was again the first to rollout a comprehensive fleet management programme branded as “SmartFleet” and designed for efficient and cost-conscious fleet owners. The SmartFleet Programme offers the fleet owner an unbeatable convenience, security and a host of privileges such as cashless transactions, vehicle tracking, credit option for Fleet Owners and Cash Management System. On 10<sup>th</sup> Anniversary of PetroBonus SmartTel card was launched for telecom sector.

### **1.4 Business objective:**

The PetroBonus and SmartFleet programs have seen tremendous growth over the recent past. It can truly be termed as an evolving platform which has evolved from a set of basic ‘reload- spend’ type functionalities to one with very complex business rules. The program is currently operating on a hybrid model where components are outsourced while a part is managed in house. However even in the outsourced components there are multiple stake-holders. The responsibilities of service providers overlap leading to accountability gaps leaving scope for improvement in the service levels.

BPCL as its larger objective intends to focus on areas of marketing, customer understanding and business development. Moving in this direction BPCL wants to outsource management of the entire back end system for the Petro Card and SmartFleet programs. The outsourcing model will involve end to end responsibility. The service provider will be given due authorities and freedom to run the system and deliver desirable service levels. BPCL will however lay down guiding principles of security, information confidentiality, accessibility and interface with other Vendors like Wipro, Oracle, Sun, and others, who have primary relationship with BPCL.

### **1.5 The Proposal Purpose**

This RFP provides information to prepare and submit proposals for consideration by Bharat Petroleum to satisfy its requirements for the provision of operations, maintenance and technical support for the Smartcard Host related infrastructure including terminal application. Objective of this RFP is to ensure that services offered to the customers of the program are such that it enables them to transact without fail when ever they want to and to ensure that the financial integrity of the system is not compromised. These requirements are described in detail in the section 4 and Annexure I.

## **Section 2: Instructions to Vendor**

### **2.1. Submission of Technical and Price bids**

Tender document with detailed terms and conditions is available on our corporate websites (<http://www.bharatpetroleum.in>) and CPP portal (<http://eprocure.gov.in>). You may download the same and participate in the tender as per the instructions given therein, on or before the due date of the tender. The tender available on the BPCL website or on the CPP portal can be downloaded for reading purpose only.

For participating in the bid you will have to download the entire document from the web site <https://bpcl.eproc.in> by using your digital signatures. And after carefully going through all the documents and filling the bids, the CRFQ NO. 1000216333, same have to be uploaded on the appropriate place on this web site & encrypt the same with your digital signatures.

Your bid will be evaluated from the bids/ documents submitted by you on the E Procurement portal. **Hard copies of the bids need not be submitted at BPCL office.**

### **2.2. Submission of Earnest Money Deposit**

EMD of Rs. 1,00,000/- ( ONE LAKHS) is required to be submitted in physical form ( by the way of crossed A/c Payee demand draft drawn on any national or scheduled bank in favor of “Bharat Petroleum Corporation Limited” and payable at our Mumbai office in sealed cover.

Please note that non submission of EMD will result in disqualifying the tender.

### **2.3. Security Deposit**

On award of the contract the Vendor shall pay as Security Deposit an amount equivalent to three months billing in the form of a DD drawn in favour of Bharat Petroleum Corporation Limited payable at Mumbai or a bank guarantee of equivalent value as per the format attached in Annexure V. This Security Deposit shall be released within three months of the expiry of Contract with BPCL and subject to completion of all product / equipment re-conciliation in all respects and the entire operations of the project along with knowledge base is handed over to authorized representatives of BPCL.

### **2.4. Bid Documents**

2.4.1 The tenders shall be submitted as per the two bid system. The first sealed envelope shall be Technical Bid Envelope, which shall contain the following:

Technical bid documents duly signed

Arbitration clause

The methodology of managing the Host as detailed in Section 4.

Earnest Money Deposit through banker's pay order or DD.

Up-to-date income tax clearance certificate in original from the Income tax office, officer of the circle or a copy of I.T. returns filed (or true copy thereof duly attested by a Gazetted Officer/Notary) valid on the date fixed for receipt of tender.

Integrity Pact to be signed and stamped ..

2.4.2 The Priced bids will only be opened if the Technical bids are found suitable.

2.4.3 BPCL will not be responsible for any postal delays wherever tenders are sent by post. Tender received after the specified date and time will not be entertained under any circumstances.

2.4.4 The right to accept or reject any offer or all offers without assigning any reason is reserved by Bharat Petroleum Corporation Limited.

2.5 Vendor shall agree to maintain **Secrecy / Confidentiality of Information**. This would be governed by Mutual Nondisclosure Agreement the format of which is detailed in Annexure III.

2.6 The Vendor is required to respond to BPCL requirements as stated in Section 4 in the same order as the requirements are stated. Vendor is required to give detailed explanation as to how they propose to meet the requirements stated therein. A comment that the vendor will meet the requirement is not sufficient. The Vendor should carefully go through the scope of work detailed in section 3 as well as details given in Service Level Agreement – (Annexure I), so as to respond to our RFP.

To be considered, the proposal must consist of a complete response.

Proposal must be submitted to the Issuing Office on diskette (soft copy) and must be included in the sealed envelope and on paper (hard copy). Hard copy responses represent the official Vendor response. Soft copy will be used by the RFP Committee to facilitate review. Bharat Petroleum's preference is that Vendors use Microsoft Word.

No other distribution of proposals will be made by the Vendor. One (1) proposal must contain the original signature(s) of an official(s) authorized to bind the Vendor to its provisions. The authorized signature(s) must appear on company letterhead, and be attached to the Technical and Commercial Portion of the proposal.

The contents of the Agreement-attached as Annexure II are a contractual obligation when executed. For this RFP, the proposal must remain valid until these documents are fully executed and approved.

## **2.8 Economy of Preparation**

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Vendor's ability to meet the requirements of this RFP. Vendors should be cognizant of the fact that excessive information in response to a question may impair the Bharat Petroleum's ability to properly evaluate the Vendor's response.

Sections of the proposal must be clearly labeled and pages numbered consecutively for ease of review.

## **2.9 Vendor Responsibility Program**

Vendors must fully comply with the Bharat Petroleum's Vendor Responsibility regulations. Vendors must certify on company letterhead that they and all of their sub-Vendors are not currently under suspension or debarment by Bharat Petroleum, any other state or the central government organization. Vendors must include this as part of their cover letter.

## **2.10. Due Diligence**

Before quoting for the RFP, the Vendor shall complete the Due Diligence process. This process will allow the Vendor to perform on-site detailed assessments of the existing data center operational environments. The purpose of Due Diligence is to allow the Vendor to verify the information supplied in the RFP, and to gain further clarification of the requirements for Bharat Petroleum's operations to be outsourced. This process will allow the Vendor to understand the requirements for migration and future operations. All data gathered by the Vendor during this process must remain confidential. Vendor must not divulge or make known in any manner to any parties any information gathered during this process without the express written consent of the Issuing Officer. Material provided by Bharat Petroleum

during Due Diligence may, at the option of Bharat Petroleum, be requested to be returned at the conclusion of this process.

If Bharat Petroleum believes that a good-faith effort has not been demonstrated by the selected Vendor to conclude the Due Diligence process and/or the Contract Negotiation process, the Bharat Petroleum at its discretion may discontinue negotiations.

### **2.11 Agreement**

After issuance of LOI, the Vendor will have to sign a contract in the format outlined in Annexure II within fifteen (15) business days.

### **2.12 Proposal Costs**

Bharat petroleum is not liable for any cost or expenses incurred by the Vendors in the preparation of their proposals, or for attendance at any conferences or meetings related to this RFP. Bharat Petroleum is not liable for the payment of any amounts to the Vendor until the Agreement has been completely executed and approved.

### **2.13 Prime Vendor Responsibility**

The Vendor will be responsible for all services in this RFP whether they are provided or performed by the Vendor (Prime Vendor ) or sub-Vendor (s). Further, Bharat Petroleum will consider the Prime Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the cost of any contract. The Vendor must identify all sub-Vendors and the services they provide. The Prime Vendor is responsible for all payments and liabilities of all sub-Vendor(s). Bharat Petroleum reserves the right to approve or reject, in writing, any proposed sub-Vendor . If Bharat Petroleum rejects any proposed sub-Vendor in writing, the Prime Vendor shall be responsible to assume the proposed sub-Vendors responsibilities. The Prime Vendor may propose another sub-Vendor if it does not jeopardize the effectiveness or efficiency of the Agreement.

Nothing contained in the RFP or in the Agreement shall create or be construed as creating any contractual relationship between any sub-Vendor and Bharat Petroleum .

### **2.14. Bharat Petroleum Participation**

Bharat Petroleum will provide appropriate personnel support for implementation of this project. Such levels of Bharat Petroleum commitment will be determined during the Due Diligence phase , arrived at by mutual agreement with the Vendor(s) and Bharat Petroleum . For the purpose of contract administration, a person to serve as Bharat Petroleum Contract Administrator will be nominated. The Contract Administrator will serve as the primary liaison between Bharat Petroleum and the Vendor(s) and will coordinate overall management and administration of the contract for Bharat Petroleum. For purposes of this RFP, all communication is to be exclusively with the Issuing Officer only.

Bharat Petroleum will also provide complimentary office space for specific members of the Vendor's ongoing support team for the duration of the agreement.

### **2.15 Disclosure of Proposal Contents**

Technical and Price information provided in proposals will be held in confidence, and, except for the Vendor's proposal, will not be revealed or discussed with competitors unless required by law. The proposal of the Vendor, however, becomes part of any contract entered into, and when the contract is fully executed will become subject to the prevailing statutory regulations. All other material submitted with the proposal becomes the property of Bharat Petroleum and may be returned only at Bharat Petroleum's option.

Proposals submitted to Bharat Petroleum will be reviewed and evaluated by members of the RFP Committee. Bharat Petroleum has the right to use any or all ideas presented in any reply to this RFP. Selection or rejection of the proposal does not affect this right.

**2.16 Vendor to CONFIRM the following :**

The vendor agrees to locate their team to manage the operations that will be used to provide the services requested in this RFP at any premises provided by Bharat Petroleum.

The Vendor agrees to meet or exceed all security requirements mandated by Bharat Petroleum .

The Vendor agrees that its proposal will remain valid until after an Agreement is fully executed and approved.

**2.17** All pages of the Tender document shall be signed and stamped on each page appropriately by the authorized person and submitted along with Annexure I to VII at the following address:

**Chief Manager Database -Retail**

Bharat Petroleum Corporation Limited  
Retail Technology Centre,  
ERPCC building, ground Floor,  
Sewree Fort Road,  
Sewree East,  
Mumbai -400015

**Disclaimers:**

The information in this Request for Proposal (RFP) is provided for information only. No representation, warranty or undertaking, express or implied, is or will be made and BPCL shall have no responsibility or liability as to, or in relation to, the accuracy or completeness of this RFP or any other written or oral information made available to any party responding to this RFP or their advisers. No information contained in this RFP will form the basis of any warranty or representation made by or on behalf of BPCL to any Bidder.

No response made by or on behalf of BPCL to any proposal received in response to this RFP shall constitute an agreement or contract between BPCL and any Bidder.

Vendor responding to this RFP do so at their own cost and expense and no reimbursement shall be made by BPCL whether or not an award of contract is made.

BPCL is not bound to accept the lowest or any Proposal and BPCL shall be free to abandon the procurement pursuant to which this RFP is issued at any time.

BPCL reserves the right to procure all or any part of the services proposed as it considers necessary.



## Section 3: Approved Environment

### Approved Environment

Environment (actual number and version may vary after the close study of the system) required for running the current PetroCard / SmartFleet application. This may not cover the new application design. The new environment will be based on new design and changes (if any) over existing design. The new environment decided by BPCL due to ageing of servers / Database / Operating System shall be acceptable to the vendor and the same shall be approved by vendor.

1. Sun servers - production database server, application server, test server, Web server, DR server (Local & Upcountry) etc.
2. SAN and storage devices
3. Firewall & routers
4. BPCL intranet/internet network topology
5. Network connectivity between production and DR site
6. Network connectivity between Retail outlet and servers (Atos worldline)
7. RAS connectivity (Atos worldline)
8. Backup devices and backup process
9. Solaris operating system
10. Java development / runtime environment 1.3
11. Oracle Database server with RAC
12. Oracle application server
13. Oracle Report server
14. Oracle Report developer
15. Oracle Data guard & data replication
16. Oracle Internet Directory Server (LDAP)
17. SMS & Mail server
18. SAP integration system
19. SAM and User Cards
20. Magic Terminals
21. Terminal field support group

## Section 4. BPCL Requirements

Response format for Technical offer evaluation:

BPCL will evaluate potential service provider based on the “Technical Bid Offer” consisting of Part A and Part B and through presentation on the proposed solution, discussions for clarifications on the offer submitted. Please ensure that you provide all the information listed below in your response.

### PART A

#### Vendors - CREDENTIALS, BIO-DATA AND BUSINESS STANDING

1	Name of the Vendor	
2	Name of Contact Person	
3	Full Address	
	Telephone No.	
	Fax No.	
	E mail ID	
4	Whether the firm is a private or public limited concern, or Hindu Undivided family, individual or a registered partnership firm ?	
	(Attested copies of Deeds or Articles of Association shall be enclosed)	
5	Year of establishment	
6	Registration No. if any.	
7	Name of person holding Power of Attorney (in case of Firm)	
	Present address of person holding Power of Attorney	
	Nationality of Person holding Power of Attorney	
	Liabilities of Person holding Power of Attorney	
8.	Name of Partners	
	Full addresses of the partners	
	Liabilities of the partners	
	(Attested copy of partnership deed to be enclosed)	
9	In case of a firm, Name of Banker and full address	
	(Banker's report in original giving financial capability of the firm to handle works of the required magnitude shall be enclosed)	
	Credit arrangement with Banker's along with the limit for Bank guarantees.	

	Enclose bank solvency Certificate	
10	Whether the applicant is enlisted with another public sector undertaking viz., Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited, IBP Company Limited or any of its joint venture companies for providing similar assistance ? If so, give details.	
	List of jobs executed	
	Documentary proof of having executed the above jobs.	
	Quantity and value of jobs.	
11	Whether the applicant is a shareholder or partner of any firm listed with BPCL? If so give details.	
12	Whether the applicant or any of his partner or shareholder is / are members of Indian parliament or any State Legislatures? If so, give details.	
13	Whether applicant has in his roll any dismissed Govt. Servant / Employees of the Undertaking?	
14	Has the applicant or any of his partners or share holders been blacklisted or removed from approved list of Vendor s or demoted to lower class, or orders passed, banning / suspending business with the applicant by any undertaking / firm in the past? Please give details.	
15	A list of persons who are working with applicant in any capacity and who are near relatives to any officer in a public sector undertaking and / or in the Ministry of Petroleum shall be furnished. The applicant should also intimate the names of such persons who are employed by him subsequent to his engagement as a Vendor .	
16	Permanent Income Tax Account No. and IT clearance certificate of last 5 years.	
17	Copies of last three years Audited balance sheet and profit and loss account shall be enclosed.	
18	Any other relevant information, the entrepreneur may wish to furnish.	
19	How many similar operations do you currently support	
20	What is the annual contract value of your three (3) largest outsourcing operations and support contracts?	
21	Provide a signed formal agreement (e.g. teaming agreement or any other legally binding document) between the Vendor and each proposed sub-Vendor . These formal agreements must be attached to the Technical Proposal)	
22	Where services of subcontractor will be used to meet the requirements of BPCL following details of the sub-contractors should be submitted:  If sub-Vendors are proposed for this RFP Provide following  A. Sub-Vendor name and address.  B. If incorporated, identify state in which incorporated.  D. A short narrative description of	

	<p>company's organization, include organization charts, and indicate company officers where applicable.</p> <p>E. Principal type of business.</p> <p>F. Total number of years in business.</p> <p>G. Number of years providing services similar to those requested in this RFP.</p> <p>H. An audited profit and loss statement and balance sheet for the sub-Vendor's last three (3) fiscal years. If a company is privately owned, this information will be kept confidential by Bharat Petroleum during the evaluation process.</p> <p>I. Do you certify that this proposed sub-Vendor is not currently under suspension or debarment by the Bharat Petroleum, any other state, or the central government?</p>	
23	<p>Provide details of Experience</p> <p>A. Provide information for a minimum of three (3) and a maximum of five (5) related engagements within the past three (3) years. Limit the description of each engagement to one (1) page which must include the following:</p> <ol style="list-style-type: none"> <li>(1) Client Name</li> <li>(2) Address</li> <li>(3) Contact Person</li> <li>(4) Phone Number</li> <li>(5) Time Available</li> <li>(6) Type of Work Performed</li> <li>(7) Period Work Was Performed</li> <li>(8) Brief Description of Scope of Work</li> <li>(9) Related Project Information</li> </ol> <p>B. On one page, describe any outsourcing projects that have been performed for governmental agencies or entities (state, central or local) within the past three years. Include information on the type of the work performed (e.g., revenue, criminal justice, welfare).</p> <p>C. List any litigation pending and/or engagements that have been terminated prior to normal contract expiration in the past three (3) years. Explain reasons for early terminations. In addition, provide the following information for each such engagement:</p> <ol style="list-style-type: none"> <li>(1) Client Name</li> <li>(2) Address</li> </ol>	

	<p>(3) Contact Person (4) Phone Number</p>	
24	<p>For the Vendor and each proposed sub-Vendor, provide three (3) customer references, all contained on one (1) page, for outsourcing services similar to those described in this RFP. Provide a brief description of work performed.</p> <p>Provide the name and title of the Contact Person and Alternate Contact who can provide detailed information regarding the Vendor's performance.</p> <p>(1) Client Name (2) Address (3) Contact Person (4) Alternate Contact (5) Phone Number (6) Time Available</p>	
25	<p>If you intend to subcontract, describe the Vendor's experience in managing sub-Vendors, (Limit the description to one (1) page).</p>	
26	<p>If you intend to subcontract, describe the Vendor's experience with each of your proposed sub-Vendors. Limit the description to one (1) page for each sub-Vendor</p>	
27	<p>List of persons to be deployed for the project, along with their qualifications and experience enclosed.</p>	

Part B:

Proposed Solution (business Plan) to addressing the scope and objectives of BPCL's initiative including (but not limited to):

**1. People plan**

- a. Number of service staff you would employ for managing this activity
- b. Organization structure of the proposed team i.e., supervisors, Managers etc.
- c. Accounting / billing plan
- d. Training plan (what type of training, how many days, at what frequency)
- e. PMS plan of resources and their review by BPCL
- f. Recruitment criteria and BPCL approval before final selection.
- g. Retention strategies to minimize attrition

**2. Processes, tools and methodologies--** Describe the approach to project management during both the transition and operational phases

- 2.1 Vendors must provide an Executive Summary of the proposed solution to Bharat Petroleum .It should be a “high-level” overview of just how the Vendor proposes to accomplish the requirements of this RFP. The purpose of this Executive Summary is to convey to the reader of the proposal the Vendor’s general approach. The details of the Vendor’s proposal are to be provided in the next section.
- 2.2 Describe the proposed process to manage this activity. Your proposal should cover in detail the following:
- i. The project management team structure, along with the roles and responsibilities of all team members.
  - ii. Project management processes, methodologies and procedures.
  - iii. How you will conduct planning for this project.
  - iv. What Bharat Petroleum resources will be necessary for the project to succeed.
  - v. What automated tools will be used in managing this project.
  - vi. How Bharat Petroleum management will be apprised on project status.
  - vii. The change management procedures to handle such things as “out-of-scope” requests or changing business needs of Bharat Petroleum while the migration is underway.
  - viii. What procedures will be used to keep the project on track, and what escalation procedures will be employed to address any problems with project progress.
  - ix. What quality assurance processes, procedures, formal reviews, etc. will be in place over and above the day-to-day work of the project team.
  - x. How both parties would work together to permit “contract flexibility” to accommodate changing Bharat Petroleum business needs.
  - xi. The mechanisms for transferring data, applications, and related processes to Bharat Petroleum or Bharat Petroleum selected service provider at the conclusion or termination of this contract.
  - xii. the proposed conflict resolution/escalation process between the Vendor and Bharat Petroleum to handle contractual disputes.
  - xiii. the review and reporting process to track the effect of application changes and additions.
  - xiv. How you propose accommodating any planned downtime required while still meeting each agency’s availability needs as described in Annexure I
  - xv. The Bharat Petroleum may elect to utilize a third party benchmarking/auditing organization. Describe the Vendor’s experience working with third party benchmarking organizations.
  - xvi. How does the Vendor propose to integrate the interface of its Help Desk function with Bharat Petroleum’s other Help Desks / Call Center?
  - xvii. Vendor must support the current volume of calls outlined above and should describe their approach to managing increased volumes of calls as more services and systems are delivered and supported

- xviii. How does the Vendor propose to build-in BPCL's business requirements and timeframes for callbacks, notifications, response times, and resolutions into the Vendor's Help Desk?
- xix. Describe the Vendor's escalation process including how the Vendor plans to keep Bharat Petroleum personnel informed.
- xx. To what degree will Bharat Petroleum Help Desk personnel have access to system logs and console commands to assist with agency-level problem determination and resolution?
- xxi. Describe the Vendor's process for problem management including any software packages used, coordination required, and communications to Bharat Petroleum personnel.
- xxii. Recommend and propose the Help Desk solution, which in Vendor's past experience is most effective. Describe fully, including the reason it was successful, benefits to be realized and potential problems.

**3. Provide sample MIS, feedback reports and metrics that you will provide BPCL to monitor performance of this contract.**

**4. Other value added services that you propose**

**5. Process for documenting** the learnings while managing this activity for e.g.

each learning /incident should be captured : -,

- i. description of the incident
- ii. what was done to solve the issue
- iii. has any learning been used to modify existing processes
- iv. what action has been taken to ensure that the incident is not repeated

**6. Activation of Disaster Recovery**

- A. What is the process/procedure for declaring a disaster and initiating disaster recovery actions? What are the roles of the Vendor and Bharat Petroleum?
- B. Describe your policies and procedures on restoration of services to satisfy Bharat Petroleum's varying requirements.
- C. Describe what Vendor must maintain at BPCL's DR site to effect the transition of mission-critical applications to a DR site.
- D. Describe how disaster recovery capabilities will be tested.
- E. Describe the role Bharat Petroleum will play in testing and actual recovery.
- F. Describe data backup policies and procedures.

## 7 Audit Requirements

To ensure adequate control of significant processes or transactions processed by service organizations, Bharat Petroleum requires that the Vendor have

a “Statement of Auditing Standards-70” (SAS-70) audit, “Report on Policy and Procedures Placed in Operation”, performed annually, and the results of the audit made available to Bharat Petroleum .

b. The Vendor should provide a copy of its latest SAS-70 audit report, summary of results, or a copy of the auditor’s opinions.

## 8. Inspections

The Bharat Petroleum shall have the right to observe and monitor all aspects of performance by the Vendor. The purpose of such observations and monitoring will be to verify the accuracy of charges by the Vendor to Bharat Petroleum and that services are being provided in accordance with performance standards. The outsource Vendor must provide Bharat Petroleum , in a timely manner, access to data specified by Bharat Petroleum as necessary to monitor the availability, performance, and cost of the Vendor’s services to Bharat Petroleum.

## 9. Project Man Power Resources

### 9.1 Project Manager

The Bharat Petroleum requires that a full-time project manager be assigned to oversee the operation of the entire contract, including the performance of all Vendor and sub-Vendor(s) personnel. In this section, describe who the Vendor’s project manager will be, addressing the following requirements of Bharat Petroleum:

- The project manager must be available full-time through the duration of the contract.
- The project manager must not be reassigned during the period of the contract without the written consent of Bharat Petroleum.
- The project manager will function as the Vendor’s authorized point of contact with the Bharat Petroleum and must be available to respond promptly and fully to all contract requirements. Project manager responsibilities will include, but are not limited to providing administrative, supervisory, and technical direction to project personnel, monitoring work performance for accuracy, timeliness, efficiency, and adherence to contract requirements, coordinating the resolution of contract problems and the implementation and enforcement of problem escalation procedures.
- The project manager must be an employee of the Vendor and must be authorized to make decisions on behalf of the Vendor and all sub-Vendors.
- The project manager should have a minimum of twelve to fifteen years’ experience in managing large scale projects involving data center operations for accounts similar in scope and complexity to this project, and must have demonstrated effective oral and written communication skills.
- The project manager will be located on-site at Bharat Petroleum.



## 9.2 Support Personnel

In addition to the Project Manager, Bharat Petroleum expects sufficient technical support personnel to be assigned to the project to adequately provide the services defined in this RFP. It is required that all personnel have demonstrated experience in data center operations or data center technical support. One or more of these individuals will be required to be on-site at Bharat Petroleum for significant portions of time. Bharat Petroleum will review and approve Vendor personnel for assignment to the project. In the selection process of the personnel Bharat petroleum reserves the right to accept/reject the person concerned. Bharat Petroleum has the right to require replacement of Vendor personnel if dissatisfied with their performance. The Performance management of the personnel shall be appraised by Bharat Petroleum every year and same should be basis for the growth/ incentive of the personnel of the vendor.

- A. Provide an organization chart for the assigned project team (contained on a **maximum of one (1) page**).
- B. Provide a brief **one-half page** biography for each key employee assigned to the project. The information provided should include the following: name, classification, time with company, previous related experience (last three years), specific reason why individual is assigned to project and their responsibilities.
- C. Will the Vendor personnel assigned to support the Bharat Petroleum be committed full time? If not, what percentage of each individual's time will be devoted to Bharat Petroleum ?
- D. Does the Vendor's operations staff have experience and training operating each of Bharat Petroleum 's hardware platforms? Explain.

## 10. Additional Services

Bharat Petroleum may request that the Vendor provides additional services /developments related to the programme or outsourcing not specified in this RFP. Bharat Petroleum will define the scope of work with the Vendor for each assignment. Bharat Petroleum is interested in understanding the hourly rates Vendor would charge for such services.

## 11. Contract Coordination

BPCL shall establish a Contract Administrator to provide contract management and BPCL oversight function. The VENDOR relationship manager will provide a venue for managing VENDOR relationships and technical requirements through BPCL's decision making body for contract adjustments, amendments and changes.

## 12 Contract Changes:

A process will be developed during contract negotiations for handling minor administrative changes as they may be needed over the life of the contract. Major changes will be handled by formal amendments. If the Vendor accepts orders and/or delivers services through other parties such as sub-Vendors, then it is the responsibility of the Vendor to apprise such parties of all contract changes.

## 13. Criminal history and credit checks

The Vendor shall conduct criminal history checks through the Mumbai police and credit checks through a reputable credit bureau for individuals of onsite team when required by BPCL.

#### **14. Billing/Cost Accounting Procedures**

##### **Billing Methodology**

Bharat Petroleum prefers a single invoice. Describe what backup detail will be provided to Bharat Petroleum to support the volume of billing units consumed., The details provided in the bill be verified by BPCL based on which the payment will be released within 21 days of providing all details as mandated along with the bill

#### **15 . Also refer to Annexure I for the BPCLs requirements.**

This is to certify that we have read the tender documents and understood the same in full and declare that we will abide by the same.

We also enclose the tender document duly signed in token of our acceptance.

SIGNATURE:

NAME OF THE VENDOR:

DATE:

ADDRESS:

## Section 5: PRICING

1. We have read the tender document comprising of RFP and annexure I- V and have understood the same fully and completely.
2. We hereby agree to execute the agreement as per draft signed by us and enclosed hereto upon acceptance of the tender by BPCL and communication of the same to us.
3. We hereby agree and undertake to give Bank Guarantee (s) equivalent to 3 months billing value from a Nationalised / scheduled bank in favour of BPCL, payable at Mumbai as per the proforma prescribed by BPCL in terms of the agreement to be executed by us after acceptance of our tender.
4. Our offer is valid for 180 days and in terms of BPCL's instruction to Vendors our offer would also be valid during the period, if any, extended by BPCL which shall not be in any case more than 30 days beyond the period of 180 days.
5. The rates quoted by us are inclusive of all taxes, duties and all levies and other charges as applicable. Rates quoted must be delivered rates inclusive of, works contract tax, service tax, & all Levies.
6. We agree to manage the Smart Card Host as detailed in the scope of work Smart card host manager for a period of one year and then for a further two terms of one year each on mutual extension of the contract. However, BPCL reserves to exercise its right to terminate the agreement any time prior to expiry date.
7. BPCL shall not pay any costs above those specified in this agreement or set forth on any Order or attachment referencing this agreement.
8. All other terms and conditions remain unchanged.
9. Payment terms: Payment will be released on a monthly basis subject to satisfactory delivery of services as detailed.

Accepted

Signature

## UN-QUOTE PRICE BID

### I **HOST Application:**

Providing software application for operating the Host for the loyalty programmes under licence to BPCL including handling all Smart Card/terminal related (excluding terminal hardware related) back-end communication logged by BPCL or partner of BPCL

- The Cost of supporting, operating and maintenance of the host application on 24 x7 basis per month with effect from 1st October 2014 to 30<sup>th</sup> September 2015 as per scope of work detailed in Annexure I is **Rs. \_\_\_\_\_ (Per Month rate)**
- Tax applicable : Rate in % \_\_\_\_\_ Amt Rs. \_\_\_\_\_
- Net Total including taxes Rs. \_\_\_\_\_
- The number of persons Required : Seven

### II . **Coordination and monitoring to ensure resolution of issues pertaining to:**

- Wipro for AMC and Support for Sun Servers. & Network and Security equipments, Load balancing and any other requirement for smooth functioning of the network, OS and Server Management
- Oracle for Online remote Database and Application Server support, Product Support for Database and Application Server, Database Management and Administration, disaster Recovery and Business Continuity
- IIS Network Team for Network and Security Management (Leased lines, RF Link, VSATs), Configuration of various appliances, exchange server support, Network accessibility and Firewall housekeeping & Disaster Recovery and Business Continuity.
- IIS Application Team, Developing and ensuring availability of interfaces such as SMS servers, HDFC online CMS recharge & Deploying internet based applications
- SAP Team for Develop interfaces with SAP for posting financial data to SAP, developing & enhancing BIW solution.
- Atos worldline for Network for transmitting of transaction from POS at Retail Outlets to the Host at primary site,, Maintain Terminals at the Outlets,, Issues with Terminal Applications & with respect to settlement of transactions, carry out card issuance activity, Card Member / User Call Center & disaster Recovery and Business Continuity
- Accentive for Query data, editing and Reports
- PINE LABS , for On site maintenance and support of RO Automation Application as well as Terminal Application support

- The cost of Co-ordination & Monitoring for issues resolution with above parties is Rs. \_\_\_\_\_ per month + Tax rate % \_\_\_\_\_ Rs. \_\_\_\_\_
- Net Total inclusive of taxes Rs. \_\_\_\_\_

**III New Developments:**

Specification will be drawn up for new development and agreed upon. New development includes testing and deployment as required for the loyalty applications. The no. of man months to be agreed with the contract administrator.

- The cost of per man month for any such software development shall be Rs. \_\_\_\_\_ + Tax Rate % \_\_\_\_\_ Rs. \_\_\_\_\_
- Net Total inclusive of taxes Rs. \_\_\_\_\_
- The above rates are all inclusive of taxes

**Section 6: General Terms and Conditions.**

GENERAL CONDITIONS OF TENDER

FILLING AND SUBMITTING TENDERS:

1. Quotations should be submitted only in the prescribed tender schedule forms supplied by the Company together with General Conditions of Tender duly signed by the Vendor along with a Bank Draft, if required, as per covering letter.....date.....for the amount mentioned in Clause EARNEST MONEY DEPOSIT(mentioned later in this document), on or before the due/time of closing of the tender. Quotations received after the due date/time will not be considered.
2. The Vendor should study all the tender documents carefully and understand the conditions. drawings, specifications etc. before quoting. If there are any doubts, he should obtain clarification, but this shall not be a justification for late submission or extension of opening date/time of the tenders.
3. The Vendor should visit the site and acquaint himself with site conditions, availability of water, electricity, approach roads.
4. The Vendor should quote for all items in the tender schedule. The rates should be expressed both in figures and in words; where discrepancy exists between the two, the rates expressed in words will prevail. Similarly if there is any discrepancy between the unit rate and the amount, the unit rate will prevail.
5. The rate should be quoted in the same units as mentioned in tender schedule.
6. All entries in the Tender Documents should be in ink/Typed- Corrections, if any, should be attested by full signature of the Vendor.
7. Every page of the tender documents shall be signed by the Vendor or his authorised representative.
8. The Vendor should indicate the time required to complete the entire start up work from the date of receiving the order. The time indicated in the tender may have a bearing on awarding the contract.

**RATES:**

9. The rates quoted should be exclusive all taxes but the relevant applicable taxes will have to be mentioned as applicable at the time of quotation
10. The rates quoted shall be valid for a period of three years. Once the quotation is accepted, the rates quoted shall be firm for a period of three years.

**ACCEPTANCE OF TENDER:**

11. Incomplete plate/conditional tender quotations or those received late and/or not conforming to the terms and conditions in the tender documents, will be rejected.
12. The Company reserves the right to reject any or every tender without assigning any reason whatsoever and or to negotiate with the Vendor (s) in the manner the Company considers suitable.

**EXECUTION OF AGREEMENT:**

13. The successful Vendor shall, within 15 days of the Company's communication to him of the acceptance of his tender, execute a formal agreement with the Company on the Company's format. A

copy of the agreement is attached with this document in Annexure II and needs to be signed returned in token of accepting the terms of the agreement.

#### **EXECUTION OF WORKS AND RUNNING THE BUSINESS:**

14. The successful Vendor should submit a detailed plan for the running of the Smart card host manager. The plan will form part of the contract. However, the Company reserves the right to alter the plan , if necessary, from time to time, and no claim of the Vendor on account of such alteration will be entertained.

15. All raw materials required for the execution of work should confirm to the standard specification and approved by the Company before actually put to use. Commencement of work without approval shall be entirely at the risk and cost of the Vendor. No delay due to non-availability of materials, tools, equipment etc. will be entertained by the Company. In the case of certain machinery/equipment, the Company's site In-Charge may inspect the items for approval before they are brought to the site.

16. This responsibility for the safety, security, accounting of the materials and equipment brought or installed by the successful Vendor or handed over to him by the Company for completion of the work / running the business, will remain with him. Any damage caused to the material equipment during the execution of work / running the business will be made good by the successful Vendor at his cost. The Company may require the successful Vendor to have a guarantee/indemnity bond executed the value of material supplied to him free of cost, as per terms of the agreement.

17. The Company reserves the right to increase or decrease the tendered quantity / revise specifications, drawing, designs of any or every item or delete them at any stage of work / running of the business. The successful tender's claim for compensation or damages on account of these shall not be entertained. Such changes will be adjusted at the rates contained in the by issuing variation order (s). In case it becomes necessary for the Company to temporarily suspend or postpone the work/, partly, or fully due to unforeseen circumstances, the Company shall not be liable for any compensation on account of resultant delays.

18.. The entire work will be carried out under the supervision of the authorised representative of the Company, but this will not detract Vendors full responsibility for quality/period of execution of work.

19. The Vendor shall submit to the office which has awarded the contract periodic progress reports of their work as stipulated by our office.

20. The Vendor shall not undertake on his own any change in specifications mentioned in the tender documents. In case of doubt he will refer the matter in writing to the Company and act as per clarifications given by the Company. Any change in the work involving charges in original specifications quantities/additional items of work, should be covered by obtaining suitable variation order (s) from the Company immediately.

21. If the performance of the successful Vendor is found to be unsatisfactory, the Company reserves the right to cancel in part or the whole of the contract and get the work executed through alternative means at the entire risk and cost of successful Vendor.

22. The successful Vendor should ensure the safety of adjoining property and shall make good any loss to product/property resulting from his negligence.

23 It will be the Vendor responsibility to get the works approved and obtain all relevant certificates from local, municipal, Governmental or other required authorities.

24. The Vendor is expected to co-operate with other operators / Vendors at the site carrying out the work allocated to them so as to avoid causing any hindrance in the progress of their work. In case there is any difficulty/dispute, the same should be immediately brought to the notice of the officer In-Charge.

25. The Vendor and his representatives shall abide by all security/safety rules/regulations in force at location and the laws, bye-laws and statues of Government and other local authorities such as requirements liability under enactments like the Workmen's Compensation Act, Contract Labour Act etc. and the Company shall stand indemnified against any claims on these scores.

26. The Vendor shall not sublet or assign any part of the work to another party without the prior written consent of the Company. In any event the Vendor will be responsible for the work so sublet or assigned.

Arbitration Clause is as per Annexure IV



## Scope of Work & Applicable SLA:

To meet our business objective of providing our customers error free and convenient transactions each and every time it is very important to quickly resolve any complaint or issues that results in non-availability or inconvenience in availing any of our services of the Smart Card Programme.

### Responsibility Matrix Legend

**P** (Perform) – The designated Party has the obligation and responsibility for performing the service

**H** (Help) – The designated Party will provide assistance to enable the performer to complete the designated service

**A** (Approve) – The performance of the services is subject to the designated Party's approval

**C-** (Coordinate)-The designated Party has the obligation to coordinate for with the agency involved for Performing the service

Note: V stands for Vendor in the matrix

### 1.B 24X7 Technical Support Services – General Service Requirements

Apart from setting up the initial infrastructure, there are certain general service level requirements (that is, non-specific to type of problem/issue/service request) that the Vendor needs to fulfill.

### 1.C Priority of Calls (Service Requests) at Technical Support Desk

BPCL has established a system for prioritizing service problems based on severity of the problem reported. Below is a **guideline** for defined priorities:

Priority	Explanation and Examples
0	<b>Total Out of Service Condition</b> - No Network availability - Connection down with no alternate route - CMS service not available - Online Transaction getting declined - Transaction / Batch Settlement not happening
1	<b>Service Outage with Alternate connection available</b> - Network connection down with alternate route available - Partial out of service - Terminal Software corruption - SAM Corruption, etc. - City specific Issues - ROC Corruption
2	<b>Service Available but with slow response</b> - Internet connection slow - Network (VSAT, RF link, etc.) connection slow
3	<b>Non-service affecting</b> - Application enhancement, development, - Documentation

### 1.D Classification of Calls (Service Requests) at Technical Support Team

The type of calls received at Call Center can be of four types as mentioned in the Table below. However, the current arrangement may change depending upon the change in scope in future. If any

change in scope happens, the same will be communicated to the Vendor 15 days prior to the implementation.

Service Request (SR) Type	Nature of Action required
0	Calls which require coordination with other parties (for e.g., BPCL Retail IS Team, BPCL IIS Network Team, 3rd Party Vendors, etc.)
1	Calls which can be solved over the phone with some due diligence done at the Host, Database, etc.
2	Calls which can be solved over the phone and should have ideally been solved at the Customer Call Center level
3	Calls which require application development, enhancement, bug fixing, etc.

### 1.E Escalation Levels

The escalation matrix for each Call (Service Request) type is described below. Please note that this is indicative in nature, any suggestions from the Vendor are welcome and the final procedure would be mutually agreed upon. Contact details of all the people involved across levels of escalation needs to be provided by the Vendor.

Also, the escalations to BPCL team would happen at two levels:

- First Level of escalation within BPCL for each category of problem
- Overall Single point of contact (Program Manager) of BPCL

The same would be defined by BPCL in the following format:

Category of problem	First Level of escalation within BPCL	People from BPCL who need to know about the Service Request	
		1	2
Host Application Development and Maintenance	Ramaprasad/Sunetra	A K Nigam	Dr. U V Girishkumar
OS and Server Administration	Ramprasad/ Sanchali	A K Nigam	Dr. U V Girishkumar
Database Administration and Maintenance	Ramaprasad/ Sanchali	A K Nigam	Dr. U V Girishkumar
Network and Security	Ramaprasad/ Sunetra	A K Nigam	A K Kaushik

**Note** – Time durations mentioned in the matrix at each level are the **average** durations within which appropriate action needs to be taken, else automatic escalation should happen to the next level

**1.E.1 Service Request Type 0** - Calls which require coordination with other parties (for e.g., BPCL IIS Team, 3rd Party Vendors, etc.)

**Note** - T (SLA) represents the time as per the SLA of the concerned party. For e.g., with Wipro we have Gold Support, according to which they should be onsite within 2 hours of calling them, so in this case T (SLA) is 2 hours

Escalation Level	Responsibility Center	Priority 0	Priority 1	Priority 2	Priority 3
Level A	Technical support Team Member / Data Center Team Member	5 Min	20 Min	45 Min	1 Hour

Level B	Data Center Team Manager	10 Min	45 Min	1.5 Hours	2 Hours
Level C	The overall single point contact of the Vendor	30 Min	1.5 Hours	3 Hours	4 Hours
Level D	The single point contact of BPCL	30 Min	T (SLA) + 2 Hours	T (SLA) + As needed	T (SLA) + As Needed

**Also, note that the BPCL's corresponding Level B point of contact (to be defined by BPCL) needs to be informed (through SMS, Call and Email) in 15 Minutes in case of Priority 0 and Priority 1 Service Requests**

**1.E.2 Service Request Type 1** - Calls which can be solved over the phone with some due diligence done at the Host, Database, etc.

Escalation Level	Responsibility Center	Priority 0	Priority 1	Priority 2	Priority 3
Level A	technical support team Member / Data Center Team Member	15 Min	30 Min	1 Hour	2 Hours
Level B	Data Center Team Manager	45 Min	1 Hour	2 Hours	As Needed
Level C	The overall single point contact of the Vendor	2 Hours	4 Hours	6 Hours	As Needed
Level D	The single point contact of BPCL	4 Hours	8 Hours	12 Hours	16 Hours

**Also, note that the BPCL's corresponding Level B point of contact (t) needs to be informed (through SMS, Call and Email) in 15 Minutes in case of Priority 0 and Priority 1 Service Requests. Any changes in point of contact will be communicated**

**1.E.3 Service Request Type 2** - Calls which can be solved over the phone and should have ideally been solved at the Customer Call Center

**Also, note that the BPCL's corresponding Level B point of contact needs to be informed (through SMS, Call and Email) in 15 Minutes in case of Priority 0 and Priority 1 Service Requests**

Escalation Level	Responsibility Center	Priority 0	Priority 1	Priority 2	Priority 3
Level A	Technical Support Team Member / Data Center Team Member	15 Min	30 Min	45 Min	1 Hour
Level B	Data Center Team Manager	1 Hour	1.5 Hours	3 Hours	4 Hours
Level C	The overall single point contact of the Vendor	2 Hour	4 Hours	8 Hours	12 Hours
Level D	The single point contact of BPCL	4 Hours	8 Hours	16 Hours	1 Day

**1.E.4 Service Request Type 3** - Calls which require application development, enhancement, bug fixing, etc

**Also, note that the BPCL’s corresponding Level B point of contact needs to be informed (through SMS, Call and Email) in 15 Minutes in case of Priority 0 and Priority 1 Service Requests**

Escalation Level	Responsibility Center	Priority 0	Priority 1	Priority 2	Priority 3
Level A	Technical Support Team Member / Data Center Team Member	1 Hour	4 Hours	2 Days	4 Days
Level B	Data Center Team Manager	2 Hours	16 Hours	4 Days	8 Days
Level C	The overall single point contact of the Vendor	6 Hours	1 Day	6 Days	15 Days
Level D	The overall single point contact of BPCL	T (SLA) + 4 Hours	T (SLA) + 1 Day	T (SLA) + As needed	T (SLA) + As Needed

**1.F 24X7 Technical Support Team Services – Service Levels for Requests which require Self-Manning or Coordination with the Vendor’s Data Center team**

This section defines SLAs for calls which are taken care of by the Technical Support Team .Technical Support Team members, either by the call receiver herself or in coordination with her other team members maintaining the Host application, Database, etc. at the Data Center

Section	Services/Activities
1.F.1	Receive the call at Level A [ <i>See Section 1.E for escalation levels</i> ] and log the call
1.F.2	Take steps towards corrective action / information provision and maintain the log
1.F.3	Perform Manual / Automatic Escalation as per the escalation procedure defined in Section 1.E
1.F.4	Close the call and maintain the log
1.F.5	Follow appropriate change control procedures when making modifications to resolve Service Requests

The vendor shall be responsible for the management and operation of the smart cards infrastructure. This activity will include coordination with other vendors for managing the terminal/ host application. The Service Requirements are structured as follows:

- Application Services
- Coordination for
  - Database Management and Administration
  - OS and Server Management
  - Disaster Recovery and Business Continuity
- Reports Management

➤ Performance / Review

The detail description of above services & associated SLAs are mentioned below:

**1. 24X7 Technical Support Team Services – Coordination with Other Parties**

Verifone will provide a Co-ordinator who will be responsible for :

- a. Ensuring the management of the of host application for Verifone services as detailed in the scope of work to ensure delivery of services as per the SLA
- b. Co-ordinating the resolution of any technical issues within defined SLA with other Programme Partners.

Please note - Calls will be logged, captured maintained & tracked as and when a call logging utility is provided by BPCL to ensure as detailed below:

<b>Section</b>	<b>Services/Activities</b>
<b>1.1</b>	<b>Coordination with BPCL Retail IS or Network Team</b>
1.1.1	Receive the call at parties and role holders
1.1.2	Email and call the concerned point of contact in the IS Team
1.1.3	Follow up with the IS team to check if the defined process is being followed at their end to resolve the issue or not. Maintain a log of all follow ups
1.1.4	If the IS team is not meeting its SLAs, escalate the issue to the single point of contact of the BPCL Retail IS Team (to be defined by BPCL) with proper evidence that the case is pending at IS Team's end
1.1.5	In case of any dispute with respect to the ownership of the Service Request, the same needs to be amicably decided between the Single Point of Contacts from both the teams
1.1.6	Close the call and maintain the log
<b>1.2</b>	<b>Coordination with the External Network and Terminal Application Service Provider (ATOS)</b>
1.2.1	Receive the call at Level A (See Section 1.E for escalation levels)
1.2.2	Email and call the concerned point of contact of ATOS
1.2.3	Follow up with ATOS to check if the defined process is being followed at their end to resolve the issue or not. Maintain a log of all follow ups
1.2.4	If ATOS is not meeting its SLAs, escalate the issue to the single point of contact of the BPCL (to be defined by BPCL) with proper evidence that the case is pending at ATOS's end
1.2.5	In case of any dispute with respect to the ownership of the Service Request, the same will be decided by the Single Point of Contact of BPCL
1.2.6	Close the call
<b>1.3</b>	<b>Coordination with the service provider of Oracle Servers (WIPRO)</b>
1.3.1	Familiarization with the AMC Terms and Conditions with Wipro
1.3.2	Follow up with WIPRO to check if the defined process is being followed at their end to resolve the issue or not.

1.3.3	If the WIPRO team is not meeting its SLAs, escalate the issue to the single point of contact of the BPCL (to be defined by BPCL) with proper evidence that the case is pending at WIPRO's end
1.3.4	In case of any dispute with respect to the ownership of the Service Request, the same will be decided by the Single Point of Contact of BPCL
1.3.5	Close the call
<b>1.4</b>	<b>Coordination with the Operations Team of BPCL</b>
1.4.1	Familiarization with the roles and responsibilities of the Operations team of BPCL
1.4.2	Issue a Service Request Number and log the details upon calling / intimating the concerned point of contact of the BPCL team
1.4.3	Follow up with the Operations Team to check if the defined process is being followed at their end to resolve the issue or not. Maintain a log of all follow ups
1.4.4	If the Operations team is not meeting its SLAs, escalate the issue to the single point of contact of the BPCL (to be defined by BPCL) with proper evidence that the case is pending at Operation Team's end
1.4.5	In case of any dispute with respect to the ownership of the Service Request, the same will be decided by the Single Point of Contact of BPCL
1.4.6	Close the call

## 1 Application Services – Development and Support

Section	Services/Activities
<b>2.A</b>	<b>Management</b>
2.A.1	Provide a central Point of contact for application related services
2.A.2	Coordinate the approval and prioritization of break fix, minor patches, bug fix or patches, Minor Enhancements, minor configurations, minor upgrades, and any new reports with BPCL counterpart
2.A.3	Collect performance statistics for monthly meetings
2.A.4	Ensure conformance with BPCL's IT Strategy as and when provided
2.A.5	Prioritize issues received by the Technical Support Team Technical Support Team Technical Support Team and other sources
2.A.6	Determine and proactively manage business risks associated with service delivery
2.A.7	Perform resource management (performance reviews, management, hiring, etc.)
2.A.8	Support BPCL's business processes through joint planning
2.A.9	Recommend third party technology platform that best meets BPCL business needs and expense/Service Level expectations
2.A.10	Release Planning
2.A.11	Update Training Materials
2.A.12	Schedule Team work efforts to meet Service Levels and complete work activities
<b>2.B</b>	<b>Problem Resolution &amp; Escalation</b>
2.B.1	Accept Service Requests of Type 1 that come from the Technical Support Team
2.B.2	Diagnose and resolve the problem, once done notify the Technical Support Team electronically by maintaining the log

2.B.3	Engage BPCL IS Team and other service organizations, when required, to resolve Service Request Types 0 and 1
2.B.4	Follow appropriate change control procedures when making modifications to resolve Problem Tickets
<b>2.C</b>	<b>Application Support &amp; Development</b>
2.C.1	Review Issues in the Call Tracking System
2.C.2	Perform User Maintenance tasks of License availability check, create Application access account, and assign access rights. All access rights need to be approved and authorized by BPCL
2.C.3	Provide “How do I?” support to Technical Support Team for Service Request Type 1
2.C.4	Prepare functional/technical specifications for break fix or repair of application to rectify design defects against specifications
2.C.5	Perform Root Cause Analysis
2.C.6	Prepare functional/technical specifications for minor configurations and minor upgrades and make them available to BPCL
2.C.7	Apply minor software patches, perform minor configuration changes
2.C.8	Coding: Analysis, planning, design, code and install applications enhancements and Upgrades
2.C.9	Provide BPCL open issues report and help prioritize
2.C.10	Develop and publish a release schedule for the Application and associated components
2.C.11	Execute releases to published schedule
2.C.12	Integrate test and sign off on final solution for break-fix, minor enhancement, or upgrade
2.C.13	Migrate to QA system using appropriate processes and procedures
2.C.14	Test all affected business application transactions post-development and prior to official QA testing
2.C.15	Perform QA testing and sign off on all Application releases and report pushes
2.C.16	Create and maintain Application Documentation (Functional and Technical) for changes in Application as implemented and make the same available to BPCL
2.C.17	Test all affected business application transactions in the QA system
2.C.18	Test and apply software releases (i.e. hot fixes, service packs) from application Vendors for supported Applications
2.C.19	Support and maintain the integrity of the Application Test, QA, and Production environments
2.C.20	Arrange QA testing by BPCL, as per the latter’s schedule
2.C.21	Maintain and support Application monitoring tools
2.C.22	Provide updated source codes once in the quarter to BPCL
<b>2.D</b>	<b>Application Development and Maintenance – POS Terminal Application</b>
2.D.1	Hotlisting Parameter file in the application needs to be generated twice in a week
2.D.2	The application should be fine tuned as batch settlement time depends on this application tuning
2.D.3	Blocked cards of customers should be handled by the terminal (POS) application accurately
2.D.4	Each time there is a change in terminal application the same should be populated on the terminal -
<b>2.E</b>	<b>Application Development and Maintenance – Host ISO Server Application</b>

2.E.1	No mismatch in the log of data exchanged between the terminal application and ISO host to ensure 99.5% compliance
2.E.2	ISO log should be available to the user in GUI form
2.E.3	Status of all the batches hit at host should be made available
2.E.4	No customer should be able to transact more than her balance to ensure Transaction integrity logic shall be maintained
2.E.5	Application needs to check faults like Customer balances becoming negative
2.E.6	Information on payable receivable should be available for immediate action.
2.E.7	Any card that is blocked / hotlisted for more than 24 hours should not be able to transact
2.E.8	All data, which needs to be uploaded in SAP (as defined by BPCL) should be automatically populated and no manual interventions should be required to ensure that data integrity is maintained right upto interface with SAP and by an automated process
<b>2.F</b>	<b>Application Development and Maintenance – GUI (Intranet / Internet)</b>
2.F.1	Comprehensive User manual should be available
2.F.2	Comprehensive System manual needs to be developed and updated
2.F.3	All security features in line with Banking and Financial System have to be built into the application
2.F.4	User management module should be available for access profile changes
2.F.5	Application should be thoroughly tested for Internal Errors and proper error messages should pop up instead of system failures
2.F.6	A log on online users need to be maintained and should be accessible to the authorized persons (defined by BPCL)
2.F.7	Performance tuning of the application should be done on regular basis as Database will increase day by day.
2.F.8	A log on the downtime of the GUI should be available
2.F.9	Modules used by partners are extremely critical and should be accessible anytime and work on a stand alone basis
2.F.10	Customer should be informed in advance the non availability of the pages
<b>2.G</b>	<b>Application Development and Maintenance – PIN Unblocking / Personalization</b>
2.G.1	Application user manual and system manual should be made available
2.G.2	The Access to this application at the territory should be given after taking proper permission of IT incharge
2.G.3	Security features as appropriate should be built in the application in line with Banking and Financial System
2.G.4	A log on online users need to be maintained and should be accessible to the authorized persons (defined by BPCL)
<b>2.H</b>	<b>Application Development and Maintenance – SMS Server</b>
2.H.1	Provide a liaison to coordinate with BPCL Retail IS team and monitor the system uptime and downtime
2.H.2	Escalate issues with the single point BPCL (to be provided by BPCL) in case of any issues

## 2 Database Management Service

Section	Services/Activities
3.1	Identify and apply database technology patches as required in coordination with Oracle team
3.2	Perform and monitor database availability in coordination with Oracle team



3.3	To coordinate the monitoring of the DataBase administration and request scheduled database backups by Oracle (in line with SLA committed by Oracle with BPCL)to
	(i) Perform database system recovery
	(ii) Perform database monitoring and tuning
	(iii) Maintain space availability for users
	(iv) Perform daily database maintenance activities
	(v) Maintain availability of the production system and all supporting systems including development, patching, testing, and preproduction environments
	(vi) Schedule and request changes to infrastructure if required by database (e.g. Operating patches)
	(vii) Upgrade technology executables and coordinate compatibility with technical system and hardware administrator
	(viii) Perform long-term capacity planning
	(ix) Install and upgrade DBMS Vendor Software
	(x) Configure and maintain DBMS instances
	(xi) Allocate disk space to tablespace / dbspace
	(xii) Configure and schedule backup and recovery tools.
	(xiii) Implement recovery media retention procedures
	(xiv) Configure DBMS monitoring tool
	(xv) Own technical support relationship with Vendors
	(xvi) Adjust DBMS configuration parameters
	(xvii) Recommend database reorganization strategies
	(xviii) Configure DBMS options such as "parallel server"
(xix) Configure DBMS data replication service for high availability	

### 3 OS and Server Administration

Verifone will coordinate and assist System Administrator to

Section	Services/Activities
4.1	Schedule and execute jobs
4.2	Schedule and optimize the services running on the server
4.3	Monitor and Check for crash dumps/panics
4.4	Conduct OS performance tuning along with Vendor
4.5	Perform application of patches/ system upgrade along with the Vendor

### 5 Disaster Recovery and Business Continuity

Section	Services/Activities
5.1	The online hot swapping process should happen with a writable snapshot of production database that is refreshed at a limit to be mutually agreed upon by BPCL and the Vendor
5.2	Schedule and perform regular tests on the efficacy of the DR and BC arrangements
5.3	Schedule and coordinate testing by BPCL / external party

### 6 Security Management

Section	Services/Activities
<b>6.A</b>	<b>Audit</b>
6.A.1	If Vendor has not already had a security audit performed by an mutually agreed upon third party, BPCL will conduct an initial security audit of Vendor's security controls that are designated by Vendor to be used in provision of the Services under the Agreement. This initial

	audit will be scheduled at a mutually agreeable time and will determine the state of security and readiness within Vendor’s environment. Prior to Vendor accessing, gathering, storing, or processing BPCL data, Vendor will resolve any issues identified through the initial security audit as mutually agreed upon by the parties
6.A.2	<p>If Vendor has had a security audit performed by an industry recognized third party as mutually agreed upon by the parties, then the requirements of Section 6.A.1 will be waived and the following obligations will apply:</p> <p>Prior to Vendor accessing, gathering, storing, or processing BPCL data, Vendor will provide BPCL with the scope and results of the most recent security audit performed by that third party. The scope of this audit must include the proposed BPCL-related environment and its compliance with BPCL’s requirements shall be determined by BPCL in its sole discretion</p>
6.A.3	<p>During the term of the Agreement, BPCL reserves the right to periodically audit the infrastructure designated by Vendor to be used in provision of Services under the Agreement to ensure compliance with the requirements of this Exhibit. Non-intrusive network audits, such as TCP port scans, may be performed randomly without prior notice.</p> <p>More intrusive network and physical audits may be conducted by BPCL with 24 hours notice during the term of the Agreement. This type of audit will be conducted as and when required.</p> <p>If during the term of the Agreement Vendor has had periodic audits performed by a mutually agreed upon third party, Vendor will provide BPCL with results of such periodic audits</p>
6.A.4	Code Audits: A web code review is the audit of web code, including Java, etc., for the explicit purposes of detection and remediation of security vulnerabilities. If Vendor has completed a web code review, then Vendor will disclose to BPCL who completed the review, the results of the review, and what remediation activity has taken place. If a web code review has not been completed, Vendor will disclose when such an activity is planned
6.A.5	Audit After an Incident: If a breach of security incident occurs involving a Vendor facility or Vendor’s systems, BPCL may suspend or terminate Vendor’s access to BPCL and it will conduct a security audit
6.A.6	BPCL Results and Vendor Response: BPCL will provide Vendor with detailed results of any audit performed by BPCL. Vendor will be granted thirty (30) days to resolve any issues BPCL has identified through an audit. Once the identified issues have been resolved, BPCL may also conduct a security audit to ensure the completion of the resolution. Vendor’s failure to resolve issues identified through audits as set forth above may be deemed by BPCL to be a material breach of the Agreement resulting in BPCL terminating the Agreement without penalty or other termination charge to BPCL . Resolution time to be based on results of audit and can vary from 30 days to 3 months
6.A.7	Services provided to BPCL by the Vendor should be BS15000 certified
6.A.8	Vendor should have accreditations from Independent Bodies such as ISO 9001
6.A.9	Services offered to BPCL should be maintained using SAS 70 audit standards (All 3rd party fees and charges for such audits to be borne by BPCL)
<b>6.B</b>	<b>Security Incidents and Response</b>
6.B.1	Notification and Timing: Notwithstanding any other legal obligations Vendor may have, Vendor agrees to immediately notify BPCL in writing upon Vendor’s discovery of a breach of security of its systems where BPCL’s data or materials containing Personally Identifiable Information, including but not limited to BPCL Users’ IDs or passwords (collectively “PII”), have been acquired by an unauthorized person or Vendor reasonably believes that such a breach of security may have occurred. Vendor will also provide immediate feedback to BPCL about any impact this possible or actual breach may or will have on BPCL or its user community. In accordance with its obligations under this Section 6.B.1, Vendor will use commercially reasonable efforts to notify BPCL of the possible or actual security breach no more than thirty (30) minutes after detecting the possible or actual breach. Notwithstanding the foregoing, in no circumstances will more than one (1) hour pass between Vendor detecting a security breach and BPCL being notified

6.B.2	BPCL Security Resources: During the term of the Agreement, BPCL may, upon mutual agreement with Vendor, provide resources from its security group to assist with an identified security breach
6.B.3	BPCL Environment Isolation: Vendor will either immediately disable functionality of the application or isolate and safeguard the BPCL data should a security issue be identified. BPCL reserves the right to require Vendor to isolate its databases/servers/networks if it appears that BPCL customer information is being compromised by the security breach
6.B.4	Vendor Response: Vendor's failure to resolve security breach issues as set forth above may be deemed by BPCL to be a material breach of the Agreement resulting in BPCL terminating the Agreement without penalty or other termination charge to BPCL
<b>6.C</b>	<b>Physical Security</b>
6.C.1	Access Disclosure: Upon written request from BPCL, Vendor will disclose list of authorized personnel who have access to the environment hosting the application for BPCL
6.C.2	Background Check: Upon written request from BPCL, Vendor will provide BPCL with documentation regarding its background check procedures
<b>6.D</b>	<b>Host and Web Security</b>
6.D.1	<p>Upon written request from BPCL, Vendor will provide BPCL with the following information, all of which shall be considered the Vendor's Confidential Information:</p> <ul style="list-style-type: none"> <li>(a) How and to what extent the hosts (Unix, etc.) comprising the BPCL infrastructure have been hardened against attack</li> <li>(b) Hardening documentation for Computer Aided Instruction (CAI), if available</li> <li>(c) A list of current patches on hosts, including host Operating System patches, web servers, databases, and any other material application</li> <li>(d) Policy for applying patches and identifying and mitigating security vulnerabilities</li> <li>(e) Processes for monitoring the integrity and availability of BPCL related hosts</li> <li>(f) Information on their password policy for the BPCL infrastructure, including minimum password length, password generation guidelines, and how often passwords are changed</li> <li>(g) Information on the account management process, for all accounts Vendor is responsible for. This will include information on how an account is created, how account information is transmitted back to the user, and how accounts are terminated when no longer needed</li> </ul>
6.D.2	<p>Upon written request from BPCL, Vendor will provide BPCL with the following information:</p> <ul style="list-style-type: none"> <li>(a) Specific configuration files for any servers and associated support functions, such as databases</li> <li>(b) What technologies are used in which general component(s) of the Vendor architecture</li> <li>(c) Identity of the computer programming language that the application back-end is written in (i.e. C++, J2EE, etc.)</li> <li>(d) Process for performing security Quality Assurance testing for the application. For example, testing of authentication, authorization, and accounting functions, as well as any other activity designed to validate the security architecture</li> </ul>
<b>6.E</b>	<b>Data Security</b>
6.E.1	Storage of BPCL Personally Identifiable Information (PII) Data: Vendor will ensure that BPCL Confidential Data will be stored in encrypted format
6.E.2	Authorized Access: During the term of the Agreement, BPCL data will only be handled by a defined and authorized group of Vendor personnel
6.E.3	Data Deletion and Destruction: Once the Agreement terminates or expires, or BPCL data is no longer required for the purposes of the Agreement, BPCL data will be immediately removed from the Vendor's environment. Thereafter, all media used to store BPCL data will be cleaned

	using industry best practices or destroyed
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### 7 Reports Management

Section	Services/Activities
7.1	Except for the Ad hoc reports, all others need to be generated automatically and made accessible to the intended recipients at the designed time level
7.2	Coordinate with the Administrator(s) (to be defined by BPCL) for access rights, view rights and other report related queries
7.3	Technical Design, data extraction, data validation and display format needs to be maintained for all reports as suggested by the Administrator
7.4	Troubleshoot exceptions in report generation, data validation, etc.

### 8 Performance / Review

Sec	Services	Target	Penalties
8.1.A	Host Application Availability (Uptime) not applicable if Database is down	99.5% on 24X7 basis	For server uptime less than 99.5% the following formula would be used to calculate the penalty:  Monthly rate of Vendor's Application maintenance services * (No. of hrs. the application was down) / (30 * 24)
8.1.B	Audit (by BPCL / third party)	100% Conformance	<ul style="list-style-type: none"> <li>• Every Non-Conformance will have to be remedied by the Vendor within 30 days of the audit</li> <li>• Once the identified issues have been resolved, BPCL may also conduct a security audit to ensure the completion of the resolution. Vendor's failure to resolve issues identified through audits as set would result in withholding of any payments to be made to the Vendor and the same may be deemed by BPCL to be a material breach of the Agreement resulting in BPCL terminating the Agreement without penalty or other termination charge to BPCL</li> </ul>
8.1.C	Financial Losses on account of security breach / malfunction of application software/process/ system failure / any activity that Vendor is responsible for	Rs. Zero. There should be no such financial loss	Any financial loss on account of such issues will be charged to the Vendor As Agreed in the Clause 12 of the agreement of _____
8.1.D	Application	From the date of	Any slippages in meeting the agreed criteria

Sec	Services	Target	Penalties
	Development / Enhancement / end to end testing (by Vendor)	approved Change Request (on the basis of effort estimates provided by Vendor) to the closure as per agreed criteria of BPCL (including functional specifications, technical specifications, code documents, regression testing)	beyond estimated and approved date will be charged through the following formula:  (Fees for the enhancement or development / (Total number of days as estimated and approved)) multiplied by (Total number of slippage days)  Subject to Maximum of 20% penalty of total fee agreed for such development on delays attributable to Verifone. In the event of delays not attributable to Verifone ,the actual period of development will be considered for payment . with the exception of any force majeure delays
8.1.E	User Acceptance Test	Should get accepted in the first testing as per <b>documented Change Request</b>	Any rework would be at Vendor's own cost. Also, penalty would be calculated through the following formula:  Fees for the enhancement or development / (Total number of days as estimated and approved) * (Total number of slippage days)

**AGREEMENT**

This Agreement is made at Mumbai this \_\_\_\_ day of \_\_\_\_\_ 2014.

BETWEEN

**Bharat Petroleum Corporation Limited**, a company registered under the companies Act, 1913, having its Registered Office at Bharat Bhavan, Ballard Estate, Mumbai, 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 successors and assigns) of the **ONE PART**;

AND

**Verifone India sales Pvt. Ltd.**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 802, Hallmark Buisness Plaza, Sant Dyaneshwar Marg , Bandra Kurla Complex, Bandra (E), Mumbai-400 051, hereinafter referred to as the “**Verifone**” (which expression unless repugnant to the context or meaning thereof shall be deemed to mean and include its successors and permitted assigns) of the **OTHER PART**;

**WHEREAS:**

- A. BPCL is engaged inter-alia in the refining of crude oil and marketing petroleum products throughout India. The retail sales of these products are being made through Retail Outlets commonly known as petrol pumps, a large number of which are located at all strategic locations in India.
- B. BPCL is also operating a Loyalty Card Program called “PetroBonus” & “SmartFleet” wherein subscribers are issued a Smart Card on which they can deposit money in advance or have a credit arrangement with BPCL partners and thereafter use the Smart Card at BPCL authorised retail outlets for purchase of fuels and lubricants and for shopping at convenience stores situated at such Retail Outlets. BPCL has enrolled Authorised dealers also known as Merchant Establishments (ME’s) to accept such Smart Cards issued to the members of the Loyalty Card Program in order to promote sales of merchandise and services on Smart Cards.
- C. VeriFone is in the business of manufacturing and selling of point of sales terminals (POS) in addition they also develop / support software application for use along with these POS. Whereas BPCL wishes to obtain from Verifone services described in Annexure I and Verifone agrees to provide said services and will grant the licenses to BPCL, who accepts, upon the terms and conditions of this Agreement.

- D. Based on BPCL inputs and Petroleum marketing domain expertise, Verifone has designed and developed the software application for the Host, the requirements for the use and running of the Smart Card programme. At the time of development (in 1998) no such product existed and has been developed for BPCL's requirements to be used along with terminals (POS) provided / sold by Verifone either directly or through third party. Verifone along with BPCL has also been developing various programs based on BPCL's functional requirements as intimated to them in writing from time to time. For the sake of clarity, BPCL fully acknowledges that Verifone has always been the owner of all Intellectual Property Rights in the Smart Card program and any other deliverable provided to BPCL.
- E. BPCL and Verifone now want to crystallize their relationship and understanding in writing and BPCL is desirous of enlarging the role of activities to be performed by Verifone in the developing, running and managing the Smart Card Program. Verifone has ensured that it has the experiences, resources and skills to render such services. The scope of work to be performed by Verifone is more specifically mentioned in Annexure I of this agreement. The detailed deliverables of these services is mentioned in Section 4. The Annexures shall be read in as part and parcel of this Agreement.
- F. Both the parties are aware that the PetroBonus and SmartFleet programs are mission critical applications currently with over 2 million Loyalty Card Program members who depend upon the services provided by Verifone for this Program. Such members use the PetroBonus and SmartFleet Solution for carrying out approximately 50 million transactions a year. For the sake of clarity however, this statement does not imply any additional liability and obligation on Verifone, other than expressly stated in this Agreement.
- G. After due consideration by BPCL of Verifone's proposal, BPCL is agreeable to appoint Verifone for the purposes of rendering such services and Verifone is willing to accept such appointment on the terms and conditions hereinafter appearing.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**1. DEFINITION & INTERPRETATION**

- 1.1 **Definitions and Preliminary:** In this Agreement, unless inconsistent with or explicitly defined or otherwise indicated by the context, the following terms shall have the meanings assigned to them hereunder, namely:

- 1.1.1 “**Affiliates**” shall mean any corporation, association, person, or other entity which directly or indirectly controls, is controlled by, or is under the common control with the party in question. The term “**control**” shall mean having the power to direct or cause the direction of the management and/or policies of a corporation or other type of legal entity by reason of contract and/or having any ownership interest therein;
- 1.1.2 “**Agreement**” shall mean this Agreement in its intent and spirit and all modifications thereto from time to time in writing, in the way of an amendment, and the attachments, annexure and schedules to this Agreement;
- 1.1.3 “**Working Day**” shall mean five days a week and 24 hours an day;
- 1.1.4 “**Confidential Information**” shall have the meaning detailed in Clause 12.4 here in under as Annexure III (NDA)
- 1.1.5 “**Deliverables**” means the services and materials to be supplied by Verifone to BPCL, resulting from the provision of the Services by Verifone to BPCL pursuant to this Agreement, as listed in Annexure B, which shall include all raw data and information collected by Verifone, unless otherwise agreed by the Parties. The same shall also be deemed to include any additions and modifications to the Deliverables mutually agreed in writing from time to time;.
- 1.1.6 “**Effective Date**” shall mean the 1st day of August 2006;
- 1.1.7 “**Fees**” shall mean the fees to be paid to Verifone by BPCL in consideration of the Services and in accordance with the provisions of Section 5 hereto;
- 1.1.8 “**HOST**” shall mean the server application software running on set of servers on BPCL’s premises to capture data from point of sale terminals. The application loaded on the Point of sale terminals enables the card to transact whether through indoor terminal or outdoor payment terminal or any other mode and sends the data to the server through the communication network. These set of servers are located, by BPCL at BPCL’s Primary Data Centre at Mumbai as well as at the Disaster Recovery Centre at Greater Noida. Terminal Applications are located at various Retail Outlets, In & Out convenience stores and any other merchant location as nominated by BPCL from time to time; The Host is precisely defined in Annexure A. Any reference to “software” in this Agreement shall refer to the Host, but in no event to the Terminal Application Software.
- 1.1.9 “**Intellectual Property Rights**” mean any and all copyright, moral rights, trademark, patent, designs, cyber property rights, design rights, know how, and other intellectual and proprietary



rights, title and interests, world-wide, whether vested, contingent or future, whether registered or not and capable of protection in any territory worldwide,;

1.1.10 “**Laws**” or “**Law**” shall mean and include laws, treaties, ordinance, judgments, decrees, injunctions, writs, orders and stipulations of any court, arbitrator, tribunal or governmental agency or authority and statutes, rules, regulations, orders and interpretations thereof of any national, state, local, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court having jurisdiction over the Parties;

1.1.11 “**Party**” shall mean a party to this Agreement when referred to individually or Parties, if referred to, collectively;

1.1.12 “**Project**” shall mean any activity as set out in Appendix “A” hereto.

1.1.13 “**Services**” shall mean the services to be provided by Verifone to BPCL under the terms of this Agreement and as further defined in Appendix “A” hereto and the required levels of services are detailed in Appendix “B”

1.1.14 “**Service Deficiency**” shall mean any defect in the services provided by Verifone on account of Verifone’s negligence, delay or non compliance with agreed Specifications.

1.1.15 “**Verifone Personnel**” shall mean those of Verifone’s personnel as may be appointed or employed by Verifone, inter alia, for providing the Services and/or fulfilling its obligations under this Agreement;

1.1.16 “**Term**” shall mean the term of this Agreement as set forth in Clause 6 herein under;

3.1.17 “**Territory**” shall mean the territory falling within the geographical limits of India;

3.1.18 “**Approved Environment**” shall mean the approved environment for the Software as described in Section 3

## 1.2 **Interpretation**

1.2.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their successors. Unless specified otherwise herein, references to days, months and years are to calendar days, calendar months and calendar years respectively;

- 1.2.2 The singular includes the plural and vice versa and, in particular (but without limiting the generality of the foregoing), any word or expression defined in the singular has the corresponding meaning when used in the plural and vice versa;
- 1.2.3 Any reference to either gender includes the other gender;
- 1.2.4 Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have the corresponding meanings;
- 1.2.5 Any reference to an Article, Section, Appendix, Annexure, Clause, Sub-clause, Paragraph, Sub-Paragraph, Schedule or Recital is reference to an Article, Section, Appendix, Annexure, Clause, Sub-clause, Paragraph, Sub-paragraph, Schedule or Recital of this Agreement. Any reference to any agreement, instrument or other document (a) shall include all appendices, exhibits and schedules thereto and (b) shall be a reference to such agreement, instrument or other document as amended, supplemented, modified, suspended, restated or novated from time to time any reference to any statute shall be construed as including all statutory provisions consolidating, amending or replacing such statute;
- 1.2.6 A reference to a Party includes that Party's successors and permitted assigns;
- 1.2.7 Any reference to "writing" includes printing, fax, email,.
- 1.2.8 The terms "hereof", "hereby", "hereto", "hereunder" and similar terms shall refer to this Agreement as a whole; and
- 1.2.9 The term, "including" shall mean "including, without limitation".
- 1.2.10 Clause headings are for ease of reference and for the purpose of convenience only and are not intended to be part of or affect the meaning, interpretation or construction of any of the terms and conditions of this Agreement.

## **2. APPOINTMENT**

- 2.1 BPCL does hereby appoint Verifone to perform and provide the Services as more particularly detailed in Annexure I hereto.
- 2.2 Verifone hereby accepts such appointment by BPCL and in consideration of the Fees agrees to provide and perform the Services during the Term.

## **3. SERVICES**

3.1 Verifone shall provide the Services more particularly detailed in Annexure I hereto to BPCL through itself and through such of Verifone Personnel or through its sub-contractor as shall be required for this purpose. Any new BPCL requirement not expressly covered by this Agreement, Verifone undertakes to analyse such special requirements, and, subject to feasibility, provide the correspondent quotation and to negotiate in good faith with BPCL the implementation subject to agreement on the applicable commercial terms. Verifone agrees to support BPCL for the interfacing of BPCL Solutions (i.e. Petro Card and Fleet card application, as integrated in the terminal) with a new available technology that Verifone is not willing to provide,

Consequently Verifone (through its own organisation or through any sub-contractor) is not willing or is unable to provide such new technology to BPCL then BPCL can approach other software developers for the same and Verifone agrees to support BPCL for such interfacing of BPCL solution (i.e Petrobonus and Smartfleet solution ) with said technology by providing / sharing all necessary information as may be required from them, subject to protecting the intellectual property rights of Verifone and BPCL bearing the cost incurred for the development and support.

3.2 The Services shall be provided by Verifone in accordance with the provisions of all applicable mandatory Laws. It shall be the responsibility of Verifone to determine, act upon and indemnify BPCL against the breach by Verifone of the relevant provisions of such applicable mandatory Laws. Verifone shall be additionally responsible for obtaining and keeping valid all such governmental authorisations and licenses, if any, as may be required by Verifone to carry out this Agreement.

3.3 It is hereby expressly understood and agreed by Verifone that no liability shall accrue to BPCL arising out of or through any failure on the part of Verifone or Verifone Personnel or any other officers, employees or agents of Verifone to comply with the provisions of any applicable Law, unless attributable to BPCL. In the event that any liability shall accrue to BPCL due to any failure on part of Verifone to ensure compliance with the mandatory Laws, Verifone hereby undertakes to indemnify BPCL in accordance with the provisions of Clause 12.

3.4 BPCL shall provide reasonable co-operation with Verifone in its provision of the Services to BPCL in respect of each Project. BPCL shall endeavour to provide Verifone with accurate and complete information concerning its operations and activities, answers to queries, decisions and approvals which may be reasonably required by Verifone for the performance of Verifone's obligations under this Agreement.

BPCL shall provide appropriate access to its office space and infrastructure in order to enable Verifone to perform the Services as provided for in this Agreement.

3.5 Verifone shall, in all events where the provision of the Services requires the Parties to agree on any matter, act reasonably and shall not withhold or delay its consent or agreement to any proposal or suggestion made by BPCL, unless such proposal or suggestion is not feasible, is impracticable or unreasonable.

3.6 If at any time during the acceptance testing it becomes apparent that the Services, Deliverables or the Software are defective (which, for these purposes, shall mean any material non-compliance with the Specification):

3.6.1 BPCL shall (as soon as it is reasonably able to do so) notify Verifone of the defect concerned (and shall provide Verifone with such documentation and information relating to the defect as Verifone shall reasonably request);

3.6.2 Verifone shall use its reasonable endeavours to correct the defect within a reasonable time; and the Acceptance tests shall be extended for an additional period which will be mutually agreed upon depending upon the extent of the problem

Upon the Acceptance test being completed without any defect arising in the Software, Deliverables or Services BPCL shall sign an acceptance certificate and forward the same to Verifone. Should BPCL fail to sign the acceptance certificate within the mutually agreed time foreseen for the acceptance testing, for reason other than material non-compliance with the Specifications of the Services, then the Services shall nevertheless be deemed accepted.

On acceptance, Verifone shall then be deemed to have performed all its obligations under this Agreement except those defined in the Support Service

3.7 Verifone shall ensure that the Services shall be provided continuously during all business hours. Verifone does however not warrant that the Software and Services will operate uninterrupted or that it will be free from defects or that the Software is designed to meet all requirements.

#### **4. VERIFONE PERSONNEL**

4.1 It shall be the responsibility of Verifone to appoint and deploy appropriate Verifone Personnel for performing the Services. All such Verifone Personnel shall at all times be treated as employees of Verifone.

4.2 Verifone shall ensure that at all times during the Term of this Agreement it shall have sufficient Verifone Personnel as may be necessary to fulfil its obligations under this Agreement. Additional Dedicated Verifone personnel may be provided if required by BPCL, subject to reasonable request and availability.

4.3 It shall be the responsibility of Verifone to ensure that Verifone Personnel while performing the Services or otherwise assisting Verifone in rendering

services under this Agreement shall dedicate sufficient time and effort as may be required for such Services.

- 4.4 Any Personnel used by Verifone in fulfilling any of its obligations under this Agreement shall at all time be employees of Verifone and not of BPCL. In this regard, it is clarified that Verifone shall be solely liable for the discharge of all obligations of an employer towards Verifone Personnel (including without limitation the payment of all remuneration of any type whatsoever as may be contractually agreed between Verifone and Verifone Personnel or under the provision of any Law or under the provisions of any collective bargaining settlement) under applicable Law. For the purposes of clarifying any ambiguity or misapprehension that may exist amongst any Verifone Personnel, Verifone shall inform Verifone Personnel that at all times such Verifone Personnel shall be considered to be employees of Verifone only and shall not be eligible to claim at any time to be employees of BPCL.
- 4.5 Verifone shall ensure that all Verifone Personnel appointed by Verifone are efficient and qualified for the services assigned to them
- 4.6 It is hereby agreed that all supervision, management and control over Verifone Personnel will at all times vest with Verifone. Verifone shall ensure that all Verifone Personnel providing any of the Services shall provide the Services in accordance with the provisions of applicable Law.
- 4.7 Verifone shall ensure that Verifone Personnel do not make any other warranties or commitments on behalf of BPCL.
- 4.8 Verifone shall ensure and undertake all necessary steps to comply with the provisions of all the applicable mandatory Laws including labour laws prevailing in India for employment, day-to-day work, insurance, provident fund, statutory contributions, taxes of Verifone Personnel.
- 4.9 In the event that Verifone shall terminate the employment of any of Verifone Personnel or should any of Verifone Personnel leave the employment of Verifone for any reason whatsoever during the Term, Verifone shall ensure that all software design and code, tools, data, promotional and other materials belonging to BPCL held by such Verifone Personnel are returned to Verifone by the concerned Verifone Personnel at the time of such termination or separation from Verifone's service as the case may be.
- 4.10 In the event Verifone Personnel visit BPCL's premises for or in relating to any services, they shall continue to be under the sole disciplinary jurisdiction of Verifone. However, they shall also comply with such safety, risk prevention and other measures as would be applicable to any

person visiting such premises on part of such premises. Verifone Personnel will comply with all reasonable safety, risk prevention and other measures, knowing however that Verifone Personnel shall be provided with these measures prior to accessing BPCL's premises.

- 4.11 It shall be the duty of Verifone to inform Verifone Personnel that they have no claim or right whatsoever against BPCL and shall not be entitled to raise any industrial dispute, either directly or indirectly, with or against BPCL, in respect of their service conditions or otherwise.

## **5. CONSIDERATION**

- 5.1 BPCL shall pay to Verifone the Fees in accordance with Section 5, subject to the issue of invoices by Verifone to BPCL in accordance with this Agreement. All fees payable by BPCL under this Agreement shall be paid within thirty (30) days of receipt of invoice with all appropriate supporting data required to process the invoice.

- 5.2 It is hereby stipulated and agreed that the total cost to BPCL for the performance of each order under this Agreement will be within the 'Not to exceed funding limitation' set forth in the order and Verifone agrees to perform the work specified and all obligations under the order within such funding limitation.

- 5.3 Notwithstanding the above, it is agreed that the fees are given for particular and specific specifications, assumptions and conditions. Should any element of service delivery required as detailed in Annexure I change, then Verifone reserves the right to review the fee.

## **6. TERM & TERMINATION**

- 6.1 This Agreement shall be valid till \_\_\_\_\_ 2015.

### **6.2 Termination:**

This Agreement may be terminated by either party during the term of this Agreement upon the occurrence of any of the following events without incurring any liability:

- The other party commits any material breach of its obligations under this Agreement and fails to take all necessary actions to remedy such breach within Ninety days from the service of any written notice to do so by the party complaining of such breach:
- If the other party goes into voluntary liquidation (otherwise than for the purpose of reconstruction and amalgamation) or if the Court orders its compulsory liquidation or If the other party enters into any composition or arrangement with its creditors, or If any receiver or liquidator is appointed for the assets of the other party.

- If any Force Majeure event affecting the performance of the obligation of the other party continues beyond six months.
- If Verifone fails to perform the deliverables as specified in the SLA over a continuous period of thirty days and such default is not remedied within sixty days of BPCL giving a notice to rectify the same.
- BPCL terminates the Petro Bonus , SmartFleet Programme

For a period of one year after the termination of this Agreement the parties shall fully and reasonably co-operate with each other and/or provide access to such non confidential information, data or documents as may be reasonably required in connection with preparation, accounts, filing of any returns under any taxing statues, responding to or any claim demand or action or any notice or inquiry from any taxing or other authority or auditor or judicial/quasi-judicial authorities or arbitrators.

6.3 Upon the termination of this Agreement for any reason whatsoever:

- (a) Verifone shall forthwith return to BPCL and/or if requested to do so by BPCL, destroy all document / data belonging to BPCL and all BPCL's Confidential Information at Verifone's own cost;
- (b) Verifone shall forthwith furnish to BPCL a certificate stating that it has removed all Confidential Information belonging to BPCL from its systems;
- (c) A reasonable transition period will be mutually established by and adhered to by the Parties in order to enable as good as possible a smooth transition of the services.
- (d) Termination of this Agreement for any reason shall not bring to an end any provision hereof which expressly or by implication comes into or continues in force after the date of termination.
- (e) Subject to Clause 7 in case of termination due to Verifone's bankruptcy or complete stop by Verifone of its business, the treatment of source codes shall be governed by Clause 7:

Verifone shall be paid the outstanding balance of charges due in respect of any part of the Software, documentation or Services performed prior to the date of termination

If the Agreement is terminated except for the reason that if Verifone is liquidated , Verifone will co-operate and provide Services as defined in this Agreement for running the program for a minimum period of eighteen months from the date of termination comes into effect or till the time BPCL is able to locate and shift the program to an alternate system, whichever happens earlier subject to fees payable under this agreement for such use by the BPCL to Verifone. However a



prior written notice period of 2 months will have to be provided by BPCL before terminating the extended period. The period of eighteen months can be extended if the need be for such further period as the parties may mutually agree. For the sake of clarity this extended period post termination will be governed by all the terms and conditions of this Agreement. “

## **7. INTELLECTUAL PROPERTY**

- 7.1 It is hereby expressly understood by Verifone that this Agreement gives Verifone no right to use BPCL trademarks, trade name, logos and brand names and any other intellectual property belonging to BPCL (“BPCL Background Intellectual Property”). Unless BPCL expressly permits in writing the use of BPCL Intellectual Properties, Verifone shall have no right to use the same. Verifone hereby acknowledges that all right, title and interest in BPCL Intellectual Property are and will remain the exclusive property of BPCL and that Verifone does not and shall not acquire any ownership, right, title, interest, license over BPCL background Intellectual Property through this Agreement. Verifone will not claim any title to or take any action that jeopardizes or otherwise adversely affects BPCL’s proprietary rights in and to BPCL Intellectual Property.
- 7.2 Verifone shall not alter, remove, modify, or suppress any proprietary notices or confidentiality legends placed on or contained within BPCL Background Intellectual Property. Verifone shall reproduce such proprietary notices and confidentiality legends on all copies of BPCL Intellectual Property
- 7.3 The Intellectual Property Rights in all materials supplied or developed under this Agreement, including the Software and the Documentation are and shall remain vested in Verifone, or its licensors. BPCL hereby acknowledges that it has no right, title or interest in the Intellectual Property Rights in such materials or software or any part thereof and shall do all such acts and things as Verifone or its licensors may reasonably require for the purposes of preserving or perfecting such vesting. Verifone grants to BPCL a licence in relation to the Software on the terms set out hereinafter:
- 7.3.1 Verifone grants BPCL a non-exclusive, non-transferable license to use the Software only in object code form on the Approved Environment and solely for the purpose of this Agreement, subject to the terms and conditions of this Agreement. For the purpose of this Clause, use shall mean execution of one copy as on the Approved Environment for BPCL’s own internal business purposes. The license to use the Host is unrestricted in time and will survive the

termination of this Agreement, except in the event of non-payment by BPCL or intellectual property right infringement.

- 7.3.2 The licence to use the Software is conditional upon payment of all Fees due under this Agreement and during the term of this Agreement.
- 7.3.3 Those rights may not be sub-licensed, assigned, or transferred in any respect, whether by operation of law or otherwise. No right title or interest in or to any Intellectual Property right, other than expressly granted herein, shall be granted.
- 7.3.4 BPCL shall not copy (except one copy for back-up purposes or except as expressly authorised under this Agreement), adapt, disseminate, translate, decompile, reverse engineer, disassemble, or otherwise reduce the Software or any part of the material provided pursuant to this Agreement to human perceivable form.
- 7.4 BPCL and Verifone agrees to enter into a bank locker agreement with a mutually agreed bank locker agent to deposit a backup of the source code of the Petro & Fleet smart card server application software as specifically and exclusively developed for BPCL (hereinafter referred to as the "Source Code"). The deposit includes the programs of the Petro & Fleet smart card server software ("Source Code") and the following documentation (hereinafter referred to the "Documentation"), to the extent exclusively related to the Petro & Fleet card server program:

1. THE SRS ( System Requirement Specification) along with data flow diagram
2. Entity relationship diagrams
3. Functional specification
4. User manual
5. Technical Manuals with description of XML & tables
6. Basis of testing ( Black Box and white box)
7. Event tables
8. Source code listing
9. Listing of Functions used (*Purpose, Description and Logic followed per methods*)
10. Data dictionary with clear relationship and dependency diagram between various entities.
11. Program write ups ( Pseudo code)
12. Test plans and outputs
13. Technology and frameworks used like Struts/JSF/Hibernate etc, if any.
14. Implementation setup with the steps involved.

Verifone acknowledges that the updates will be put in bank locker, on a quarterly basis. The cost of the bank locker shall be equally shared between the Parties.

Verifone grants BPCL the right to access said Source Code and Documentation, throughout the term of this Agreement in case any of the following events occurs:

- Verifone (and its successor, if any) stops completely its business, for any reason whatsoever,
- Verifone is subject to bankruptcy or liquidation,
- Verifone's (and its successor, if any) is still unable or refuses to undertake corrections of the Petro & Fleet smart card server application software, as necessary to correct non-conformities blocking the functioning of the Petro & Fleet smart card server application software after unjustified material delays beyond the mutual agreed times lines.

It is agreed between the Parties that the Source Code and Documentation is delivered “as is”, without any warranty whatsoever, whether implied or express. However, before handing over the source code, the genuinity of the same shall be demonstrated by Verifone by compiling the same and putting it on the production server on a real time basis.

It is expressly stated that the implementation of the right to access to Source Code in application of the present Article shall allow BPCL to use said Source Code solely in such a way as to allow for the corrective Software maintenance to be performed as provided for in this Agreement and subject to compliance with the confidentiality obligation and use restrictions contained in this Agreement."

## **8. VERIFONE WARRANTIES**

### **8.1 Verifone warrants to BPCL that:**

- (a) it has followed good industry practices for the provision of the Services, in accordance with the agreed technical Specifications. Therefore, BPCL warrants that the Services and Software Approved Environment shall remain unchanged.
- (b) it shall provide the Service in a professional, diligent, timely and efficient manner, and to the best of its ability.)
- (c) All persons responsible for the provision of the Services are / will be suitably qualified with the appropriate experience and skills.
- (d) All matters and results set out in all Deliverables are / will be, to the best of its knowledge, correct, accurate and complete.
- (e) the provision and use contemplated under this Agreement of the Services and the Deliverables themselves do not violate or infringe upon any Intellectual Property Rights on any other rights and does not constitute a slander, libel or other defamation, of any person or entity and that it has used only legal software for the development and management of the program under this Agreement. BPCL would not be responsible for any use by Verifone of illegal software chosen

by Verifone. Verifone will indemnify BPCL against the direct damages incurred by BPCL resulting from a direct infringement by the Software of Intellectual Property Rights in India, in accordance with clause 12 and provided BPCL has promptly notified Verifone of the claim and makes no admissions.

- (f) It shall not, knowingly, take any action or commit any omission which, , would or is likely to jeopardise in any way the rights (including without limitation Intellectual Property Rights) of BPCL
- (g) It has full capacity, power and authority to enter into this Agreement and has duly authorised the execution, delivery and performance of this Agreement; and during the continuance of this Agreement, will continue to have full capacity, power and authority to carry out and perform all its duties and obligations as expressly agreed herein and has already taken and will continue to take all necessary and further actions, (including where applicable without limitation obtaining of all Governmental and other necessary Licenses in all applicable jurisdictions for carrying out its business).
- (h) It has the necessary skills, knowledge, experience, expertise, required capital net worth, adequate and competent Verifone Personnel, systems, equipment and procedures and capability to duly perform its obligations in accordance with the terms of this Agreement.
- (i) The execution of this Agreement and providing Services hereunder by Verifone to BPCL, does not and will not, to the best of its knowledge, violate, breach any covenants, stipulations or conditions of any agreement, Deed entered into by Verifone with any third party/parties.
- (j) The Services performed by Verifone pursuant to this Agreement shall be rendered and performed by Verifone with reasonable care and diligence and shall conform to the agreed functional specifications.
- (k) Verifone shall take all reasonable steps to ensure that regardless of the occurrence of any event which may result in or which may give reason to believe that there may be work stoppage, slowdown, labour dispute, strike, any labour relates disruption of its own staff or other impediment, there will be no disruption in the due performance of the Services by Verifone under this Agreement.
- (l) All documents and other informatory papers and any other data relating to the products, schemes, etc., (“the Documents”) handed over to Verifone and/or Verifone Personnel by BPCL in terms of the Agreement or which otherwise come into the hands of Verifone and/or Verifone Personnel’s custody, power or possession, through disclosure of BPCL, pursuant to or in connection with this Agreement will remain the sole and absolute property of BPCL, and

Verifone and/or Verifone Personnel shall not have and also shall not claim any charge, claim, lien, right of retention, sale or set-off or other right, title or interest therein or thereon for any reason whatsoever. Verifone and/or Verifone Personnel shall not at any time use or attempt to use BPCL's logo or letter heads for any purpose including for any purposes in terms of this Agreement.

8.2 Verifone hereby acknowledges and accepts that BPCL has relied upon the above warranties in deciding to enter into this Agreement.

8.3 These warranties are expressed in lieu of any other warranties or representations, expressed, implied or statutory, including the implied warranties of fitness for a particular purpose and merchantability. These warranties may be asserted only by BPCL and not by its own customers, if any.

## **9. TAXES**

9.1 Unless specifically provided otherwise under the provisions of this Agreement, Verifone shall be liable for the payment to the correspondent tax authority of taxes and duties by whatever name called as may become due and payable under any applicable tax Law (whether in force as on the Effective Date or subsequently thereafter) in relation to the Services.. All Fees shall be exclusive of taxes and duties and exclusive of all incidental expenses incurred by Verifone. All such applicable taxes and duties will be reimbursed by BPCL to Verifone for the Services rendered under this Agreement .

9.2 BPCL shall be entitled to deduct tax at source (TDS) on all payments made under this Agreement to Verifone in accordance with the provisions of applicable Law and will provide all required correspondent certificates.

9.3 Verifone shall co-operate fully in the defence of any claims by any local, state or union authorities against BPCL with respect to any taxes and/or duties due and payable by the BPCL. Without limiting the generality of the foregoing, Verifone shall upon the request by BPCL in this regard, promptly furnish to BPCL all documents and other information of any kind whatsoever in a form satisfactory to BPCL to defend such claims.

9.4 The provisions of this Article shall survive the Term and termination of this Agreement.

## **10. MAINTENANCE OF RECORDS**

- 10.1 Verifone shall maintain and keep updated records with respect to its software upgrades, or alternations to established configurations and preserve system logs and alerts, maintain system and process documentation, knowledge base and or any other data gathered during the operation and management of the program under this Agreement and shall provide the same to BPCL and or its any other authorized agent on demand.
- 10.2 All previously mutually designated books, records and documents related to the Services under this Agreement shall be made available by Verifone to BPCL and its designated agents for a period of three years after final payment, for purposes of audit and examination.
- 10.3 In addition to any other obligations that Verifone may have in this regard under this Agreement and without derogation to the efficacy of such obligations, Verifone shall keep true, complete and accurate records of the Services rendered pursuant to this Agreement and shall provide these records for verification after grant of reasonable prior notice to Verifone as and when required.
- 10.4 BPCL shall be free to appoint independent auditors to audit the process of the Services including records and technical data pertaining to the Services to be carried out by Verifone under this agreement, to the extent reasonable and provided such auditors shall comply with the security and confidentiality rules in force at Verifone. Such auditors shall not directly or indirectly compete with Verifone. Verifone will be bound by recommendation of such internal or external auditors and will have to enforce reasonable corrective actions as recommended, any changes to be implemented due to the outcome of this audit recommendation (excepting for deficiencies in Verifones delivery for Services under this agreement )may have a commercial implication, which shall be mutually discussed and agreed upon prior to implementation .

## **11. INSURANCE**

- 11.1 Verifone shall maintain at its sole cost and expense during the Term and any extensions thereof, sufficient insurance coverage, including but not restricted to, comprehensive general liability insurance covering bodily harm, injury and death of all Verifone Personnel employed/assigned by Verifone to perform the Services (through general liability insurance or Employer's Liability insurance), fidelity insurance protecting against the dishonesty of any of the Verifone Personnel, theft, robbery, forgery, altered documents, fidelity and/or any other dishonest acts including acts like illegal data transfer to third parties, . on the part of Verifone and/or Verifone Personnel, workmen compensation insurance, if applicable, covering all

Verifone Personnel, specific insurance covering loss and/or damage to any BPCL Products that may be in the possession of Verifone

## **12. LIABILITY**

- 12.1 Verifone shall indemnify BPCL from and against any and all direct damages incurred by BPCL, resulting from any (i) wilful misconduct or gross negligent acts or omissions on the part of Verifone or Verifone Personnel in the performance of this Agreement; (ii) violation by Verifone or Verifone Personnel of any of Verifone's statutory obligations applicable in connection with the performance by Verifone of its obligations under this Agreement, including the payment of taxes or any statutory workmen payments and insurance obligations; and (iii) any injury or death of Verifone Personnel.
- 12.2 Verifone will perform the services with reasonable skill and care. It is agreed between the Parties that Verifone will not be held liable for any damages or losses, consequential or not, arising out of or in relation with this Agreement.
- 12.3 Verifone agrees to be liable in the event BPCL has incurred damages as a direct result of Verifone's (or any of its employees) serious negligence in the performance of its material obligations.
- 12.4 Notwithstanding anything to the contrary in this Agreement, in no event shall Verifone's aggregate liability arising out of any and all claims under this Agreement (whether asserted as a tort claim or contract claim) exceed 1 (one)% of the total contract value of the Agreement at the date of the claim.;
- 12.5 These limitations shall apply even if any remedy fails its essential purpose.

## **13. CONFIDENTIALITY**

- 13.1 Either Party (hereinafter referred to as the "Receiving Party") shall not disclose the other Party's (hereinafter referred to as the "Disclosing Party") Confidential Information without the prior written approval of the Disclosing Party.
- 13.2 The Receiving Party shall take all reasonable steps to ensure that its officers, employees and agents do not make public or disclose the Disclosing Party's Confidential Information.
- 13.3 Notwithstanding any other provision of this Article, either Party may disclose the terms of this Agreement to its solicitor, accountant, insurer and auditor or as may be required by any statutory body or governmental authority having jurisdiction over the parties.

- 13.4 For the purposes of this Agreement, “ Confidential Information” shall have the same meaning as per the “Non Disclosure Agreement” entered by the Parties on the 7<sup>th</sup> March 2008.
- 13.5 It is hereby agreed that neither party shall be entitled to make any announcements, press releases or advertise the existence or the terms of this Agreement without the prior written consent of the other party.
- 13.6 The Parties hereto agree that equitable relief, including injunctive relief and specific performance, shall be available in the event of any breach of the provisions of this Article, subject to applicable Law. Such remedies shall not be deemed to be the exclusive remedies for a breach of the provisions of this Article but shall be in addition to all other remedies available pursuant to this Agreement.
- 13.7 The provisions of this Article and the Parties’ obligations hereunder shall survive the expiration or termination of this Agreement for a period of 5 (five) years following such termination or expiration.

**14. JURISDICTION:**

- 14.1 In the event of any claim, controversy, or other dispute between the Parties hereto relating to or pursuant to this Agreement, the same shall be subject to the exclusive jurisdiction of the courts at Mumbai.

**15. NOTICE**

- 15.1 Any notice, demand or other communication required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made if:

(a) To: Bharat Petroleum Corporation Limited :  
Designation: GM (IT & BI)  
Address: Bharat petroleum Corporation Ltd.,  
Retail Technology Centre,  
ERPCC building , ground Floor,  
Sewree Fort Road,  
Sewree East,  
Mumbai -400015



Telephone: +91-22-24176078

Fax: +91-22-24128859

sent by registered post and/or courier and/or hand delivery to the above mentioned address marked "For the Attention of GM ((IT & BI)" and/or faxed, during normal hours on a Business Day and subsequently confirmed by registered post and/or courier as aforesaid to the address above of BPCL marked "For the Attention of Chief Manager (Database)"

(b) To : Verifone India sales Pvt. Ltd.  
Designation :Executive Director VeriFone India Sales Pvt Ltd.  
Address : VeriFone India Sales Pvt Ltd.  
802, Hallmark Business Plaza,Sant Dyaneshwar Marg,  
Bandra(E), Mumbai – 400051  
Telephone: +91 22 3061 2100  
Fax: +91 22 3061 2150

sent by registered post and/or courier and/or hand delivery to the abovementioned address marked "For the Attention of Mr. Pran Mehra and/or faxed during normal hours on a Business Day and subsequently confirmed by registered post and/or courier as aforesaid to the address above of Verifone marked "For the Attention of Mr. Deepak Ananth.

15.2 Any notice, demand or other communication so given or made shall be deemed to have been given or made and to have been received only on actual receipt:

15.3 Any Party may from time to time change its address for notice or the person designated by such Party for receipt of any notices sent under this Agreement by giving notice to the other Party in the manner aforesaid.

## **16. ASSIGNMENT AND SUB-CONTRACTING**

16.1 This Agreement and/or its benefits, rights, duties and obligations thereof may be assigned at any time by BPCL to any third party whosoever, upon prior written approval of Verifone and mutually agreed terms.

16.2 BPCL shall have the right to take services of any other party to maintain the Host mentioned under this agreement without reference to Verifone under following circumstance:

- (a) Verifone (and its successor) decides to get out of this line of business;
- (b) Verifone (and its successor) is in bankruptcy;

- (c) Verifone's (and its successor, if any) is still unable or refuses to undertake corrections of the Petro & Fleet smart card server application software, as necessary to correct non-conformities blocking the functioning of the Petro & Fleet smart card server application software after unjustified material delays beyond the mutual agreed times lines.

16.3 Verifone can sub-contract obligations under this Agreement to any third party . However, the final responsibility for all subcontracting activities will rest with Verifone. Verifone will be responsible for all services rendered by it under this Agreement whether they are provided or performed by Verifone, its employees, agent and or sub-contractor(s). Further, BPCL will consider Verifone to be the sole point of contact with regard to matters under this Agreement, including payment of any and all charges resulting from the cost of any sub-contract. Verifone must identify all sub-contractor and the services they shall provide and shall intimate about same in writing in advance to BPCL. BPCL and Verifone shall agree upon the subcontractor and shall mutually review their performance periodically In case of any issue with the subcontractor in the performance of this Agreement Verifone shall be responsible to assume the proposed sub-contractor's responsibilities. Verifone may propose another sub-contractor who if found fit shall be approved by BPCL. Verifone shall be responsible for all payments to its sub-contractor(s). Nothing contained in the Agreement shall create or be construed as creating any contractual relationship between any sub-contractor and BPCL.

## **17. WAIVER**

17.1 The failure by any Party to enforce at any time or for any period of time any one or more of the terms and conditions of this Agreement, shall not be construed as a waiver by such Party of the respective performance by the other Party of such terms and conditions or of such Party's right thereafter to enforce each and every term and condition of this Agreement.

17.2 No waiver, express or implied, by any Party of any rights hereunder, or of any failure to perform, shall be a continuing waiver or constitute or be deemed to constitute a waiver of any other right hereunder or of any claim or remedies available in law in respect of any other breach hereof by the other Party whether of similar or dissimilar nature

## **18. EXCLUSIVITY**

It may happen under this Agreement that BPCL requests Verifone to develop Specific Software. For the purpose of this Section 18 'Exclusivity' "Specific Software" shall be defined as software to be designed and written by Verifone specifically and exclusively for BPCL

pursuant to BPCL's detailed specifications, and fully financed by the BPCL. Prior to the performance of such specific development, the Parties shall expressly define in writing the boundaries of the Specific Software, provided however that such Specific Software can never impact Verifone Group's background intellectual property rights nor constitute an enhancement of them. On this Specific Software, Verifone shall grant the same license rights than outlined in clause 7 (Intellectual Property Rights), with the additional provision that Verifone shall refrain from licensing such Specific Software as developed exclusively for BPCL to any other Oil Company in India for the period of **36** months following use for or by BPCL of such Specific Software.

Nothing in this Section can be construed as transferring any intellectual property rights. For the avoidance of doubt, Verifone shall have the right to freely use the know-how and the knowledge which Verifone will have acquired or developed during the performance of the Specific Software without any restrictions whatsoever (also for similar developments for any customer).

## **19. FORCE MAJEURE**

If at any time during the term of this agreement the performance of any obligation of either party in whole or in part under this agreement (other than the making of a payment) is prevented or delayed due to Force Majeure circumstances such as war, revolution, riot, act of public enemy, terrorism, sabotage, epidemic, quarantine, restrictions, accident, fire, flood, tempest, earthquake, server breakdown, civil commotion, governmental action or inaction (including without limitation, action under export or import control regulation and delay in obtaining customs clearance or other permits or authorization) or other causes which are beyond the reasonable control of the party (hereinafter referred as "Events") neither party shall be entitled to terminate this agreement nor shall either party have any claim for damages against the other in respect of such non performance or delay in performance, provided notice of the happening of any such events are given by the concerned party to the other within 45 days from the date of occurrence thereof and shall be resumed by such party as soon as practicable after such events have come to an end or ceased to exist. Provided that if the performance in whole or part of any obligations under this agreement is prevented or delayed by reason of any such events for a period exceeding ninety days, the parties shall jointly discuss the feasibility of a rescheduling of performance. If either of the parties can not with reasonable diligence be expected to continue performance such party may at its option elect to terminate this agreement or such part thereof as can be severed without affecting the performance of the remaining portion.

## **20. DISPUTE RESOLUTIONS**

- 20.1 Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter claim or set off of BPCL/Verifone against each other or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this Agreement shall be referred to the Sole arbitration of Director (Marketing), BPCL or to some officer of BPCL who may be nominated by the said Director (Marketing).
- 20.2 In the event, the Arbitrator being unable or refusing to act for any reason whatsoever, the Director (Marketing), BPCL shall designate another officer of BPCL to act as an Arbitrator in accordance with the terms of this Agreement. The Arbitrator newly appointed shall be entitled to proceed with the reference from the point at which it was left by his predecessor.
- 20.3 The law applicable to such proceedings will be the Arbitration and Conciliation Act, 1996 or any other enactment in replacement thereof.
- 20.4 The language of the proceedings will be in English and the place of the proceeding will be Mumbai.
- 20.5 **APPLICABLE LAWS** - This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of India.
- 20.6 **JURISDICTION** - The courts in Mumbai shall have jurisdiction over any action arising under this Agreement.

## **21. ENTIRE AGREEMENT**

This Agreement expresses fully the understanding between the Parties and all prior understandings, representations, Agreements, licenses or agreements, oral or written, related to the same subject matter are hereby cancelled. The terms or provisions of this Agreement may be modified, amended, supplemented, waived, or discharged only in writing signed by the legal representatives of the Parties hereto.

## **22. SEVERABILITY**

Should any clause, sentence, provision, paragraph, or part of this Agreement, for any reason whatsoever, be adjudged by any court of competent jurisdiction, or be held by any other competent government authority having jurisdiction over the Parties to be invalid, unenforceable or illegal, such judgment or holding shall not effect, impair or invalidate the remainder of this Agreement, but shall be confined in its operation to the clause, sentence, provision, paragraph or part of this Agreement directly involved in the matter, controversy or proceeding in which such judgment or holding shall have been rendered, and the remainder of this Agreement shall remain in full force and effect.

## **23. SET OFF**

BPCL shall be entitled to set-off any amounts due to Verifone under or pursuant to this Agreement against any amounts due to BPCL whether under this Agreement, provided this has been previously authorised by Verifone on a case by case basis.

## **24. COSTS**

All costs and expenses in the execution of this Agreement, including without limitation any taxes and Stamp duties shall be borne solely by Verifone.

## **25. RELATIONSHIP**

The relationship between BPCL and Verifone under this Agreement shall be on a principal to principal basis. Verifone shall not represent itself as an agent of BPCL in any circumstance whatsoever. Nothing herein is intended to or shall be construed to create a partnership or joint venture between the parties.

**26. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

**IN WITNESS WHEREOF** BPCL and Verifone have caused this Agreement to be duly executed and delivered in duplicate as of the day and year first above written.

**EXECUTED FOR AND ON BEHALF OF  
BHARAT PETROLEUM CORPORATION LIMITED**

THROUGH THE HAND OF ITS AUTHORIZED  
SIGNATORY-

NAME: Dr. GIRISHKUMAR UV  
DESIGNATION: GM (IT & BI)

DATE: PLACE: MUMBAI

IN THE PRESENCE OF

- 1.
- 2.

**EXECUTED FOR AND ON BEHALF OF  
M/S. VERIFONE INDIA SALES PVT.LTD**

THROUGH THE HAND OF ITS AUTHORIZED  
SIGNATORY-

NAME:  
DESIGNATION:

DATE: PLACE: MUMBAI

IN THE PRESENCE OF

- 1.
- 2.

## NON DISCLOSURE AGREEMENT

This Confidentiality Agreement ("Agreement") is entered into on this the 7th day of March 2008 by and between:

**Bharat Petroleum Corporation Ltd.**, ("BPCL"), a company incorporated under the Companies Act, 1913 and having its Registered office at Bharat Bhavan, Ballard Estate, Mumbai, (which expression shall unless repugnant to the context thereof mean and include its successors and assigns);

**AND**

**M/s Verifone India sales Pvt. Ltd.**, ("Verifone"), a company incorporated under the provision of the companies act 1956 and having its Registered office at 4<sup>th</sup> Floor Vaibhav Chambers BKC, Bandra East Mumbai -400051, (which expression shall unless repugnant to the context thereof mean and include its successors and assigns);

### RECITALS:

**WHEREAS BPCL and Verifone** (hereinafter individually referred to as the "party" or collectively as the "Parties") have entered into an agreement dated 7<sup>th</sup> March 2008 (hereinafter referred to as Said Agreement) for managing the Loyalty Card Program called "PetroBonus" & "SmartFleet" of Bharat Petroleum.

**WHEREAS**, each party has agreed that, subject to the terms and conditions of this Agreement, it will maintain in confidence any and all such confidential and proprietary information of the other as may be disclosed to it by the other during the term hereof; and will not, either directly or indirectly, on its behalf or on behalf of others, solicit for employment or hire, or attempt to solicit for employment or hire, any employee of the other party.

### NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The Parties agree to execute this Agreement and be bound by the terms and conditions hereof as a precondition to the proposed negotiations and discussions between the Parties in relation to the Purpose.

### DEFINITIONS

2. In this Agreement, the following terms shall have the meaning ascribed thereto as given below:
  - (a) "**Confidential Information**" shall mean all information, know-how, ideas, designs, documents, concepts, technology, manufacturing processes, industrial, marketing, commercial knowledge, and other materials of a confidential nature and includes but is not limited to, information of a commercial, technical or financial nature which contains amongst other matters, trade secrets, know- how, patent and ancillary information and other proprietary or confidential information, regardless of form, format, media including without limitation written or oral, and also includes those communicated or obtained through meetings, documents, correspondence or inspection of tangible items, facilities or inspection at any site or place including without limitation:

- i) research, development or technical information, confidential and proprietary information on products, intellectual property rights;
  - ii) business plans, operations or systems, financial and trading positions;
  - iii) details of customers, suppliers, debtors or creditors;
  - iv) information relating to the officers, directors or employees of the Disclosing Party and its Related Corporations;
  - v) marketing information, brochures, printed matter, rates and rate tables;
  - vi) details of the Disclosing Party's telecommunication network.
  - vii) formulae, patterns, compilations, programmes, devices, methods, techniques, or processes, that derive independent economic value, actual or potential, from not being generally known to the public,
  - viii) all agreements and contracts
  - ix) all documents relating to litigations and disputes.
- (b) **"Related Corporation"** means a company which is the holding company or subsidiary of either Party or a company which shares a common holding company with either Party. The words "holding company" and "subsidiary" shall have the same meanings as given to them in the Companies Act, 1956.

### SCOPE

3. Except as otherwise provided in this Agreement, the Receiving Party shall keep confidential all Confidential Information of the Disclosing Party which:
- (a) is disclosed, communicated or delivered to the Receiving Party in furtherance to the Purpose for which the Parties are entering into negotiations/discussions;
  - (b) comes to the Receiving Party's knowledge or into the Receiving Party's possession in connection with negotiations/discussions towards the Purpose.

irrespective whether such Confidential Information is received before or after the date of this Agreement.

### OBLIGATIONS OF PARTIES

4. Except as otherwise provided in this Agreement, neither Party shall disclose to any other person the status, terms, conditions or other facts concerning the negotiations/discussions as contemplated between the Parties in terms hereof.
5. The Receiving Party shall not use or copy the Confidential Information of the Disclosing Party except in connection with the Purpose and as both Parties may agree in writing from time to time.
6. In the event of the Receiving Party visiting any of the facilities of the Disclosing Party, the Receiving Party undertakes that any further Confidential Information which may come to its knowledge as a result of any such visit and any Confidential Information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly confidential and that any such Confidential Information will not be divulged to any third party and will not be made use of in any way, (whether for its benefit or that of any third party) except in connection with the Receiving Party's negotiations with the Disclosing Party in terms hereof.



7. Except as otherwise provided in this Agreement, the Receiving Party shall not disclose or communicate, cause to be disclosed or communicated or otherwise make available Confidential Information to any third party other than:
  - (a) the Receiving Party's directors, officers, employees, or representatives to whom disclosure is necessary for the purpose of negotiations/discussions;
  - (b) the Receiving Party's professional adviser only to the extent necessary for that adviser to advise or protect the rights of the Receiving Party under this Agreement;
  - (c) the Receiving Party's appointed financial adviser or appointed banker only to extent necessary for the financial adviser or appointed banker to provide financial advice and/or financial services to the Receiving Party.  
(each an "Authorised Person", and collectively, the "Authorised Persons").
8. The Receiving Party hereby agrees to advise the Authorised Person(s) that they are obligated to protect the Disclosing Party's Confidential Information in a manner consistent with this Agreement. The Receiving Party may disclose some or all of the Confidential Information to the Authorised Person(s) provided that prior to such disclosure, the Receiving Party shall obtain and provide to the Disclosing Party a written undertaking in favour of the Disclosing Party from the Authorised Person(s) to comply with the terms of this Agreement as if the Authorised Person(s) is a party hereto. In any event, the Receiving Party shall remain liable for any disclosure by the Authorised Person(s) to any other person.
9. A Receiving Party may disclose Confidential Information to a Related Corporation to the extent necessary to adopt and implement the Purpose or any part thereof, subject to the Related Corporation under-taking to comply with obligations equivalent to those of a Receiving Party, as contained in this Agreement.

#### **PUBLIC ANNOUNCEMENTS**

10. Save as provided in this Agreement, no news releases, public announcements or any other form of publicity concerning this Agreement or the terms of this Agreement shall be conducted or released by either Party without the prior written consent of the other Party.

#### **EXCLUSION**

11. The Receiving Party's obligations hereunder, shall not apply to Confidential Information if the same is:
  - (a) in or enters the public domain, other than by breach by the Receiving Party or any of its Authorised Person(s) or
  - (b) known to the Receiving Party on a non-confidential basis prior to disclosure under this Agreement, at the time of first receipt, or thereafter becomes known to the Receiving Party or any of its Authorised Person(s) without similar restrictions from a source other than the Disclosing Party, as evidenced by written records, or
  - (c) is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

#### **MODE OF DISCLOSURE**

12. Except as otherwise provided in this Agreement, a Receiving Party may not disclose the Confidential Information of the Disclosing Party except in the following circumstances:

- (a) the disclosure is authorised in writing by the Disclosing Party to the extent as so authorized;
  - (b) the disclosure is made pursuant to a directive or order of a Government entity or statutory authority or any Judicial or governmental agency provided however that the Receiving Party shall promptly notify the Disclosing Party so as to enable the Disclosing Party to seek a protective order or other appropriate remedy;
  - (c) the disclosure is made pursuant to any applicable laws, rules or regulations or direction of statutory or regulatory authority or stock exchange or order of a relevant court of law.
13. The Receiving Party shall inform in writing, the Disclosing Party, of any disclosures made to third parties under Clause 12 b, prior to any such disclosure.
14. A Receiving Party shall exercise no lesser security or degree of care than that Party applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of care which a reasonable person with knowledge of the confidential nature of the information would exercise.
15. Confidential Information provided by one Party to the other Party is provided for the benefit of that Party only and shall be used solely for the purposes for which it was disclosed.

#### **INJUNCTIVE RELIEF**

16. Each Party acknowledges that a breach of this Agreement by one Party may cause the other Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a Party may seek injunctive relief against such a breach or threatened breach.

#### **RETURN OF CONFIDENTIAL INFORMATION**

17. Unless agreed to otherwise between the Parties, all written Confidential Information or any part thereof or copies thereof (including, without limitation, information incorporated in computer software or held in electronic storage media) together with any analyses, compilations, studies, reports or other documents or materials prepared by the Receiving Party or on its behalf which reflect or are prepared from any of the Confidential Information provided by the Disclosing Party shall be returned to the Disclosing Party or destroyed by the Receiving Party, when requested by the Disclosing Party at any time, or when the Receiving Party's need for such information has ended or when this Agreement expires or is terminated, whichever is earlier provided however, the Receiving Party and/or its Authorised Persons shall retain such portions of Confidential Information as are mandatorily required for the purpose of compliance with applicable laws and regulations. In the event of destruction, the Receiving Party shall certify in writing to the Disclosing Party within thirty (30) days that such destruction has been accomplished. The Receiving Party shall make no further use of such Confidential Information nor retain such Confidential Information in any form whatsoever.

## TERM AND TERMINATION

18. This Agreement shall be effective and binding from the date of execution and will continue until and unless terminated in accordance with clause 19 herein.
19. This Agreement shall terminate upon the occurrence of the earlier of the following events:
  - (a) the execution of binding arrangements between the Parties in pursuance of the Purpose;
  - (b) by written agreement between the Parties;
  - (c) when either Party notifies the other in writing electing to discontinue the negotiations and discussions in respect of the purpose;
20. Notwithstanding the termination of this Agreement, the obligation to maintain confidentiality of the Confidential Information provided hereof and the undertakings and obligations in this Agreement shall continue for a period terminating on the later to occur of:
  - a) 2 years from the date of termination of this Agreement;
  - b) 3 years from the date on which the Confidential Information is disclosed.

## MISCELLANEOUS

21. Nothing contained in this Agreement shall be deemed to grant to the Receiving Party either directly or by implication, any right, by licence or otherwise, under any patent(s), patent applications, copyrights or other intellectual property rights with respect to any Confidential Information of the Disclosing Party nor shall this Agreement grant either Party any rights whatsoever in or to the other Party's Confidential Information, except the limited right to use and review the Confidential Information as necessary to explore and carry out the proposed Purpose between the Parties.
22. Nothing contained in this Agreement shall be construed as:
  - a) requiring the Disclosing Party to disclose to the Receiving Party any particular information;
  - b) creating any warranties of any kind in connection with any particular information;
  - c) soliciting any business or business changes or incurring any obligations of any kind not specified herein.

Notwithstanding anything contained in this Agreement, the Receiving Party agrees to indemnify the Disclosing Party for any loss or damage suffered due to any breach by it of its obligations under this Agreement. Damages shall include all costs, expenses and attorney's fees incurred by the Disclosing Party in the enforcement of this Agreement

23. This Agreement is not intended to constitute, create, give effect to, or otherwise recognize a joint venture, partnership or formal business entity of any kind and the rights and obligations of the Parties shall be limited to those expressed set forth herein. Any exchange of Confidential Information under this Agreement shall not be deemed as constituting any offer, acceptance, or promise of any further contract or amendment to any contract which may exist between the Parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties. Each Party shall act as an independent contractor and not as an agent of the other Party for any purpose whatsoever and no Party shall have any authority to bind the other Party.

24. This Agreement contains the entire understanding between the Parties with respect to the safeguarding of said Confidential Information and supersedes all prior communications and understandings with respect thereto. No waiver, alteration, modification, or amendment shall be binding or effective for any purpose whatsoever unless and until reduced to writing and executed by authorized representatives of the Parties.
25. The rights, powers and remedies provided in this Agreement are cumulative and do not exclude the rights or remedies provided by law and equity independently of this Agreement.
26. This Agreement shall be governed and construed in all respects in accordance with the laws of India.
27. It is irrevocably agreed that the Courts at Mumbai shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding arising out of or in connection with this Agreement shall be brought in such Court and that the Parties hereby submit to the exclusive Jurisdiction of such Court.

Each representative of the Parties executing this Agreement represents that he/she has the authority to enter into this Agreement and caused it to be effective as of the date first written above.

IN WITNESS WHEREOF THIS AGREEMENT was entered into the day and year first above written.

SIGNED for and on behalf of

SIGNED for and on behalf of

M/s Bharat Petroleum Corporation Limited  
Name: Dr. U V Girish Kumar  
Title: Head/ GM ( IT & BI)

M/s Verifone India sales Pvt Ltd.  
Name: Pran Mehra  
Title: ED- VeriFone India Sales Pvt Ltd.

**WITNESSES**

1.

2.

ARBITRATION

(a) Any dispute or difference of any nature whatsoever any claim, Gross-claim, or set off the Corporation against the Vendor of regarding any right, liability, act, omission or account of any of the parties hereto arising out or in relation to this agreement shall be referred to the Sole Arbitration of the Director (Marketing) of the Corporation or to an Officer of the Corporation who may be nominated by the Director (Marketing). The Vendor will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an Officer of the Corporation or that he has dealt with the matters to which the contract relates or that in the course of his duties as an Officer of the Corporation he had expressed views on all or any other matters in dispute or difference. In the event of arbitrator to whom the matter is originally referred being transferred or vacating his office for being unable to act for any reason, the Director (Marketing) as aforesaid at the time of such transfer, vacation of office or inability to act may in the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an Officer of the Corporation if the Director (Marketing) does not designate another persons to act as arbitrator on such transfer, vacation of office or inability of original arbitrator. Such persons shall be entitled to proceed with the reference from than the Director (Marketing) or a person nominated by such Director (Marketing) of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration Act. 1940 or any statutory modification or re-enactment thereof and the rules made there under for the time being in force shall apply to the arbitration proceeding under this clause.

(b) The shall be in writing and published by the Arbitrator within two years after entering upon the reference or within such extended time not exceeding further twelve months as the sole Arbitrator shall be a writing under has own hands appoint. The parties here to shall be deemed to have irrevocably given their consent to the Arbitrator to make and publish the award within the period referred to herein above and shall not be entitled to raise any objection or protest there to under any circumstances whatsoever.

(c) The arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the arbitrator may thin fit having regard to the matters in difference i.e. dispute before him. The arbitrator shall have all summary powers and may take such evidence oral and/or documentary, as the arbitrator in his absolute discretion thinks fit and shall be entitled to exercise all powers under the Indian Arbitration Act. 1940, including admission of any affidavit as evidence concerning the matter in difference i.e. dispute before him.

(d) The parties against whom the arbitration proceedings have been initiated, that is to say, Respondents in the proceedings, shall be entitled to prefer a cross-claim, counter-claim or set off before the Arbitrator in respect of any matter in issue arising out of or in relation to the Agreement without seeking a formal reference of arbitration to the Director (Marketing) for such Counter-claim or set off and the Arbitrator shall be entitled to consider and deal with the same as if the matter arising therefore has been referred to him originally and deemed to form part of the reference made by the Director (Marketing).

(e) The arbitrator shall be at liberty to appoint, if necessary any accountant or engineer or other technical person to assist him, and to act by the opinion so taken.

(f) The arbitrator shall have power to make one or more awards whether interim or otherwise in respect of the dispute and difference and in particular will be entitled to make separate awards in respect of claims or cross-claims of the parties.

(g) The arbitrator shall be entitled to direct any of the parties to pay the costs of the other party in such manner and to such extent as the arbitrator may in his discretion determine and shall also be entitled to

require one or both the parties to deposit funds in such proportion to meet the arbitrators expenses whenever called upon to do so

(h) The parties hereby agree that the courts in BPCL of Mumbai.....alone shall have jurisdiction of 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 BPCL of Mumbai only.

**BANK GUARANTEE**

1. In consideration of Bharat Petroleum Corporation Limited having its registered office at Bharat Bhavan, 4&6 Currimbhoy Road, Ballard Estate, Mumbai 400001 (hereinafter called "BPCL") having entered into a \_\_\_\_\_ Agreement dated \_\_\_\_\_ (hereinafter called "contract", which expression shall include all the amendments agreed to between BPCL and Host Manager, thereto) with M/s \_\_\_\_\_ having its registered Office at \_\_\_\_\_ (hereinafter referred to as "Host Manager", which expression unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assigns) appointing him as SMART CARD HOST MANAGER and Host Manager shall furnish to BPCL a bank guarantee (hereinafter referred to as "Guarantee") towards its obligations as provided in the Contract for in Indian Rupees for the performance of its obligations under the Contract.
  
2. We \_\_\_\_\_ (name of Bank) (hereinafter referred to as "Bank" which expression unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assigns) having its registered office at \_\_\_\_\_ do hereby guarantee and undertake to pay immediately on the first demand in writing and any / all money(s) to the extent of Indian Rs. \_\_\_\_\_ (in figures) and (Indian Rupees \_\_\_\_\_ in words) without any demur, reservation, contest or protest and / or without any reference to the Host Manager. Any such demand made by BPCL on the Bank by serving a written notice shall be conclusive and binding, without any proof, on the Bank as regards the amount due and payable, notwithstanding any dispute(s) pending before any Court, Tribunal, Arbitrator, Sole Expert, Conciliator or any other authority and /or any other matter or thing whatsoever, as liability under these presents being absolute and unequivocal. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable until it is discharged by BPCL in writing. This guarantees shall not be determined, discharged or affected by the

liquidation, winding up, dissolution or insolvency of the host manager and shall remain valid, binding, and operative against the Bank.

3. The Bank also agree that BPCL at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance, without proceeding against the ..... Host Manager and not withstanding any security or other guarantee that BPCL may have in relation to the Host Manager's liabilities.
4. The Bank further agrees that BPCL shall have fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said Host Manager from time to time or to postpone for any time or from time to time exercise of any of the powers vested in BPCL against the said Host Manager and to forebear or enforce ay of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Host Manager or for any forbearance act or omission on the part of the BPCL or any indulgence by BPCL to the said Host Manager or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.
5. The Bank further agree that the Guarantee herein contained shall remain in full force during the period that is taken for the performance of the Contract and all dues of BPCL under or by virtue of this Service Contract have been fully paid and its claim satisfied or discharged or till BPCL discharges this guarantee in writing, whichever is earlier.
6. This Guarantee shall not be discharged or by any change in our constitution, in the constitution of Contract or that of the Host Manager.
7. The Bank confirms that this Guarantee has been issued with observance of appropriate laws of the country of issue.
8. The Bank also agree that this Guarantee shall be governed and construed in accordance with Indian Laws and subject to the exclusive jurisdiction of Indian courts at ..... India.



9. Notwithstanding any thing contained hereinabove, our liabilities under this Guarantee is limited to Indian Rupees..... (in figures) Indian Rupees..... (in words) and our guarantee shall remain in force upto and including sixty (60) days after the expiry date / extended date. Any claim under this Guarantee must be received before the expiry of sixty (60) days or before the expiry of sixty (60) days from the extended date, if any. If no such claim has been received by us within sixty (60) days after the said date/extended date BPCL's right under this will cease. However, if such a claim has been received by us within and upto sixty (60) days after the said date/extended date, all BPCL's rights under this Guarantee shall be valid and shall not cease until we have satisfied that claim.

In witness "hereof, the Bank through its authorized officers has set its hand and stamp on this day of 2014 at.

The seal of.....was hereto duly affixed by .....this day of.....2014 in accordance with its bye-laws and this guarantee was duly signed by and as signed by.....and .....as required by the said bye-laws.

## INTEGRITY PACT

### Between

Bharat Petroleum Corporation Limited (BPCL) hereinafter referred to as "The Principal",

And

.....hereinafter referred to as "The Bidder/ Contractor/Supplier"

### Preamble

The Principal intends to award, under laid down organization procedures, contract/s for **BPCL Loyalty program host management**. The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder/s, Contractor/s and Supplier/s.

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organisation "Transparency international" (TI). Following TI's national and international experience, the Principal will appoint an Independent External Monitor who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

### **Section 1 - Commitments of the Principal**

(1) The Principal commits itself to take all measures necessary to prevent Corruption and to observe the following principles:

(a) No employee of the Principal, personally or through family members, will in connection with the tender, or the execution of the contract, demand, take a promise for or accept, for himself/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.

(b) The Principal will, during the tender process, treat all Bidders with equity and reason. The Principal will, in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential / additional information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.

(c) The Principal will exclude from the process all known prejudiced persons.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

## **Section 2 - Commitments of the Bidder / Contractor/Supplier**

- (1) The Bidder / Contractor/Supplier commits itself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
  - (a) The Bidder / Contractor/Supplier will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person, any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange, any advantage of any kind whatsoever during the tender process or during the execution of the contract.
  - (b) The Bidder / Contractor/Supplier will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
  - (c) The Bidder / Contractor/Supplier will not commit any offence under the relevant Anti-Corruption Laws of India; further the Bidder / Contractor/Supplier will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - (d) The Bidder / Contractor/Supplier will, when presenting his bid, disclose any and all payments he has made, is committed to, or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder / Contractor/Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

## **Section 3 - Disqualification from tender process and exclusion from future contracts**

If the Bidder, before contract award, has committed a transgression through a Violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.

- (1) If the Bidder/Contractor/Supplier has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is also entitled to exclude the Bidder / Contractor/Supplier from future

contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.

- (2) A transgression is considered to have occurred if the Principal after due consideration of the available evidences, concludes that no reasonable doubt is possible.
- (3) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- (4) If the Bidder / Contractor/Supplier can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

#### **Section 4 - Compensation for Damages**

- a) No employee of the Principal, personally or through family members, will in connection with the tender, or the execution of the contract, demand, take a promise for or accept, for himself/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.
  - b) The Principal will, during the tender process, treat all Bidders with equity and reason. The Principal will, in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential / additional information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor/Supplier liquidated damages equivalent to Security Deposit / Performance Bank Guarantee.
  - (3) The Bidder agrees and undertakes to pay the said amounts without protest or demur subject only to condition that if the Bidder / Contractor/Supplier can prove and establish that the exclusion of the Bidder from the tender process or the termination of the contract after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder / Contractor/Supplier shall compensate the Principal only to the extent of the damage in the amount proved.

### **Section 5 - Previous Transgression**

- (1) The Bidder declares that no previous transgression occurred in the last 3 years with any other Company in any country conforming to the TI approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

### **Section 6 - Equal treatment of all Bidders / Contractors/ Suppliers/ Subcontractors**

- (1) The Bidder/Contractor/Supplier undertakes to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors/Suppliers and Subcontractors.
- (3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

### **Section 7 – Punitive Action against violating Bidders / Contractors / Suppliers/Subcontractors**

If the Principal obtains knowledge of conduct of a Bidder, Contractor, Supplier or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor, Supplier or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

### **Section 8 - Independent External Monitors**

- (1) The Principal has appointed competent and credible Independent External Monitors for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairperson of the Board of the Principal.
- (3) The Bidder/Contractor/Supplier accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Bidder/Contractor/Supplier. The Bidder/Contractor/Supplier will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to this project documentation. The same is

applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/Contractor/Supplier/ Subcontractor with confidentiality.

- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/Supplier. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation, or to take other relevant action. The Monitor can in this regard submit non-binding recommendation. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action. However, the Independent External Monitor shall give an opportunity to the Bidder/Contractor/Supplier to present its case before making its recommendations to the Principal.
- (6) The Monitor will submit a written report to the Chairperson of the Board of the Principal within 8 to 10 weeks from the date of reference or intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) If the Monitor has reported to the Chairperson of the Board a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- (8) The word 'Monitor' would include both singular and plural.

### **Section 9 - Pact Duration**

This Pact begins when both parties have legally signed it. It expires for the Contractor/Supplier 12 months after the last payment under the respective contract, and for all other Bidders 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairperson of the Principal.

### **Section 10 - Other provisions**

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Mumbai. The Arbitration clause

provided in the main tender document / contract shall not be applicable for any issue / dispute arising under Integrity Pact.

- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Bidder/Contractor/Supplier is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

-----  
For the Principal

-----  
For the Bidder/Contractor/  
Supplier

Place .....

Witness 1 : .....  
(Signature/Name/Address)

Date .....

Witness 2 : .....  
(Signature/Name/Address)