

Tripartite Agreement

THIS TRIPARTITE AGREEMENT ("Agreement") has been made, prepared and executed on thisday of....., 2020, at New Delhi.

AMONG AND BETWEEN

_____ 'Sugar Mill' a Company incorporated under the Companies Act, 1956/2013 OR a Cooperative Society incorporated under the _____ Cooperative Societies Act, _____ having its registered address at..... (hereinafter called the "Sugar Mill"), through its or any other officer authorized by them on its behalf which expression shall unless repugnant to the subject or context or meaning thereof be deemed to include all its members, directly or indirectly involved in the business, administrators and permitted assigns of the **FIRST PART**;

AND

_____ a Company incorporated under the Indian Companies Act, 1913/1956/2013 an Oil Marketing Company/ies having its registered office at..... (hereinafter called the "OMC's"); through its..... or any other officer authorized by them on its behalf which expression shall unless repugnant to the subject or context or meaning thereof be deemed to include all its associates, directly or indirectly involved in the business, administrators and permitted assigns of the **SECOND PART**;

AND

_____ a Banking Corporation constituted under the Banking Regulations Act, 1949 / _____ Act BANK NAME having its registered office at..... (hereinafter called the "Lending Bank"), through its..... or any other officer authorized by them on its behalf which expression shall unless repugnant to the subject or context or meaning thereof be deemed to include all its associates, directly or indirectly involved in the business, administrators and permitted assigns of the **THIRD PART**;

(That for the sake of brevity and convenience, the First Party, Second Party and the Bank shall collectively hereinafter be referred to as the "Parties" to this Agreement)

RECITALS

- **This Agreement requires that Lending Bank may sanction and disburse eligible loans to Sugar Mill for ethanol production and supply to OMC's and in turn OMC's will deposit the payment against such ethanol supplies by the Sugar Mill in an ESCROW account, agreed to be opened by all the three parties herein, in the said Lending Bank. The payments deposited by the OMCs against the supplies of Ethanol by the Sugar Mill with the ESCROW Account shall be treated as payments effected to the Sugar Mill for the supplies of the Ethanol.**
- **Lending Bank may periodically recover the loan amount from the ESCROW account and thereafter release the balance to the concerned sugar mills account.**
- **That each party herein is competent to execute this Agreement, and each party has taken all approvals required under the law and other actions for the execution of this Agreement and that there are no suits, actions or**

proceedings against either party pending before any court of law in respect of the obligations of the parties under this Agreement, which might affect either party's performance of the obligations hereunder.

- That the parties hereto are desirous of entering into this Agreement to record their understanding of their terms and conditions thereof as hereinafter appearing and as such have hereby offered their acceptance to the considerations of either party to this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

Obligations of the Parties:

1. The Parties to this Agreement agree to facilitate all transactions under this Agreement through an ESCROW account in the lending bank and that all the payment against the ethanol supplies by the sugar mill to the OMCs, will be deposited by the OMCs to the ESCROW account only. **The payments deposited by the OMCs against the supplies of Ethanol by the Sugar Mill with the ESCROW Account shall be treated as payments effected to the Sugar Mill for the supplies of the Ethanol.**
2. It is agreed that once the Sugar Mill approaches the Lending Bank with the Detailed Project Report (DPR) and the application for sanction of the loan under the interest subvention scheme of the Government, the Lending Bank may execute/invoke this Tripartite Agreement and accordingly sanction and disburse the loan to sugar mills as per the Lending Bank's due process whose balance sheets are distressed.
3. The Parties hereto agree that the Lending Bank undertakes to deduct the amount of installment from the said ESCROW account for repayment of loan every quarter or half yearly (as the case may be) and deduct every month, the interest part on such loan from the said account (after reducing the interest subvention amount to be paid by the Government), and thereafter release the balance amount to the Sugar Mills account.
4. The Lending Bank duly undertakes that in case any amount is withheld by the Lending bank, beyond the term loan period and interest burden, the Lending bank will pay interest to the account of the sugar mill at the same rate as the interest burden on the term loan.
5. Lending Bank agrees that the loans sanctioned and disbursed to the Sugar Mills will be in addition to the other loans and will not affect the pre existing loans.
6. It is hereby agreed and acknowledged by OMCs that the payment towards the ethanol supplied by the Sugar Mills shall be duly deposited in the ESCROW account within a period ofdays.
7. The Sugar Mill herein agrees to supply at least a minimum quantity of ethanol to OMCs as per its supply obligations under Ethanol Supply Agreement with OMCs enough to cover/service the Lending bank loan and interest thereof under this Agreement, till the loan amount is outstanding in the lending bank.
8. It is hereby agreed and acknowledged by OMCs that the undisputed clear payment towards the ethanol supplied by the Sugar Mills shall be duly deposited in the ESCROW account within a period ofdays.

9. Obligations of OMC under this agreement to make payment against supplies to the Escrow Account shall be co-terminus with the Ethanol Supply Agreement dated _____ executed by the Sugar Mill with the OMC.
10. That the parties hereto agree that neither party shall be liable to each party or to their employee, agent, representative or associate, for any mistake or error in judgment or for any act or omission done in good faith and believe to be within the scope of authority conferred or implied by this Agreement.
11. The payment made by OMCs to the Escrow Account created under this Agreement shall be sufficient discharge of its payment obligation under the Ethanol Supply Agreement dated _____ and the Sugar Mills will not be liable to raise any recovery demand/claim towards the payment so made in the Escrow Account against the OMCs.
12. The OMCs Ethanol Supply Agreement dated _____ executed with Sugar Mill will supersede provision of this Agreement
13. That this Agreement shall be governed and construed in accordance with the laws of India. That each party hereby consents to the exclusive jurisdiction of Courts in New Delhi. **Subject to clause 9 of this Agreement**, the TPA will be in force till the loan is liquidated to protect the interest of the Banks.
14. The Sugar Mill agrees that in case there is shortage of availability of molasses due to drought or any other reasons beyond control, the said sugar mill will compulsorily divert sugar syrup, sugarcane juice or 'B' heavy molasses to generate enough revenue to be able to repay the Lending bank loan and interest every month or quarter as the case may be, until the availability of molasses situation improves.
15. It is duly acknowledged by the Sugar Mill that in case of any exigencies in supplies which may impact the revenue generation, the sugar mill undertakes to repay the debt from its other sources of income until the situation improves and ethanol is regularly supplied to OMC's.
16. The Parties agree to notify each other withindays after learning of the occurrence of any actions or omissions of which the party becomes aware that may be in violation of the Tripartite Agreement or which may be otherwise fraudulent or unauthorized.
17. The Parties agree that no person other than the parties to the Agreement is intended to be the beneficiaries of the Tripartite Agreement nor shall any other person have rights arising under the same.

Term and Termination:

- The Parties hereby agree that this Agreement shall be valid for a period ofcommencing from the date of execution of this Agreement i.e. till the date of final realization of the loan amount from the Sugar Mills[kmk(एक1)] whichever is earlier.
- The Parties duly agree and understand that shall the final realization of the EMI's plus principal amount relating to the Sugar Mills is made as agreed upon, the Agreement shall automatically stand expired.
- Either of the Parties may terminate this Agreement at any time with a minimum ofdays written notice, if either of the party finds that one of

the Parties to this Agreement has failed to substantially perform its obligations under this Tripartite Agreement or that one of the party to this Agreement precludes the other to timely perform its obligations under this Agreement.

Liability and Severability:

- That the parties hereto agree that neither party shall be liable to each party or to their agent or associate, for any mistake or error in judgment or for any act or omission done in good faith and believe to be within the scope of authority conferred or implied by this Agreement.
- The Lending Bank agrees that it shall not enter into any agreement with any other party to carry out the primary responsibilities of this Tripartite Agreement.
- The parties agree to comply with the provisions set forth in any attachments or addenda to this Tripartite Agreement mutually agreed by the parties, which are attached hereto and incorporated herein.
- The parties agree that, in the event of any conflict of terms, this Tripartite Agreement supersedes the Lending Bank's Service Terms for accounts that are covered by this Tripartite Agreement.
- The loan facility to be extended by the Lending Bank to the Sugar Mill for the purpose of enhancement and augmentation of the ethanol production capacity for producing ethanol for the Ethanol Blended Petrol (EBP) Programme shall be on principal to principal basis between the Lending Bank and the Sugar Mill.
- In case of any difference or dispute arising out of the relationship between the Lending Bank and the Sugar Mill as regards to any claims and liabilities, the same shall be settled as per the agreed arrangement between the Lending Bank and the Sugar Mill without making the OMCs a party to such differences or disputes. The OMCs shall be responsible only to the extent of depositing the payment against the supplies of the Ethanol by the Sugar Mill with the ESCROW Account with the Lending Bank. The OMCs shall not be responsible for any other liability of the Sugar Mill to the Lending Bank save and except provided herein.

Governing Law and Jurisdiction:

- That this Agreement shall be governed and construed in accordance with the laws of India. That each party hereby consents to the exclusive jurisdiction of New Delhi.

Dispute Resolution and Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD)

In the event of any dispute or difference relating to the interpretation and application of the provisions of this agreement, such dispute or difference

shall be first resolved amicably by the parties within a time period of 30 (thirty) days.

In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No.4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.

Confidentiality:

All information acquired by any party as to the business dealings of the others including (but not by way of limitation) any information relating to any trade secret, method, trade connection, customer, client or any financial arrangement or circumstances shall be treated as confidential by the recipient. No such information shall be used for any purpose other than as contemplated by this Agreement without the consent in writing of the party providing, or otherwise the subject of, such information, unless such information:

- a. Is, or has become, public knowledge other than by breach of this Confidentiality Clause; or
- b. Is in the possession of the recipient with full right to disclose prior to receiving it from the disclosing party; or
- c. Is independently received by the recipient from a third party with full right to disclose.
- d. Pursuant to a court /competent authority order or is otherwise required by law to be disclosed, provided that Recipient has notified the disclosing party immediately upon learning of the possibility of any such court/competent authority order or legal requirement and has given the disclosing party a reasonable opportunity and co-operate with disclosing party to contest or limit the scope of such required disclosure including application for a protective order.

Nothing herein shall restrict a party from providing the information to its advisers, consultants in connection with and for the purpose of this Agreement, provided that the party disclosing such confidential information shall ensure that the recipient of the confidential information shall be equally bound by the provisions of this Clause.

The provisions of this Clause shall survive for a period of five (05) years from the date of expiry or termination of the Agreement.

The parties shall not without prior written consent of the Disclosing party share the data, confidential information regarding this Agreement including the parties obligations herein provided by the Disclosing party with any third party/authority. The sharing of the confidential information shall be on trust within the parties and the confidential information shall not be shared by any of the Receiving party to any third party without permission from the Disclosing party. However the Receiving party may share the confidential information if required under the Law or by any regulatory authority.

Final Agreement:

- That this Agreement terminates and supersedes all prior understandings, proposals, representations, MOU's on the subject matter hereof;
- Each party duly agrees and understands that he/she/they have reviewed all aspects of this agreement, having carefully read all terms, conditions and obligations in and to this Agreement and have hereby voluntarily entered and executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, including the signature pages, to be executed as of the day and year first above written.