

**SETTLEMENT AGREEMENT**

The parties to this Settlement Agreement, Jeffrey S. Chiesa, Attorney General of the State of New Jersey (“Attorney General”), and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs (“Director”), (collectively, “New Jersey Attorney General’s Office”) and Thakur Gas, L.L.C. d/b/a LUKOIL (“Thakur Gas”), hereby agree and state that:

**WHEREAS** on December 21, 2011, the New Jersey Attorney General’s Office commenced an action against Thakur Gas in the Superior Court of New Jersey, Chancery Division-Sussex County, captioned *Jeffrey S. Chiesa, et al. v. Thakur Gas L.L.C.*, Docket No. SSX-C-30-11 (“Action”)<sup>1</sup> asserting claims and seeking relief pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), as more fully set forth in the Complaint filed by the New Jersey Attorney General’s Office in that Action;

**WHEREAS** the New Jersey Attorney General’s Office and Thakur Gas (collectively, “Parties”) desire to resolve the Action and to avoid the costs, expenses, distractions, risks and delays associated therewith and have reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and Thakur Gas having voluntarily cooperated with the New Jersey Attorney General’s Office and consented to the entry of the within Settlement Agreement without having admitted any fact or violation of law, and for good cause shown;

**NOW THEREFORE**, in consideration of the mutual promises and commitments made in this Settlement Agreement, the New Jersey Attorney General’s Office and Thakur Gas hereby agree as follows:

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<sup>1</sup> The Action was commenced on behalf of Paula T. Dow, former Attorney General, and Thomas R. Calcagni, former Director. Pursuant to R. 4:34-4, the caption has been revised to

## **1. EFFECTIVE DATE**

1.1 This Settlement Agreement is effective on the date that it is executed by all of the Parties (“Effective Date”).

## **2. DEFINITIONS**

As used in this Settlement Agreement, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Settlement Agreement:

2.1 “Action” shall refer to the action titled JEFFREY S. CHIESA, Attorney General of the State of New Jersey, and ERIC T. KANEFSKY, Acting Director of the New Jersey Division of Consumer Affairs, v. THAKUR GAS, L.L.C. d/b/a LUKOIL; JANE AND JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of THAKUR GAS, L.L.C. d/b/a LUKOIL; and XYZ CORPORATIONS 1 – 10.

2.2 “Advertise,” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the Sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium.

2.3 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.4 “Consumer” shall refer to any Person, as defined in accordance with N.J.S.A. 56:8-1(d), who is offered Merchandise, as defined in accordance with N.J.S.A. 56:8-1(c), for Sale, as defined in accordance with N.J.S.A. 56:8-1(e).

2.5 “Excessive Price Increase” shall be defined pursuant to N.J.S.A. 56:8-108 as a price that is excessive compared to the price at which the Consumer good or service was sold or offered for Sale by the seller in the usual course of business immediately prior to a State of Emergency.

2.6 “State” shall refer to the State of New Jersey.

2.7 “State of Emergency” means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator.

### **3. REQUIRED AND PROHIBITED BUSINESS PRACTICES**

3.1 Thakur Gas shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA.

3.2 Thakur Gas shall not Advertise, offer for Sale and/or sell motor fuel at a price constituting an Excessive Price Increase, in violation of the CFA, specifically N.J.S.A. 56:8-109.

### **4. SETTLEMENT AMOUNT**

4.1 The Parties have agreed to a settlement of the Action in the amount of Fifty Thousand and 00/100 Dollars (\$50,000) (“Settlement Amount”).

4.2 The Settlement Amount consists of a civil penalty of Thirty-Eight Thousand Two Hundred Forty-Eight and 85/100 Dollars (\$38,248.85), pursuant to N.J.S.A. 56:8-13; reimbursement of investigative costs of Four Thousand One Hundred Twenty-Eight and 65/100 Dollars (\$4,128.65); and reimbursement of attorneys' fees of Seven Thousand Six Hundred Twenty-Two and 50/100 Dollars (\$7,622.50).

4.3 The sum of Thirty Thousand and 00/100 Dollars (\$30,000) of the civil penalty portion of the Settlement Amount shall be suspended subject to the conditions set forth in Sections 4.4 through 4.8.

4.4 Thakur Gas shall pay Twenty Thousand and 00/100 Dollars (\$20,000.00) ("Settlement Payment") on or before the Effective Date.

4.5 The Settlement Payment referenced in Section 4.4 shall be made by bank check, attorney trust account check, or other guaranteed funds made payable to the "New Jersey Attorney General's Office" and forwarded to:

Nicholas Kant  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

4.6 Upon making the Settlement Payment referenced in Section 4.4, Thakur Gas shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the New Jersey Attorney General's Office pursuant to the terms herein.

4.7 The Thirty Thousand and 00/100 Dollars (\$30,000.00) balance of the Settlement Amount (“Suspended Penalty”) shall be automatically vacated after three (3) years from the Effective Date, provided:

- a. Thakur Gas complies with the requirements and prohibitions set forth in this Settlement Agreement;
- b. Thakur Gas does not engage in any acts or practices in violation of the CFA; and
- c. Thakur Gas makes payment in accordance with Section 4.4 of this Settlement Agreement.

4.8 In the event Thakur Gas fails to comply with Section 4.7, the entire Suspended Penalty shall be immediately due and payable upon notice by the New Jersey Attorney General’s Office. In any such notice, however, the New Jersey Attorney General’s Office shall provide Thakur Gas with the specific details of Thakur Gas’s alleged noncompliance and Thakur Gas shall be afforded a fifteen (15) day period within which to cure any such noncompliance. In the event of Thakur Gas’s failure to cure any such noncompliance, the New Jersey Attorney General’s Office will file a Certificate of Debt for the Suspended Penalty as well as any unpaid balance of the Settlement Payment.

## **5. GENERAL PROVISIONS**

5.1 This Settlement Agreement is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Settlement Agreement.

5.2 This Settlement Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Settlement Agreement and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Settlement Agreement.

5.4 This Settlement Agreement contains the entire agreement among the Parties. Except as otherwise provided herein, this Settlement Agreement shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Settlement Agreement, nothing herein shall be construed to limit the authority of the New Jersey Attorney General's Office to protect the interests of the State or the people of the State.

5.6 If any portion of this Settlement Agreement is held invalid or unenforceable by operation of law, the remaining terms of this Settlement Agreement shall not be affected.

5.7 This Settlement Agreement shall be binding upon Thakur Gas as well as its principals, owners, managers, members, agents, employees, successors and assigns, and any Person through which it may now or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs its business.

5.8 This Settlement Agreement shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Settlement Agreement avoid compliance with this Settlement Agreement.

5.9 This Settlement Agreement is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement shall constitute or be construed as: (a) an approval, sanction or authorization by the New Jersey Attorney General's Office or any other governmental unit of the State of any act or practice of Thakur Gas; or (b) an admission by Thakur Gas that any of its acts or practices

described in or prohibited by this Settlement Agreement are unfair, or deceptive or violate the CFA. This Settlement Agreement is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 This Settlement Agreement is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Settlement Agreement.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 The Parties Represent and warrant an authorized representative of each has signed this Settlement Agreement with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

6.2 Thakur Gas represents and warrants that it has fully read and understands this Settlement Agreement, that it understands the legal consequences involved in signing the Settlement Agreement and that there are no other representations or agreements not stated in writing herein.

## **7. RELEASE**

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Settlement Agreement and conditioned on Thakur Gas making the

Settlement Payment in the manner specified in Section 4, the New Jersey Attorney General's Office hereby agrees to release Thakur Gas from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the New Jersey Attorney General's Office could have brought against Thakur Gas for violations of the CFA prior to the Effective Date arising out of this Action as well as the matters addressed in this Settlement Agreement ("Released Claims").

7.2 Notwithstanding any term of this Settlement Agreement, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Settlement Agreement; and (c) any claims against Thakur Gas by any other agency or subdivision of the State.

#### **8. PENALTIES FOR FAILURE TO COMPLY**

8.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of Section 3 of this Settlement Agreement or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the provisions of Section 3 of this Settlement Agreement and/or the CFA shall constitute second or succeeding violations pursuant to N.J.S.A. 56:8-13 and that Thakur Gas may be liable for enhanced civil penalties.

#### **9. COMPLIANCE WITH ALL LAWS**

9.1 Except as provided in this Settlement Agreement, no provision herein shall be construed as:

- (a) Relieving Thakur Gas of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or



- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Thakur Gas pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Thakur Gas may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

#### **10. DISMISSAL OF ACTION**

10.1 Within five (5) days after the State's receipt of this signed Settlement Agreement, the signed Stipulation of Dismissal with Prejudice and the Settlement Payment, Plaintiffs shall sign the Stipulation and submit it for filing with the court to conclude the Action.

#### **11. NOTICES UNDER THIS SETTLEMENT AGREEMENT**

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the New Jersey Attorney General's Office or Thakur Gas pursuant to this Settlement Agreement shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the New Jersey Attorney General's Office:

Assistant Deputy of Enforcement, Office of Consumer Protection  
Division of Consumer Affairs, State of New Jersey  
Office of the Attorney General, Department of Law and Public Safety  
124 Halsey Street - 7<sup>th</sup> Floor  
P.O. Box 45028  
Newark, New Jersey 07101

For Thakur Gas:

Howard Z. Buckner, Esq.  
2035 State Route 27 # 100  
Edison, New Jersey 08817-3351

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS SETTLEMENT AGREEMENT ON THE DATES ADJACENT TO THEIR RESPECTIVE SIGNATURES.**

FOR THE NEW JERSEY ATTORNEY GENERAL'S OFFICE:

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By: Nicholas Kant

Dated: September 18, 2012

Nicholas Kant  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: [REDACTED]

FOR THAKUR GAS:

THAKUR GAS, L.L.C. d/b/a LUKOIL

By: x [Signature] (President Thakur Gas LLC)

Dated: 8/31, 2012

Ranbir Singh, Owner  
Thakur Gas, L.L.C. d/b/a LUKOIL  
348 US Highway 206 North  
Branchville, New Jersey 07204

HOWARD Z. BUCKNER, ESQ.

By: [Signature]

Dated: 9/7/12, 2012

Howard Z. Buckner, Esq.  
2035 State Route 27 # 100  
Edison, New Jersey 08817-3351