

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board ("CARB"), with its principal location at 1001 I Street, Sacramento, California 95814; and ITUIUTABA BIOENERGIA LTDA. ("ITT"), with its principal location at Fazenda Recanto, s/nº, Zona Rural, Zip Code 38300-898, City of Ituiutaba, Minas Gerais State, Brazil (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Cal. Health & Safety Code §§ 38560, 38562, and 38580.)
- (2) Regulation. CARB adopted the *Low Carbon Fuel Standard* ("LCFS Regulation") to incentivize innovative fuels that will reduce greenhouse gas emissions. (Cal. Code Regs., tit.17, § 95480, *et seq.*)
- (3) Regulatory Provisions. Fuel reporting entities selling, supplying or offering for sale transportation fuel into the State of California must report this fuel to CARB as well its carbon intensity, which determines the number of credits or deficits the fuel will generate and ultimately demonstrate the fuel reporting entity met its annual compliance requirements. Fuel reporting entities must submit quarterly and annual reports that include the volume, fuel type, pathway code, and whether the corresponding credits or deficits were transferred with the fuel, and attest to the accuracy. (Cal. Code Regs., tit.17, §§ 95480-95503.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to thirty-five thousand dollars (\$35,000) for strict liability violations, twenty-five thousand dollars (\$25,000) for entering false information, failing to keep any document, for each day in which the violation occurs, and \$1,000 per deficit. (Cal. Code Regs., tit. 17, § 95494; Health & Saf. Code §§ 38580, and 43027.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, ITT was organized under the laws of Brazil as a private limited liability company and through one or more commercial transactions conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notices of Violation ("NOV") F072120-ITTP-RPT that CARB issued to ITT on October 4, 2021. CARB alleges that at all relevant times, ITT or agents thereof were fuel reporting entities as defined by the LCFS Regulation for the Reporting Period Quarter 3 2018 through Quarter 1 2020, and sold, supplied, offered for sale, transported ethanol into the

State of California and submitted one or more reports containing inaccuracies, misreported, or entered false information, which did not conform to the requirements of the LCFS Regulation as outlined in the Notices of Violation F072120-ITTP-RPT. (Cal. Code Regs., tit.17, § 95480 et seq.) CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against ITT for each and every day of alleged violation.

- (7) Acknowledgment. ITT does not dispute the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, ITT has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against ITT or any of its agents or downstream purchasers or customers for the alleged violations referred to above in the Legal Background and Case Background, and ITT's agreement to complete all terms and conditions set forth below, CARB and ITT agree as follows:

- (9) Settlement Amount. ITT shall pay a civil penalty of one hundred thirty thousand dollars (\$130,000.00 USD). ITT shall make the payment within thirty (30) calendar days from the date CARB notifies ITT of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. ITT shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. ITT is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to ITT in accordance with Paragraph 12 (Notices).

Ituiutaba Bioenergia Ltda. Settlement Agreement  
Notice of Violation: F072120-ITTP-RPT

- (11) Documents. ITT shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, and a copy of the Payment Transmittal Form(s) (if applicable), to the address or email in Paragraph 12 (Notices).
- (12) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Field Operations Branch / Fuels Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to ITT:

Ituiutaba Bioenergia Ltda.  
Fazenda Recanto, s/nº,  
Zona Rural, Zip Code 38300-898,  
City of Ituiutaba, Minas Gerais State, Brazil

Attn: Geovane Dilkin Consul  
Title: Director  
E-mail: geovane.consul@bpbungebio.com.br

and

Marcus Schlosser  
Title: Director  
E-mail: marcus.schlosser@bpbungebio.com.br

With a copy to:

ITT Counsel:

Todd O. Maiden  
Reed Smith LLP  
101 Second Street  
Suite 1800  
San Francisco, California 94105-3659  
tmaiden@reedsmith.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, ITT shall pay all reasonable costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. ITT agrees to comply with all regulatory requirements relating to the LCFS Regulation and acknowledges that alleged repeat violations of the LCFS Regulation could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds ITT, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent

such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

- (22) Not Tax Deductible. For purposes of this Settlement Agreement, ITT shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full completion of civil penalty, and all other undertakings above, CARB hereby releases ITT and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and downstream commercial customers (of the ethanol that is the subject of CARB's allegations) from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

## PENALTY BASIS

- (30) For violations of report submittals of the LCFS Regulation (Cal. Code Regs., tit.17, § 95494(b)), the per unit penalty in this case is a maximum of twenty-five thousand dollars (\$25,000) per day under Health and Safety Code sections 38580 and 43027(d). The penalty of one hundred thirty thousand dollars (\$130,000) represents a penalty of ten thousand dollars (\$10,000) for each of the total of thirteen (13) incomplete or inaccurate quarterly reports and pathway application submittals.
- (31) Emissions. The provisions cited above prohibit emissions above a specified level. Without additional information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that ITT did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (33) Confidential Business Information. CARB based this penalty in part on confidential business information provided by ITT and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Richard W. Corey

Title: Executive Officer

Date: December 31, 2021

**Ituiutaba Bioenergia Ltda.**

Signature: /S/

Name: Geovane Dilkin Consul

Title: Director

Date: December 29, 2021

Signature: /S/

Name: Marcus Schlosser

Title: Director

Date: December 28, 2021