##### CONTRACTING

##### AUTHORITY: Zavod Republike Slovenije za blagovne rezerve

(Public Economic Institute of the Republic of Slovenia for Commodity Reserves)

Dunajska cesta 106, 1000 LJUBLJANA,

Represented by Mr. Anton Zakrajšek, Acting Director,

ID for VAT: SI34375848

(hereinafter referred to as: the Institute), of the one part,

and

**CONTRACTOR:**

ID for VAT:

(hereinafter referred to as: the Contractor), of the other part,

acting on the basis of the decision taken by the Institute on the award of the public contract to the most successful Tenderer hereby conclude the following:

# TENDER FORM

# DRAFT CONTRACT AGREEMENT FOR THE REPLACEMENT (EXCHANGE) OF THE OIL PRODUCTS No. \_\_\_\_\_\_\_\_\_\_

###### I. SUBJECT MATTER OF THE CONTRACT

**Article 1**

The subject matter of the Contract is the replacement (exchange) of petroleum products to be carried out as specified below:

1. The sale of app. 9,258 cbm (i.e. until the tank is completely emptied) of unleaded gasoline 95 in the excise storage facility operated by Petrol, d.d., Dunajska cesta 50, 1000 Ljubljana and stocked at the location SND Rače, Turnerjeva ulica 24, 2313 Fram
2. The purchase of app. 9,258 cbm of diesel fuel to the excise storage facility operated by Petrol, d.d., Dunajska cesta 50, 1000 Ljubljana at the location SND Rače, Turnerjeva ulica 24, 2313 Fram.

**The exchange is performed in the manner of the simultaneous sale of the Institute’s petroleum product (unleaded gasoline 95) and the purchase of the Contractor’s petroleum product (diesel fuel), which is temporarily stored at another location and subsequently delivered to the required location. Sales and purchases may be made in partial quantities up to the total estimated quantity for exchange under this contract.**

###### II. QUALITY OF THE OIL PRODUCT

**Article 2**

The Institute hereby warrants that quality of the oil product referred to in the first point of Article 1, is in conformity with the Appendix 5A. In accordance with the second point of Article 1 the Contractor hereby undertakes to supply the oil product in compliance with Appendix 5~~A~~ and the Rules on Implementing Excise Duty Act (Official Gazette of the Republic of Slovenia, No. 49/2004). The fuel to be supplied by the Contractor must not be older than one year, calculating from the date of delivery evidenced by a certificate of the fuel producer.

The Institute hereby declares and the Contractor explicitly agrees that the quality of the oil product stipulated in the Contract and being the subject matter of the supply i.e. delivery to the Institute made by the Contractor (second point of Article 1 hereof), shall constitute the essential element of the Contract, as well as that it shall be deemed as a severe breach of this Contract, if the oil product supplied and delivered to the Institute should fall short of the requirements in terms of quality specified in the preceding paragraph of this Article.

###### III. PLACE AND DESCRIPTION OF THE EXCHANGE

**Article 3**

The Institute will make the oil product referred to in the first point of Article 1 hereof available to the Contractor at the excise storage facility operated by the company Petrol, d.d., Dunajska cesta 50, 1000 Ljubljana and stocked at the location SND Rače, Turnerjeva ulica 24, 2313 Fram, (FCA - Incoterms 2010, whereas risk of loss passes when it is at the loading arm/manifold), without charging any and all loading costs to the Contractor.

The Contractor will supply and deliver the oil product referred to in the second point of Article 1 of this Contract to the excise storage facility/tank farm operated by the company by the company Petrol, d.d., Dunajska cesta 50, 1000 Ljubljana and stocked at the location SND Rače, Turnerjeva ulica 24, 2313 Fram, and specifically by applying the delivered duty paid clause (DDP - Incoterms 2010), without charging any and all unloading costs to the Contractor.

Before taking possession of the unleaded gasoline 95 in the Rače storage facility, and until delivery of the diesel fuel to the Rače storage facility, the Contractor shall submit to the Institute ownership of diesel fuel (seasonal or winter grade) in the stated quantity in one of the excise storage facilities in the territory of Slovenia, the Federal Republic of Germany, the Netherlands or Hungary, such that all costs associated with the provision of temporary storage and other related costs are borne by the Contractor. Subsequent to deliveries of diesel fuel to the Rače storage facility, partial transfers of quantities (“swap”) are carried out as follows: the Contractor to the Institute in the Rače storage facility, and the Institute to the Contractor at the temporary storage location.

###### IV. ACCEPTANCE THE OIL PRODUCT

**Article 4**

Petroleum Product will be taken over/accepted on the basis of the calibrated and certified measuring equipment of the Storage Facility Operator. The Institute shall accept the quantities for each completed part of delivery for which the receipt of acceptance or other relevant document will be issued by the Storage Operator, proving that the quantity has been stored in the storage facility. In the case that in the course of the delivery any technical difficulties should arise in connection with the petroleum product or in relation to taking the petroleum product into the storage tanks, that is, should the measurements of the delivered petroleum product  indicate material deviations, the Agency reserves the right in agreement with the contractor to suspend taking the petroleum product into the storage tanks with the aim to establish the reasons for such deviations and until the measuring instruments have been re-calibrated, if appropriate.

The Contractor shall be obliged to notify the Institute in writing of the date(s) of the envisaged delivery of the Petroleum Product no less than 5 (five) business days prior to the intended delivery to the Storage Facility referred to in the second paragraph of Article 3 of this Contract, and the Contractor undertakes to inform the Institute also of the designated quantity of the Petroleum Product he intends to deliver. A representative of the Contractor may be present at the discharge of the Petroleum Product to the Storage Facility subject to a previous agreement being made with the Institute.

The quality inspection of the Petroleum Product referred to in the second point of Article 1 conducted in the Storage Facility shall be conducted by an independent accredited laboratory designated by the Institute. The costs of the control service shall be borne by the Institute. The Contracting Parties hereby undertake to accept the findings with regard to the quality specified in the certificate to be issued by the accredited laboratory with respect to the quality of the delivered Petroleum Product as final.

The Contracting Parties hereby expressly agree that in the case that the Storage Facility Operator makes a grounded request for another analysis of the samples and should the results of the repeated measurements deviate from the values stated in the certificate issued by the accredited laboratory referred to in the preceding paragraph of this Article, the results of the measurements to be made by a third independent accredited laboratory selected by the Institute upon the request made by the Storage Facility Operator, shall be acknowledged as the final measurement readings. If according to the readings obtained as described before the Petroleum Product is of the quality, which complies with the specified requirements laid down in Article 2 of this Contract, the Contracting Parties will consider the delivery of the Petroleum Product to be of appropriate/acceptable quality.

The Contracting Parties hereby agree also that the Contractor may, in the case that the accredited laboratory referred to in the previous paragraph of this Article has established that the Petroleum Product is not of appropriate/acceptable quality, propose to have another analysis made (the super analysis). The Contracting Parties shall designate jointly the accredited laboratory to carry out another quality control. If the results of the super analysis (the values from the certificate must not exceed the values determined in the valid standard) demonstrate that the Petroleum Product is of appropriate/acceptable quality, the costs of the analysis shall be borne by the Institute, whereas the seller shall settle the costs in the case that the accredited laboratory selected by following the procedure described before shall establish that the quality of the dispatched/received Petroleum Product does not comply with the parameters specified in this Contract.

If the measurements are performed once more on the basis of the grounded request made by the Storage Facility Operator and the results obtained show that the Petroleum Product does not comply with the requirements in terms of the quality specified in Article 2 of this Contract, the costs incurred by performing another round of measurements shall be borne by the Contractor.

The Contracting Parties hereby agree that, in the case that the Contractor has delivered the Petroleum Product of quality that does not meet the agreed quality specified in Article 2 of this Contract, by taking into account also the provision laid down in the seventh paragraph of this Article, will deem it to constitute a serious breach of the Contract. Should that be the case, the Institute shall not be bound by the covenants of this Contract by virtue of a unilateral statement, and on the basis of the refusal to accept the delivered Petroleum Product hereby undertakes to remove the Petroleum Product at his cost without making any objection and shall be liable to payment of compensation to the Institute.

If the Petroleum Product is not of adequate quality and deviates from the specified quality only in certain element(s), which could be improved by means of the processes for technological improvement in the Storage Facility so that the Petroleum Product obtains the adequate quality in conformity with the requirements specified in Article 2 of this Contract, the Contractor may propose to the Institute to carry out the improvement process at the seller’s costs in the Storage Facility. The Institute may accept the proposal, or he may turn it down without stating any reasons for doing so. The Contractor hereby waives any objection against the decision taken by the Institute, that is, the rejection of his proposal.

1. **DELIVERY OF THE PETROLEUM PRODUCT**

**Article 5**

The Contractor shall be obliged to notify the Institute in writing of the date(s) of the envisaged delivery of the Petroleum Product no less than 5 business days prior to the intended delivery from the Storage Facility referred to in the Article 3 of this Contract, and the Contractor undertakes to inform the Institute also of the quantity of the Petroleum Product he intends to take over. Petroleum Product will be delivered from the Storage Facility on the basis of the calibrated and certified measuring equipment of the Storage Facility Operator. The Institute shall deliver the quantities for each completed part of delivery for which the receipt of acceptance or other relevant document will be issued by the Storage Operator, proving that the quantity has been released from the storage facility. In the case that in the course of the delivery any technical difficulties should arise in connection with the petroleum product or in relation to the delivery of the petroleum product from the storage tanks, that is, should the measurements of the petroleum product  indicate material deviations, the Agency reserves the right in agreement with the contractor to suspend taking the petroleum product into the storage tanks with the aim to establish the reasons for such deviations and until the measuring instruments have been re-calibrated, if appropriate.

The Contractor may authorise an independent surveyor to carry out a quality and quantity check. In that case, costs of such checks shall be borne by the Contractor.

The Contracting Parties hereby agree that in the case that the results of the measurements referred to in the previous paragraph would indicate that the Petroleum Product does not comply with the requirements in terms of quality, they will accept as undisputable the results of the measurements to be made by a third independent surveyor, that is, the accredited laboratory designated by both Contracting Parties. If the results of the repeated analysis (the values from the certificate must not exceed the values determined in the valid standard) demonstrate that the Petroleum Product is not of appropriate/acceptable quality, the costs of the analysis shall be borne by the Institute, whereas the Contractor shall bear these costs in the case that the designated accredited laboratory should establish that the Petroleum Product is of the quality specified in this Contract.

If the Petroleum Product is not of appropriate/acceptable quality and deviates from the specified quality only in some element(s), which could be improved by means of the processes for technological improvement in the Storage Facility so that the Petroleum Product obtains the adequate quality in conformity with the requirements laid down in Article 2 of this Contract, the Institute shall be entitled to propose that the Contractor should perform the improvement procedure at the expense of the Institute in the Storage Facility. The Contractor may accept the proposal, or he may turn down the proposal without stating any reason for doing so. The Institute hereby waives any objection against the decision taken by the Contractor, that is, the decision to turn down his proposal.

The Contracting Parties hereby agree that in the case that Institute would release/deliver the Petroleum Product not being of the quality that complies with the quality specification referred to in Article 2 of this Contract, it shall be deemed that there has been a serious breach of the Contract. Should it be the case that the Petroleum Product has not been withdrawn from the Storage Facility on the grounds that its quality is not in conformity with the specification, the Contracting Parties will not be bound any longer by the provisions of the Contract by virtue of a unilateral statement made by the affected party. In the case that the Petroleum Product has not been withdrawn from the Storage Facility on the grounds that its quality is not in conformity with the specification, the Contract shall be terminated. Considering that the Contractor is entitled to run the checks of the quality and the quantity of the Petroleum Product released from the Storage Facility during the entire period of the release of the Petroleum Product, the Contractor may at his own expenses return the Petroleum Product referred to in the first paragraph of Article 3 of this Contract to the Storage Facility.

The Contractor hereby declares that the tank trucks/rail wagons into which the Petroleum Product will be discharged have been checked and that they are clean.

The Storage Facility Operator shall be entitled to draw samples of the Petroleum Product while in the fuel tank and/or when the Petroleum Product is on a tank truck/rail wagon.

**Article 6**

The Contracting Parties hereby agree that in the event that the Contractor should deliver the oil product of the quality that is not in conformity with the agreed quality referred to in the Article 2 of this Contract, it shall constitute a serious breach of the Contract. Should that be the case, the Institute shall be entitled to:

- demand from the Contractor to dispose of, i.e. remove the oil product of inadequate quality and to supply the oil product quality in accordance with to the Contract by the deadline determined by the Institute;

- cash the financial guarantees referred to in Article 9 of this Contract;

- terminate the Contract and purchase the same kind of the oil product in the same quantity on the basis of the cover purchase and

- to demand compensation of loss incurred by the seller’s defaulting on his obligations under this Contract.

The entitlements realised as set forth the preceding paragraph must not exceed the actual damage incurred to the Institute.

**Article 7**

The Contracting Parties hereby agree that when the oil product is released from the stock the maximum tolerance is 1 per cent minus or plus. The supply of the Oil Product shall be accepted also in the event that the Contractor has delivered the agreed quantity of the Oil Product as laid down in Article 1 of this Contract being 1 per cent minus than the agreed quantity.

The Contracting Parties hereby agree Should it be the case that the quantity delivered is lower (up to 1 per cent) that the quantity specified in Article 1 of this Contract, the Contractor shall not be entitled to claim any payment for the Oil Product under the Contract for the missing quantity of the Oil Product and hereby expressly waives all claims on payments for the undelivered quantity of the Oil Product.

1. **TIME SCHEDULE**

**Article 8**

The Contractor may commence the takeover of the oil product referred to in first point of Article 1 of this Contract on 1 June 2020 but not before all conditions from the tender documentation are fulfilled, approval given by the Ministry of Economics and Technology received and this contract is signed. The Contractor hereby undertakes to take over the entire quantity of the oil product not later than on 20 July 2020.

The Contractor may commence with the filling on and including 1 January 2021, i.e. when the tank will be after the reconstruction prepared for filling. The Contractor hereby undertakes in accordance with this Contract to supply and deliver the oil product referred to in second point of Article 1 not later than on 28 February 2021.

Once the tank is completely empty, the Storage Operator will carry out maintenance works of the tank; therefore, between the emptying and delivery a break is needed, which is foreseen to last until the 20 December 2020. In case the works are not completed by the date due, the time schedule may be changed/prolonged accordingly.

The Contractor will adjust well in advance the time frame for the release and the supply of the oil product with the operator of the discharge/supply point. In the event of delay, the Contractor hereby undertakes to cover to the Institute on first call and unconditionally all costs and losses suffered by the Institute due to the Contractor’s delay.

Where the total quantity of the fuel for exchange/replacement is such that it would be possible to do, the Agency and the contractor/service provider may agree to reschedule the time frame laid down in the contract and stipulate the new time frame in an annex to the contract.

1. **FINANCIAL GUARANTEE**

**Article 9**

The Contractor hereby undertakes to submit to the Institute within fifteen days following the signing of this Contract, i.e. at least three days prior to the takeover of oil product, a performance guarantee in the amount of 40,000 EUR, in the form of a bank guarantee issued by an investment-grade bank or by a first grade insurance company, and valid until the expiry of the deadline for the payment of the oil product extended by fifteen days.

The Contractor undertakes to, prior to taking over the unleaded gasoline 95 from Paragraph 1, Article 3 of this Contract, forward to the Institute a statement whether the petroleum product is to be accompanied by an eAD (electronic Administrative Document) or released for sale on the market after being dispatched from the Rače storage facility.

In the event that an eAD is issued for the dispatched petroleum product from the Rače storage facility, and the Institute’s excise guarantee number is stated on it, the Contractor shall bear all risks from the excise duty. The Institute will charge the Contractor for any costs arising from the excise duty.

In case the petroleum product is released for sale on the market, the Contractor will present to the Institute before releasing the product a guarantee issued by an investment grade bank (bank guarantee) or first grade insurance company (suretyship) in the value of the excise duty, CO2 tax and other eventual taxes.

All mutual obligations arising from the subject matter of the Contract (stockpiling fee, excise duty, shortages …) may be offset.

Should the Contractor fail to comply with this obligation by the stipulated deadline, the Contract shall become null and void.

1. **LIQUIDATED DAMAGES**

**Article 10**

In the case that the Contractor has failed to meet the deadline for the supply/delivery of the Petroleum Product referred to in the second point of Article 1 into the Storage Facility referred to in the second paragraph of Article 3, he shall pay to the Institute the liquidated damages/penalty as follows:

- for one day in the first week of delay the amount calculated at the rate of 0.5‰ of the total selling price of the quantity of the Petroleum Product not supplied/delivered complete with any and all charges and VAT;

- for the following days of delay the amount calculated at the rate of 0.5‰ of the total selling price of the entire quantity stipulated in the Contract complete with any and all charges and VAT.

The amount from the previous paragraph shall not exceed 5 % of the total selling price for the oil product.

In the case that the Contractor has failed to meet the deadline for the take-over of the Petroleum Product referred to in the first point of Article 1 into the Storage Facility referred to in the first paragraph of Article 3, he shall pay to the Institute the liquidated damages/penalty as follows:

- for one day in the first week of delay the amount calculated at the rate of 0.5‰ of the total purchase price of the quantity of the Petroleum Product not supplied/delivered complete with any and all charges and VAT;

- for the following days of delay the amount calculated at the rate of 0.5‰ of the total purchase price of the entire quantity stipulated in the Contract complete with any and all charges and VAT.

The amount from the previous paragraph shall not exceed 5 % of the total purchase price for the oil product.

The Institute shall be entitled to, and the contractor explicitly agrees with that, that the sum in the amount of the penalty charged as liquidated damages can be offset against the same amount of consideration under this Contract.

Should the Contractor fail to meet the deadline, he undertakes to compensate ZRSBR for any and all costs born and any damage suffered by ZRSBR upon first call and without objections being a result of the delay of the Contractor. The obligation to pay liquidated damages shall remain valid even in such a case.

In the event of a delay lasting for more than 10 days, ZRSBR shall be entitled to terminate the Contract and demand compensation for damage in accordance with the preceding paragraph of this Article.

In the event that the delay shall be longer than 10 days after the final deadline for the supply i.e. delivery, stipulated in Article 8 of this Contract, additional the Institute shall be entitled to act as follows:

- to cash the financial guarantees referred to in Article 9 of this Contract;

- to terminate the Contract and to purchase the same kind of oil product in the same quantity at the Contractor’s expense as the guaranteed purchase and demand a compensation for the damage caused by the breach of the seller’s obligations.

In the event of failure to meet the deadline set for the takeover of the oil product, the Institute may demand a compensation for any and all damage suffered due to the delayed takeover of the oil product.

1. **CONTRACT PRICE AND VALUE**

**Article 11**

The price of the oil product (diesel fuel) supplied, i.e. delivered by the Contractor is euros per litre at the temperature of 15 ° C (excluding stockpiling fee, CO2 tax, fee for ensuring savings, PZPPE fee, VAT and excise tax) – hereinafter the selling price.

The price charged to the Contractor when selling the oil product (unleaded gasoline 95), property of the Institute, is \_\_\_\_\_\_\_ euros per litre at the temperature of 15° C (excluding stockpiling fee, CO2 tax, fee for ensuring savings, PZPPE fee, VAT and excise tax) – hereinafter referred to as the purchase price.

All the prices reflect the market conditions.

The contract price of the oil product supplied, i.e. delivered by the Contractor shall include also transport, harbour and any other costs related to the execution, i.e. fulfilment of the Contractor ‘s obligations under this Contract, as well as any other taxes, levies and charges due.

In the case of additional costs/taxes arising from and in connection with the delivery or purchase of the Oil Product, such shall be settled by the Contractor.

1. **TERMS OF PAYMENT**

**Article 12**

Each fuel seller will issue an invoice for the petroleum product with the prescribed duties and taxes as well as with the tax number of both partners and the delivery note, within 5 days from the date of delivery of the petroleum product to the buyer.

The invoices for the sale of petroleum product issued by the Contractor to the Institute and vice versa shall be offset on the 30th day after the receipt of the Contractor's invoice by the Institute, up to the amount that the Contractor will charge the Institute for unleaded gasoline 95 from Paragraph 1, Article 3 of this Agreement provided that diesel fuel at the alternate location is properly supplied within the meaning of this Agreement.

The Institute will pay the difference to the Contractor within 15 days after the delivery of diesel fuel referred to in Point 2 of Article of this Contrract to the storage facility Rače if the petroleum product is properly delivered within the meaning of this Contract.

The Contractors will issue invoices for the goods at least for each tax period. All duties will be charged in accordance with aplicable law. In the event that the Institute is obliged to pay the duties on goods sold before the deadline of settlement of the invoice, the contractor will transfer to the Institute two working days before the deadline for payment of duties the amount of duties that the Institute will have to transfer to the competent institutions.

The Contractor undertakes that in the event that the certificate of an accredited laboratory indicates that the petroleum product from the Point 2 of Article of this Contract does not meet the quality requirements of Article 2 of this Contract, the Contractor will reimburse the complete amount already paid by the Institute to the Contractor within thirty days after the certificate was issued, whereby the Institute retains all rights arising from Article 6 of this Contract.

The mutual obligations may also be offset by the Contractors. Transfer of claims is not allowed.

1. **ANTI-CORRUPTION CLAUSE**

**Article 13**

Shall somebody on behalf or for the account of Contractor promise, offer or give any undue benefit to a representative or agent of ZRSBR regarding this contract for the purpose of:

* winning the contract; or
* concluding the contract under better terms & conditions; or
* omitting due supervision over meeting of contractual obligations; or
* other acts or missions causing damage to the ZRSBR or enabling undue benefit to a representative or agent of ZRSBR, other contractual parties or their representatives, attorneys and agents;

this contract shall be deemed void.

1. **TERMINATION CONDITION**

**Article 15**

Notwithstanding the covenants set out in individual provisions of this Contract, the Contract shall be terminated in case that the circumstances and terms and conditions laid down below should occur:

* if the Contracting Authority becomes aware of the fact that the court by passing a final judgement has established that the obligations set out in laws governing labour, environmental or social matters have been breached by the Contractor or by the Sub-contractor or
* if the Contracting Authority becomes aware of the fact that a competent state body during the period of the execution of the Contract has revealed at least two breaches by the Contractor or the Sub-contractor in relation to:
  + wages,
  + working hours,
  + rest time ,
  + performing work on the basis of contracts governed by civil law despite the existence of the elements of employment relationship in relation to undeclared work and the Contractor or the Sub-contractor was fined twice pursuant to a final decision of the competent authority,

and subject to the condition that between the time of becoming aware of a breach and the expiry of the Contract effectiveness there are at least six more months, i.e. if the Contractor performs work together with the Sub-contractor also in the case that the Contractor fails to substitute or replace the Sub-contractor who has committed a breach as provided for in Article 94 of the Public Procurement Act (ZJN-3) and in accordance with the provisions laid down in this Contract within 30 days after becoming aware of the breach.

In the case that the circumstances and the terms and conditions referred to in the preceding paragraph should occur, it shall be deemed that the Contract is terminated as of the day on which a new contract for the public procurement which is the subject matter of the award of contract is concluded. The Contracting Authority will notify the Contractor of the new date of the conclusion of the new contract.

In the case that the Contracting Authority does not initiate within 30 days of becoming aware of the breach a new public procurement procedure, it shall be deemed that the Contract is terminated as of the thirtieth day after becoming aware of the breach.

1. **SETTLEMENT OF DISPUTES**

**Article 14**

The Contracting Parties will try to solve amicably any disputes. Should that not be the case, the dispute shall be referred to the court of law in Ljubljana.

1. **FINAL PROVISIONS**

**Article 16**

The provisions of the Code of Obligations (Official Gazette of the Republic of Slovenia, No 83/01), Commodity Reserves Act (Official Gazette of the Republic of Slovenia, No. 96/2009 – official consolidated version), and other regulations, shall apply to all matters not provided for under this Contract.

**Article 17**

The Contracting Parties hereby agree that the Contract shall enter into full force and effect as of the day when both Parties sign the Contract. If the Contract is signed in more than one language, the Slovenian text of the Contract shall be the governing version. The contract is valid until both parties fulfil their obligations.

**Article 18**

The Contract has been drawn up in four (4) identical copies, of which every Contracting Party shall receive two (2) copes.

Done at Ljubljana on \_\_\_\_\_\_\_\_\_\_

Ref. No.: Ref. No.:

## THE CONTRACTOR THE INSTITUTE