##### 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. Tomi Rumpf, 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 the petroleum products to be carried out as specified below:

1. The sale of app. 4,671 cbm of diesel fuel, in the excise storage operated by the company Petrol, Slovenska energetska družba, d.d., Ljubljana, Dunajska cesta 50, 1000 Ljubljana, and stocked at the location Petrol, d.d., Ljubljana, Skladišče goriv Lendava, Trimlini 1h, 9220 Lendava and
2. The purchase of app. 5,000 cbm of diesel fuel, to the excise storage facility operated by the company Petrol, Slovenska energetska družba, d.d., Ljubljana, Dunajska cesta 50, 1000 Ljubljana, and stocked at the location Petrol, d.d., Ljubljana, Skladišče goriv Lendava, Trimlini 1h, 9220 Lendava.

###### 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

**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 of the company operated by the company Petrol, Slovenska energetska družba, d.d., Ljubljana, Dunajska cesta 50, 1000 Ljubljana, and stocked at the location Petrol, d.d., Ljubljana, Skladišče goriv Lendava, Trimlini 1h, 9220 Lendava, (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 operated by the company Petrol, Slovenska energetska družba, d.d., Ljubljana, Dunajska cesta 50, 1000 Ljubljana, and stocked at the location Petrol, d.d., Ljubljana, Skladišče goriv Lendava, Trimlini 1h, 9220 Lendava, and specifically by applying the delivered duty paid clause (DDP - Incoterms 2010), without charging any and all unloading costs to the Contractor.

###### 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 Institute 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 delivery the petroleum product from the storage tanks, that is, should the measurements of the petroleum product  indicate material deviations, the Institute 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.

**V. TIME SCHEDULE**

**Article 8**

The Contractor may begin to take over of the oil product referred to in first point of Article 1 of this Contract on 26 October 2020, however not before all the conditions from the tender documents are fullfiled. The Contractor hereby undertakes to take over the entire quantity of the oil product not later than on 14 November 2020.

The Contractor may begin with the filling the tanks on and including 2 November 2021. 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 22 November 2021.

Once the tank is empty the Storage Operator will carry out maintenance works in particular tanks. In case the project is not completed by the deadline, the deadlines shall be postponed 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 Institute 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.

###### VI. 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 take over of oil product the performance security in amount of 50,000 EUR in the form of:

* Bank Guarantee issued by an investment- grade bank or the suretyship shall be issued by the first grade insurance company

with the validity until the expiry of the deadline for the payment of the oil product extended by fifteen days.

All costs related to security and cashing in the bills of exchange shall be borne by the contractor/service provider.

As for the financial security for the purchased oil product the Contractor is obliged to submit within fifteen days following the signing of this Contract i.e. at least five days prior to the take over/supply of oil product, the property of the Contracting Authority, referred to in the first point Article 1 of these Contract, the Contractor shall be obliged to submit the guarantee issued by an investment grade bank or insurance company in the value of delivered oil product or more (VAT and other eventual taxes) with the validity until the expiry of the deadline for the payment of the oil product extended by fifteen days.

The Petroleum Product will always be released up to the amount of the value of the guarantee, whereby the total price of the oil product including fee, VAT and other taxes will be considered.

The Contracting Parties agree that any and all obligations arising from and in connection with the operation subject-matter of the Contract (stockpiling fee, excise duty, shortage ...), including any damages could be offset.

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

###### VII. LIQUIDATED DAMAGES

**Article 10**

In the case that the Contractor for reasons on the Contractor’s side 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 for reasons on the Contractor’s side fail to meet the deadline, he undertakes to compensate the Institute for any and all costs born and any damage suffered by the Institute upon first call and without objections being a result of the delay of the Contractor up to the difference of full compensation. 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, the Institute 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 for reasons on the Contractor’s side 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.

###### VIII. CONTRACT PRICE AND VALUE

**Article 11**

The price of the oil product 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, 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 have to be expressed in eur per liter excluding (excluding the stockpiling fee, CO2 tax, fee for ensuring savings, PZPPE fee, excise tax and VAT).

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, with the exemption of the costs referred to in Article 3 of 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.

###### IX. TERMS OF PAYMENT

**Article 12**

The Contractor will settle the purchase of the Petroleum Product referred to in first point of Article 1 of this Contract by offsetting the mutual liabilities on the due date of the Contractor's invoice for the Petroleum Product referred to in the first point of Article 1 of this Contract, but not later than on 31. December 2021, which does not apply to the payment of VAT and other charges to be paid one working day before the last day of the month for the preceding month (taking over the Petroleum Product). The Institute will issue an invoice containing the statutory taxes and charges on the last working day of the month for the Petroleum Product referred to in point 1 of Article 1 of this contract, delivered in current month. The Contractor will make the payment for the aforementioned Petroleum Product by making a credit transfer to the bank account designated in the invoice by the Institute.

The payment made in accordance with the preceding paragraph shall be considered as the fulfilment of the Contractor’s obligation to pay for the purchased oil product in conformity with this contract.

The Contractor will issue the invoice and delivery note with the Slovenian tax number of the Institute and the statutory taxes and other charges in eight (8) days of the month for the Petroleum Product referred to in point 2 of Article 1 of this contract, delivered in previous month. The Institute will make the payment of the purchase price of the Petroleum Product referred to in the second point of Article 1 of this Contract on the 30th day following the receipt of the invoice subject to the condition that the Petroleum Product has been delivered in accordance with the provisions laid down in this Contract.

The payment made in accordance with the preceding paragraph shall be considered as the fulfilment of the Institute’s obligation to pay for the oil product referred to in the second point of Article 1 of this Contract in accordance with this Contract, whereas the contractor hereby waives any objection or demand.

All the taxes shall be charged in accordance with effective legislation.

The Contractor hereby undertakes to reimburse to the Institute the total amount paid for the Petroleum Product in the event that the certificate issued by an accredited laboratory should show that the Petroleum Product referred to in second point of article 1 of this Contract is not compliant with the quality specification referred to in article 2 of this Contract within thirty days following the issuance of the aforementioned certificate without prejudice to the rights of the Insitute laid down in article 6 of this Contract.

The Contracting Parties may also set off their mutual obligations. The Contractor and the Institute will issue the invoices for the oil product for each fiscal period separately. Assignment of receivables is not allowed.

###### X. 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.

###### XI. 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.

###### XII. FINAL PROVISIONS

**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.

**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