

## SERVICE CONTRACT

no. S-CA \_\_\_\_\_ from \_\_\_\_\_

1. Based on Internal Procurement Procedural Norms of CONPET S.A. Ploiești (revision 3), it has been concluded this service contract

Between

### THE CONTRACTING PARTIES,

**CONPET S.A.**, headquartered in Ploiești, No. 1-3, str. Anul 1848 Street, Prahova County, telephone 0244/401330, fax 0244/516451, 402386, registered at the Trade Register close to Prahova Law Court, under no. J29/6/1991, fiscal code RO 1350020, subscribed and paid-up share capital: 28,569,842.4 RON, banking account code IBAN RO38 RNCB 0205 0448 6570 0001, opened at Banca Comercială Română – Ploiești Branch, legally represented by Legal Expert Anamaria Mihaela Dumitrache – Director General and Econ. Sanda Toader – Economic Director, as **LESEE**;

and

\_\_\_\_\_, headquartered in \_\_\_\_\_, Str. \_\_\_\_\_, No. \_\_\_,  
County \_\_\_\_\_, telephone/fax \_\_\_\_\_, tax identification number RO  
\_\_\_\_\_, registered at the Trade Register with number J\_\_\_\_/\_\_\_\_/\_\_\_\_, IBAN banking account  
\_\_\_\_\_ opened at \_\_\_\_\_, represented by \_\_\_\_\_ -  
\_\_\_\_\_, as **LESSOR**,

### 2. SCOPE OF CONTRACT

**2.1.** The scope of contract is the supply of **lease services of a number of 15 tank cars suitable and authorized for gaseous hydrocarbons in liquefied mixture, NSA (Mixture C)**, within the agreed period, in compliance with the requirements of the Scope of work (Annex no. 1), with the obligations assumed by this contract and with the legislation in force in the field.

### 3. PRICE OF CONTRACT

**3.1.** The price agreed for the full achievement of the scope of contract, payable to the Lessor by the Lessee, as per Annex no.3 – the financial proposition is of \_\_\_\_\_ Euro VAT excluded. The unit prices are binding all along the contract performance period.

**3.2** The equivalent value of the lease services along the contract performance period is of \_\_\_\_\_ RON, VAT excluded; the consideration of the services is to be paid by instalments, on monthly basis. The lease services price also contains the expenses related to revisions/repairs and accidental defects falling in the responsibility of the Lessor.

**3.3.** The price for accidental repairs provided at Art. 8.11 falling the the responsibility of the Lessee is of \_\_\_\_\_ Euro, VAT excluded; the consideration of the services is to be paid by instalments, for each intervention.

**3.4.** In case the Lessee does not pay the entire amount estimated at Art. 3.2, the Lessor will not be able to make financial claims for the remaining unspent amount.

### 4. TERMS OF CONTRACT

**4.1.** The duration of this contract is 12 months from the execution date of the delivery-take over report signed by the representatives of both contracting parties.

**4.2.** The contract enters into force at the date of the execution thereof by both contracting parties.

**4.3. The Lessor commits to:**

(1) make available the leased tank cars no later than 01.03.2021. The delivery of the tank cars to the Lessee is being performed based on a delivery-receipt Protocol signed by the representatives of both contracting firms under the conditions stipulated in the Scope of Work (Annex 1).

(2) replace the leased tank cars taken out of circulation along the performance of the contract, following revisions/repairs, within 5 days from the date of taking it out of circulation,

**4.4.** The late enforcement of the obligations provided at Art.4.3. by the Lessee is being sanctioned with the payment of delay penalties calculated as per the provisions of Art.14, without having to send a notification or prior formalities of delay.

**5. DEFINITIONS**

**5.1.** In this contract the following terms will be construed as follows:

- a. Lessee and Lessor – the contracting parties, as they are being named in this contract;
- b. the contract price – the price payable to the Lessor by the Lessee, based on the contract, for the full and proper accomplishment of all his obligations assumed under the contract;
- c. services – activities whose delivery is subject to the contract;
- d. standards – the standards, the technical regulations or others of the kind provided in the Scope of Work and in the technical proposal;
- e. force majeure – an event beyond the parties' control that is not due to mistake or fault thereof, which could not have been foreseen on the conclusion of the contract;
- f. hour, day, month, year – the terms of this contract are being calculated as per Art.181-184 from the new Code of civil procedure.
- g. The General Contract for the use of tank cars (GCU) – the multilateral contractual frame is based on CUV (appendix D to COTIF) for the use of tank cars, coming to the completion thereof; the contract contains all mutual relevant rights and obligations of the railway undertakings and the holders of tanks in what concerns the use of the tanks and exempts the parties to the contract of the necessity to negotiate numerous bilateral agreements, thus providing the interoperability of the tank cars on an European liberalized rail market; can be completed in a flexible manner by other contractual commitments, if necessary; the contract does not contain commercial information.

**6. ANNEXES OF THE CONTRACT**

**6.1.** The annexes to this contract are:

Scope of work – Annex no. 1

Technical proposal – Annex no .2;

Financial Proposal – Annex no. 3;

Convention regarding the Health and Safety at Work – Emergency Situations – Environmental Protection – Management of Energy – Annex no. 4;

Partnership agreement, if applicable – Annex no. 5;

Addenda, if applicable;

Other annexes to the contract.

**6.2.** The annexes are integral part of the contract.

**7. CONFIDENTIALITY**

**7.1. (1)** (1) Any contracting party has no right, without the written consent of the other party:

- a. to disclose the contract or any provision thereof to a third party, except for those persons involved in the contract fulfilment;
- b. to use the information and documents obtained or to which it has access during the performance of the contract, in purposes other than for the fulfilment of the contractual obligations.

(2) The disclose of any information against the persons involved in the contract fulfilment will be made confidentially and will be extended only to such information necessary in view of contract fulfilment.

**7.2.** A contractual party will be discharged of liability for disclosure of information related to the contract if:

- a) the information has been disclosed after having received the written agreement of the other contracting party for such disclosure; or
- b) the contracting party has been legally obliged to disclose the information.

## **OBLIGATIONS OF THE PARTIES**

**8.1.** The Lessor is liable for making available to the Lessee the tank cars required through the Scope of Work (Annex no.1), specified in the technical Proposal (Annex no.2), suitable in technical terms, ready for use.

**8.2.** In case one or more tank cars must be decommissioned or cannot be used for the scope envisaged on the conclusion of the lease contract, the Lessor is bound to make available to the Lessee another appropriate tank car, upon the Lessee's request.

**8.3.(1)** The Lessor is fully responsible of any prejudice produced due to pre-existing defects of the tank cars that could not be identified on the receipt thereof by the Lessee;

**(2)** The Lessor is liable for the remedy of the accidental defects occurred while operating the tank cars, by his fault;

**8.4.(1)** The Lessee shall use the tank cars only for the transport of goods for which they have been leased and is fully liable for the inappropriate use thereof;

- a. the tank cars will be at the sole disposal of the Lessee all along contract duration;
- b. the tank cars leased and subject to this contract may be used in international traffic;

**8.5. The Lessee is responsible of the remedy of accidental defects occurred while operating the tank cars, by his fault. The remedy of these defects may be performed by an authorized firm, employed by the Lessee, on his own expense and cannot exceed the price mentioned at Art. 3.3.;**

**8.6.** The Lessee commits to return the tank cars at the delivery-receipt site in good condition, clean and with all the component parts complete and deliver them to the Lessor based on delivery-take over protocol;

**8.7.** If along contract performance a tank car breaks or the performance of a recurrent inspection is necessary, it should be proceeded as follows:

- a) if the defect falls into the responsibility of the Lessor or a periodical revision must be performed, the named tank car will be replaced, upon the request of the Lessee, with a new suitable tank car. As of the declaration of the defect until the replacement or repair, the Lessee will not pay any rent for the named tank car;
- b) if the defect falls into the responsibility of the Lessee, the tank car will be repaired on his own expense, the Lessee not being exempted from the payment of the lease along the immobilization period;

**8.8.** In case along the contract performance period is being registered a defect that the parties do not wish to assume, the parties shall constitute a joint commission that will analyze the situation and decide the party responsible for the production of the defect, which shall bear the costs of the repair.

**8.9.** The Lessor will bear the expenses related to:

- the transport to the delivery-take over site, in view of making available the tank cars;

- the transport from the delivery-take over site, after the tank cars have been returned to the Lessee;

- the transport to and from the service stations for accidental defects falling into his responsibility or the performance of recurrent inspections;

- the preparation in view of performing (cleaning, washing, degassing etc) and carry out accidental repairs falling in his responsibility and the recurrent inspections along the contract performance period;

**8.10.** The Lessee shall bear the expenses related to:

- the transport from the delivery-receipt site, after the tank cars have been received by the Lessor;

- the transport to the delivery-reception site, in view of returning the tank cars to the Lessor;
- all costs related to the normal operation of the tank cars along contract performance period (transport for loading/unloading, shunting, parking etc.);
- the transport to and from the service stations for accidental defects falling into his responsibility.

**8.12.** In case the Lessor is resident of other state he has the obligation to present, at the beginning of each contractual year, in original and in legalized translation into Romanian, a Tax Residence Certificate issued by the fiscal authorities of the resident state, wherefrom to result that he is resident of the respective state in the year of income acquirement and that the provisions related to the avoidance of double taxation are applicable thereto, provisions concluded between the Romanian state and the State of residence of the enterpriser. The certificate of fiscal residence will be presented to the Lessee (as income payer) on the conclusion of the contract. The fiscal residence certificate shall be issued for the year when the Lessor proceeds the income related to the received rentals. In case the fiscal residence Certificate is not submitted on time, the provisions of title VI of Law no.227/2015 of the Fiscal Code are being applied, namely the withhold of the due tax by stoppage-at-source.

**8.13.** The Lessee undertakes to pay the price of services in due term.

## **9. OPERATION RULES**

**9.1.** The Lessee is bound to observe all the legal, administrative and technical regulations applicable to tanks user, as well as the specifications supplied by the Lessor for tank car operation.

**9.2.** (1) No modification of the tank cars is allowed, markers or inscriptions thereof, without the written consent of the Lessor, except for the situation when these modifications have been expressly disposed by a competent authority. In case of such legal dispositions of the competent authorities, the Lessor will be promptly notified.

(2) If the Lessee does not notify the Lessor in respect to the inconsistencies of the markers and inscriptions of the tank cars, he will be liable against the Lessor and third parties for all the consequences and costs generated by his failure to notify.

(3) In case the Lessor allows the personalized inscription of the tank car by the Lessee, the Lessor shall bear all costs related to inscription and maintenance thereof. At the cease of the contract the tank car will be returned in the initial state. The costs due to removal of the markings of the Lessee and the return thereof to the initial state will be borne by the Lessee.

## **10. OPERATION OF LEASED TANK CARS**

(1) The Lessor is either himself a signatory of the "General Contract for the Use of Tank Cars" (GCU) and the holder of the tank car as defined by the GCU or represents the holder in relation to the Lessee.

(2) The Lessee is obliged to use the tank car exclusively for transport by the railway companies that have signed an agreement with the holder thereof for the GCU application. If, contrary to this provision, the Lessee uses a railway company that does not meet these requirements it shall indemnify the Lessor for any economic disadvantage/damage suffered as a result of this, as if the tank car was used by a railway company signatory of the GCU.

(3) The Lessee is considered third party authorized by the holder in respect to the following contractual provisions, in accordance with the GCU:

a) The right to use or provision of the tank car for the loaded and empty transport, as well as the provisions concerning the railway tank cars transport, whether empty or loaded.

b) The Lessee shall provide information on the actual mileage of the tank car in accordance with Article 15.2 of the GCU. The Lessee shall inform the railway company which uses the tank car that, in all other cases, the notifications, in accordance with the GCU, will be directly addressed to the tank car owner. Regardless this fact, the Lessee shall transmit, without delay, all notifications and information that it receives from the railway company that uses the tank car relevant for the holder, to the Lessor. The Lessee shall ensure, in any case, that the Lessor receives the information about the actual mileage of the tank car.

(4) In any event, the Lessee is not allowed to agree with the railway company, user of the tank car, on any deviations from the GCU content without prior consent of the Lessor.

(5) In relation to the Lessor, the Lessee will be responsible for the railway company user of the tank car in compliance with the GCU, with the contractual terms of the railway company user of the tank car and will indemnify the Lessor for any disadvantages arising from the failure to comply with the contract. If necessary, the Lessee will introduce additional contractual clauses with the railway company user of the tank car in order to ensure that the GCU is being fulfilled.

The Lessor may request information, at any time, on the railway company that used the tank car. He is entitled to prohibit the operation of the tank car by specific railway companies, whether they are signatories of the GCU or not.

(6) The Lessor may request information, at any time, on the railway company that used the tank car. He is entitled to prohibit the operation of the tank car by specific railway companies, whether they are signatories of the GCU or not.

## **11. MAINTENANCE OF LEASED TANK CARS**

(1) The Lessor is either itself the Entity in Charge of Maintenance (ECM)/ Entity in Charge with Servicing (ECS) of the tank car or represents the ECM/ECS to the Lessee. The Lessee is obliged to take all maintenance measures deemed necessary by the ECM/ECS and must cooperate in implementation therof as long as deemed necessary. The Lessee shall make available the tank car to the Lessor in due time for mandatory recurrent inspections and all other necessary controls, under conditions of operational safety and under controllable conditions, the tank car being completely emptied and cleaned inside and outside as needed, at the destination indicated by the Lessor. If the Lessor determines other data for mandatory recurrent inspections other than the ones indicated on the tank car, these other data are mandatory for the Lessee.

(2) The Lessor will bear the costs for normal maintenance of the tank car, as well as for the mandatory periodic inspections or those inspections to be carried out according to mileage or any other inspections according to legal requirements, orders of the competent authorities or the ones necessary for operational safety.

(4) The service stations where the repairs, maintenance and inspections will be performed are determined by the Lessor or, in the case of applying the GCU, by the railway company user of the tank cars.

## **12. OBLIGATIONS UPON EXPIRY OF THE LEASE CONTRACT, TANK CAR DECOMMISSIONING**

(1) The Lessee will return the tank car to the destination indicated by the Lessor, in good condition after it has been cleaned inside and outside. The Lessee shall provide written information about the goods carried on the train, at the request of the Lessor.

(2) In case of late handover of the tank car, at the end of the contractual period, the Lessee is required to pay rent until the tank car reaches destination. The Lessor reserves the right to request higher compensation for loss of use or/and/ any other damage due to Lessee's delay. If, at the request of the Lessor, the tank car is handed over to a third party and not to the Lessor or if the tank car is made available by the Lessor to a third party, the liability to pay rent ends on the date of delivery or the day before making available the tank car.

(3) For complaints/claims after handing over the tank car, the Lessor shall require to the Lessee to participate in a joint assessment of damages within three months from delivery. If the Lessee does not comply with this request within two weeks, the findings of the Lessor or its agent are opposable to the Lessee.

(4) If the tank car needs to be cleaned, repaired or in accordance with legal requirements, subject to technical inspection on delivery, the Lessee is obliged to compensate for loss of use, inability to lease for the period necessary to carry out these operations, except the case where the owner is liable/responsible for the loss of use of the tank car.

### **13. PAYMENTS METHOD. INVOICING**

**13.1.** (1) The Lessor will issue within the first 15 days of the month based on the supporting documents showing the number of tank cars and the period of use. The invoice will be sent at the e-mail address [financiar.facturi@conpet.ro](mailto:financiar.facturi@conpet.ro), in the issuance day.

(2) *The Lessee shall perform the pay with payment order in EURO, within 30 days from the date of registration of the invoice to the Lessee (if the invoice is in EURO) or*

*(2) The Lessee shall perform the pay with payment order in RON, within 30 days from the date of registration of the invoice to the Lessor, at the BNR exchange rate of the date of issuance of the invoice (if the invoice is in RON).*

(3) Any change that occurs during the invoicing period will be operated starting with the next invoice.

**13.2.** The payment obligation related to the lease begins the day the tank car is provided by the Lessor to the Lessee at the handover site based on the delivery-hand over protocol and up to the day they are returned to the Lessor, based on the delivery-hand over protocol.

**13.3.** The payment of accidental repairs, provided at Art. 3.3, 8.5 and 8.11. falling into the responsibility of the Lessee is executed based on the technical findings process of the defects, signed by the Fixer, the representatives of the Lessor and Lessee and the estimate accepted by CONPET.

### **14. PENALTIES**

**14.1.** (1) If the Lessor fails to fulfill its contractual obligations within the deadlines set by the contract, he must pay the Lessee, as penalties, a sum in quantum of 0.5% per day of delay calculated at the value of the contract related to the stage corresponding to the service not executed or executed improperly, from the first day of delay until the effective fulfillment of the obligations, without having to send a prior notification of letter of formal notice.

(2) The calculated penalties shall be notified to the Lessor. The Lessor is required to pay the amount calculated as penalties within 5 (five) working days from receiving the notification. The Lessee will issue the invoice to the Lessor after receipt of the amount representing penalties. The Lessee shall notify the Lessor on the penalties, specifying the obligations that have not been met.

**14.3.** If the Lessee does not pay the invoices within 30 days of the expiry of the payment due date stipulated in the contract, he is obliged to pay penalties in quantum of 0.5% per day, for each day of delay, calculated to the value unpaid starting from the first day of maturity.

**14.4.** Penalty charges will be notified and invoiced to the Lessee. The Lessee is bound to pay the penalty charge within 5 (five) working days from the date of registration thereof.

### **15. CEASE OF CONTRACT**

**15.1.**(1) The Lessor is entitled to unilaterally terminate the contract without notice period in the following cases:

a) if the Lessee uses the tank cars in a manner inconsistent with the lease contract or with the rules or legal or technical regulations;

b) The Lessee fails to pay two consecutive invoices.

(2) In the cases provided at Art.15.1.(1) the Lessor will issue a notification by which will be specified the unfulfilled obligations and the term for the execution thereof, without being excluded the right of the Lessor to charge delay penalties as per the provisions of Art.14. The failure to fulfill the obligations provided at Art. 15.1. (1) within the term assigned by the Lessor gives him the right to unilaterally terminate the contract. The date at which the unilateral termination produces effects is the date when the written termination notification has been communicated to the Lessee.

**15.2 (1)** The Lessee has the right to unilaterally terminate the contract in the following cases:

a) the lessee exceeds, with more than 5 days the term provided at Art. 4.3 (1) of the contract;

b) more than 3 tanks cars leased to the Lessee are taken out of circulation for performance of revisions/repairs and the Lessor does not replace them within the term provided at Art.4.3. (2) of the contract;

**(2)** In the cases provided at Art. 15.2. (1) the Lessee shall issue a notification by which he will specify the unfulfilled obligations and the term of execution thereof, this fact not excluding the right of the Lessee to charge delay penalties as per the provisions of Art.14. The failure to fulfill the obligations provided at Art.15.2. (1) within the term assigned by the Lessee gives him the right to unilaterally terminate the contract. The date at which the unilateral termination produces effects is the date when the written termination notification has been communicated to the Lessor.

**(3)** The unilateral termination provided for each of the situations provided at Para 15.2.(1) of the contract is sanctioned by binding the Lessor to payment of liquidated damages to the Lessee, in percentage of 20% of the contract price, to which is added the exchange value of the deferred interests provided at Art.14.

**(4)** The receivables mentioned at Art. 15.2.(3.) of the contract will be notified by the Lessee to the Lessor, mentioning in the notification the obligations that have not been fulfilled, the quantum of liquidated damages and the calculation manner.

**(5)** The Lessor is bound to pay the liquidated damages within 30 days from the date of notification receipt. After collecting the liquidated damages, the Lessee will send the invoice to the Lessor.

**15.3.** The Lessee has the right to unilaterally terminate the lease contract in case of occurrence of unforeseen situations that make the execution of the contract impossible (eg: termination of the transport of gaseous hydrocarbons in liquified mixture NSA (C Mixture) or the decrease of the quantities of transported products. The unilateral termination is made with a maximum 45 days notice.

**15.4.** The contract also ceases upon expiration, through the consent of the parties or declaration of bankruptcy by any of the parties.

## **16. FORCE MAJEURE**

16.1. Force majeure protects of liability the responsible party invoking the terms and conditions established by the law.

## **17. SURETIES**

17.1. The Lessee shall not be liable for any liquidated damages, compensations payable by law related to or following an accident or injury to a worker or other person engaged by the Lessor, except for accidents or damages resulting from the fault of the Lessor, his agents or his employees.

## **18. LITIGATIONS**

18.1. The parties have agreed that all disputes concerning the validity of this agreement or arising from the interpretation, execution or cease thereof, should be resolved amicably by their representatives.

18.2. If solving the disagreements amicably is not possible, the parties will address the competent Court within the Lessee's jurisdiction.

## **19. COMMUNICATIONS**

19.1. (1) Any communication between the parties, relating to the execution of this contract, must be submitted in writing.

(2) Any written document must be registered both when submitting and when receiving.

(3) During the progress of this contract, all the related documents, including correspondence between the parties, will be drafted in Romanian.

**19.2.** Communications between parties can be made by fax or email, provided acknowledgment of receipt of communication.

## **20. CESSION**

20.1. In this procurement contract exclusively the assignment of the claims arising from the contract is allowed, the obligations arisen remaining in charge of the Contracting Parties as stipulated and initially assumed.

## **21. FINAL CLAUSES**

21.1. Amendment of this contract is made only by addendum concluded between the contracting parties.

21.2. This agreement, along with its annexes that are integral part therein, represents the will of the parties and invalidates any other verbal agreement, before or after its conclusion.

21.3. If the parties breach their obligations, the non-execution by the party suffering any prejudice related to the right to request the precise enforcement or by cash equivalent of the respective obligation does not mean waiver to its right.

## **22. PROTECTION OF PERSONAL DATA**

(1) This contract is a services procurement type and does not involve the processing of personal data on behalf of the Lessee (CONPET).

(2) Personal data that shall be processed under this agreement are only those necessary for the proper preparation and execution thereof (and for complying with legal requirements).

(3) In the processing of personal data under this Agreement, the Parties undertake to respect all the obligations applicable thereto, as operators of personal data under the law on protection of personal data inclusive of, but without limitation, according to GDPR.

(4) The personal data sets received by the Contracting Parties will not be used for purposes other than meeting the contractual obligations.

(5) The Contracting Parties shall respond to the requests regarding the exercising, by the person concerned, of the rights laid down in Chapter III, of GDPR.

(6) The Contracting Parties are responsible for implementing appropriate technical and organizational measures to ensure the security and confidentiality of personal data.

## **23. CONTRACT CONTROLLING LAW**

23.1. The contract will be construed under the laws of Romania.

This contract was concluded today, \_\_\_\_\_, in Ploiesti, in two copies, one for each contracting party.