#### **AGREEMENT FOR STORAGE OF LIQUID FUELS**

Version: 06/2007

**AGREEMENT FOR STORAGE OF LIQUID FUELS**

This Agreement for Storage of Liquid Fuels (hereinafter the “**Agreement**”) is executed on \_\_\_\_\_\_\_\_\_\_\_\_ in Tallinn

between:

**AS Eesti Varude Keskus**, registry code 11124171, address Veerenni 38B, 10138 Tallinn, Estonia, (hereinafter the“**Depositor**” or “**Estonian Stockpiling Agency**”) represented by Priit Enok, who is acting pursuant to law and Articles of Association of the Estonian Stockpiling Agency,

and

     , registry code ......................., address .................................. (hereinafter referred to as **the Storage Operator**) represented by .................................., acting pursuant to law and Articles of Association of the ..................................,

hereinafter separately and jointly referred to respectively as **the Party** or **the Parties**,

**Whereas:**

(1) Pursuant to Article 5(3) of the Liquid Fuel Stocks Act of the Republic of Estonia the Depositor may maintain liquid fuel stocks itself or transfer the stocks for storage to a company or to another legal person pursuant to a deposit contract concluded with a company or other legal person.

(2) The Depositor may maintain liquid fuel stocks in Estonia or another Member State of the European Union pursuant to Article 5(2) of the Liquid Fuel Stocks Act.

**HAVE HEREBY AGREED:**

## **Article 1**

**Storage**

* 1. The provisions of this Agreement shall be applicable to all single storage contracts (hereinafter referred to as **the Single Storage Contract**) to be executed between the Depositor and the Storage Operator under this Agreement or to any other contracts where the application of the provisions of this Agreement has been agreed upon. The provisions of this Agreement shall not be applicable, if so expressly agreed in a Single Storage Contract.
  2. Subject to the terms and conditions set forth in this Agreement and in its Annexes as well as the respective Single Storage Contracts, the Storage Operator shall store (*ladustama*) and preserve (*säilitama*) the liquid fuels of the Depositor (hereinafter the “**Products**”) delivered by or on behalf of the Depositor in storage facility specified in the respective Single Storage Contract (hereinafter the “**Storage Facility**”).
  3. At any time during the validity of the Single Storage Contract, the Storage Operator shall maintain the tank capacity specified in the respective Single Storage Contract (hereinafter: the “**Tank Capacity**”) available for the storage and preservation of the Products and shall not have the right to use the Tank Capacity otherwise, even if the Products are not stored and preserved in the Tank Capacity at the relevant time. For avoidance of doubt, the Parties have agreed that this Agreement shall not constitute a lease agreement (*üürileping*) or a commercial lease agreement (*rendileping*) of the Tank Capacity.
  4. The Storage Operator shall procure that the Tank Capacity is constantly in a due constructional and technical condition for the proper, safe and prudent storage and preservation (including for the loading and unloading) of the Products specified in the Single Storage Contract. The Storage Operator shall procure that all applicable legislation and requirements of the location of the Storage Facility with regard to the Tank Capacity are duly followed. The Storage Operator shall further procure that its technical facilities enable, at any time, a proper receipt and release of the Products according to the instructions of the Depositor. For the avoidance of doubt, the Storage Operator shall procure that all requirements mentioned in this Article 1.4 are fulfilled already on the date of signature of the respective Single Storage Contract by the Storage Operator, unless expressly otherwise stipulated in the tender documents and therefore separately and expressly agreed by the Parties in writing.
  5. The Storage Operator shall procure that the Tank Capacity is, at any time, in the exclusive direct possession and use of the Storage Operator and the Tank Capacity may not be accessed by any third person without authorisation of the Storage Operator. The Storage Operator shall procure that the Products are, at any time, safely stored and preserved in the Tank Capacity.
  6. The Storage Operator shall store and preserve the particular Products in the Tank Capacity either individually (hereinafter the“**Separate Storage**”) or collectively (hereinafter the“**Co-mingled Storage**”). The Parties shall agree on the manner of storage and preservation of the particular Products in the Single Storage Contract.
  7. In case of Separate Storage the Storage Operator shall store and preserve the respective Products separately from any other stored products of any other depositor or of the Storage Operator. The Storage Operator shall not commingle itself and shall procure that the Products are not commingled by any third party. The Storage Operator shall keep the Tank Capacity available for the storage and preservation of the Products free from any residue and in the degree of purity commonly required for the storage and preservation of the particular Products specified in the respective Single Storage Contract.
  8. In case of Co-mingled Storage the respective Products are stored and preserved by the Storage Operator in the same tanks together with the same goods of any other depositor as well as those of the Storage Operator. The Storage Operator shall procure that any goods stored throughout the duration of the Single Storage Contract together with the Products comply with the specification of the Products agreed by the Parties in the relevant Single Storage Contract and meet, at least, the respective EN quality requirements (in line with the respective European Standard). If the Parties have not agreed on any specific specifications, the Storage Operator shall follow the respective EN quality requirements.
  9. Under no circumstances shall the Storage Operator give the Products to the third party for storage and preservation.
  10. The Storage Operator shall have the right to replace, at its own costs, the Tank Capacity specified in the respective Single Storage Contract with its other units of similar size, technical condition, accessibility, suitability and equipment within the same storage facility (as indicated in Annex C to the respective Single Storage Contract) only upon the prior written consent of the Depositor which may not be withheld unreasonably. Such replacement shall not affect the performance of any other obligations of the Storage Operator arising out of this Agreement or of the relevant Single Storage Contract, including, but not limited to the obligations stipulated in Article 3.3 of this Agreement. For avoidance of doubt, the Storage Operator shall have no right to replace the Separate Storage or the Co‑mingled Storage with each other.
  11. Upon execution of each Single Storage Contract, the Storage Operator shall request from the Depositor any and all concrete documents and information, if any, which it reasonably needs from the Depositor for performing of its obligations arising out of this Agreement or of the relevant Single Storage Contract. The Depositor shall provide the Storage Operator only such documents or information which the Storage Operator have reasonably requested from the Depositor, except if the Storage Operator already has or shall have such documents or information.

**Article 2**

**Ownership and Possession**

* 1. Under no circumstances shall the ownership title to the Products or to the legal share of the co‑ownership (*kaasomandi mõtteline osa*) to the liquid fuel volume equal to the ratio found by dividing the respective volume of the Products by the total volume stored and preserved collectively in the respective tank (in case of the Co-mingled Storage) pass to the Storage Operator, unless expressly otherwise stipulated in this Agreement or in the relevant Single Storage Contract, or separately and expressly agreed by the Parties in writing.
  2. The Storage Operator shall procure that under no circumstances the ownership title to the Products or to the legal share of the co-ownership (*kaasomandi mõtteline osa*) to the liquid fuel volume equal to the ratio found by dividing the respective volume of the Products by the total volume stored and preserved collectively in the respective tank (in case of the Co-mingled Storage) passes from the Depositor to the third party due to any reasons depending on the Storage Operator.
  3. In case of the Stock Exchange (as defined in Article 10 of this Agreement) during the Separate Storage, the ownership title to the liquid fuel, including any substitute stocks, before and after the exchange shall be determined pursuant to the provisions of the Stock Exchange Contract.
  4. In case of the Co-mingled Storage, after the loading, unloading or any other form of blending activities (*e.g.* by pumping from one tank to another) the sizes of the legal shares of the co-ownership (*kaasomandi mõtteliste osade suurused*) of the Depositor, of the Storage Operator or of a third party with regard to the liquid fuel shall be the ratios found by dividing the respective individual volume of a respective depositor by the total volume of the liquid fuel stored and preserved collectively in the respective tank after such activities. The Storage Operator shall record the change of the sizes of the legal shares of the co-ownership in detailed manner by fractions of the legal shares of the co-ownership in the storage accounts of the Storage Operator.
  5. In case of the Co-mingled Storage, the deficits volumes shall be divided in proportion to the sizes of the legal shares of the co-ownership of the Depositor, of the Storage Operator or of a third party with regard to the liquid fuel.
  6. The Storage Operator shall not have and shall never acquire, invoke or grant any right of retention, pledge or lien (including, but not limited to the respective right as set forth in Article 907 of the Law of Obligations Act) or any other real right (right in rem) or right under the law of obligations having equivalent effect in respect of the Product. For the purposes of any such future circumstances the Storage Operator hereby irrevocably waives any and all of such rights to which the Storage Operator might become entitled to under any provision of law. For avoidance of doubt, if the Storage Operator breaches any obligation stipulated in this Article, such breach shall be in any case considered as the breach of the material obligation under this Agreement.

## **Article 3**

**Receipt and Return of the Products**

* 1. The Storage Operator shall receive the Products from the Depositor or from a person acting on behalf of the Depositor (loading of the Products into the Tank Capacity) and return the Products to the Depositor or to the person acting on the behalf of the Depositor (unloading of the Products from the Tank Capacity) at the place of the Storage Facility indicated in the respective Single Storage Contract. The Storage Operator shall not receive the Products from any third person or return the Products to any third person without prior written instructions of the Depositor.
  2. The Depositor shall notify the Storage Operator about the delivery of the Products for storage and preservation and removal of the Products in advance for at least the period specified in the Annex C to the respective Single Storage Contract.
  3. As soon as the respective transport has arrived at the Storage Facility for delivery or removal of the Products, the Storage Operator shall, without delay, start respectively loading the Products into the Tank Capacity or unloading the Products from the Tank Capacity to the tanks of the transport, at the latest at the end of the Advance Notification Period and Heating-up Time, if applicable, as indicated in Annex C to the respective Single Storage Contract. Once started, the Storage Operator shall perform the loading and unloading of the Products continuously according to the Loading Capacity and Unloading Capacity as indicated in Annex C to the respective Single Storage Contract. The Storage Operator shall compensate to the Depositor any costs (including, but not limited to overtime fees invoiced by the carriers) and damages caused to the Depositor due to the delay in loading or unloading of the Products by the Storage Operator.
  4. The Depositor shall have the right at any time to remove the Products placed in the storage and preservation at the Storage Facility and the Storage Operator shall have no right to refuse the return of the Products on any reason. The Storage Operator may demand removal of the Products only in case of expiration or termination of the respective Single Storage Contract and only having granted the Depositor sufficient time to remove the Products from the Storage Facility.

## **Article 4**

**Customs and Tax Issues**

* 1. Unless otherwise stipulated in a Single Storage Contract, the Storage Operator shall, at any time, store and preserve the Products at the Storage Facility free of any tax and customs duty. The Storage Operator shall procure that the Products are always stored and preserved so that the Depositor shall have no obligation to pay any tax or duty (including, but not limited to value added tax, excise tax or any customs duty or other import or export duty or any other similar duty or tax) related to the delivery, storage, preservation or return of the Products to the Depositor. If any permission or licence or any other documentation shall be required for those purposes, the Storage Operator shall be responsible for obtaining any such permission, licence or any other documentation. For the avoidance of doubt, the Storage Operator shall have any such permission, licence or any other documentation already on the date of signature of the respective Single Storage Contract by the Storage Operator, unless expressly otherwise stipulated in the tender documents and therefore separately and expressly agreed by the Parties in writing.

4.2. The Storage Operator shall be responsible for tax liabilities (including, but not limited to customs duties, excise taxes etc.) and any administrative fines thereon that may occur through the non-observance of fiscal regulations and failure to procure what has been undertaken by it in Article 4.1 of this Agreement. The Storage Operator shall be liable for charges arising as a result of his instructions or activities, which are not in conformity with the provisions of this Agreement or its Annexes or resulting in such unconformity.

## **Article 5**

**Obligation to Render Information, Quantity Determination**

* 1. The Storage Operator shall keep a proper and clear storage records and accounts suitable for inspections by the Depositor. The Storage Operator shall take any and all steps that are necessary to clearly identify and record the rights of the Depositor with regard to the Products both in its storage records and accounts.
  2. The Depositor shall have the right to inspect the relevant storage records and accounts, books and any other relevant documentation of the Storage Operator at any time during the Working Hours (as indicated in Annex C to the respective Single Storage Contract). The Storage Operator shall provide the Depositor, at the request of the Depositor, any necessary information and copies of documents of any business transactions thereon related to the Depositor. The Depositor’s aforementioned rights to inspect shall remain in force even after the expiry of the respective Single Storage Contract.

5.3 In case of the Separate Storage, the Storage Operator shall determine (measure) the volume of the Products stored and preserved under the respective Single Storage Contract by gauging (suitable for customs purposes) at the beginning and end of any movements (loading or unloading activities) of the Products and notify the Depositor of the relevant results without delay.

* 1. In case of the Co-mingled Storage, the Storage Operator shall determine the collectively stored volume by gauging (suitable for customs purposes) at the beginning and end of any movements (loading or unloading activities) of the relevant volumes.
  2. The Depositor shall have, at any time, the right to demand an examination of volumes stored and preserved in the Separate Storage or in the Co-mingled Storage.
  3. The Storage Operator shall, at its own costs, perform the inventories of the volume of the Products and of the volumes of the liquid fuel stored collectively with the Products (hereinafter “the **Inventory”**) once a year as an annual Inventory on a date determined by the Depositor and in other cases if so demanded by the Depositor. As a result of the Inventories, the Storage Operator shall prepare a detailed report on the Inventory (hereinafter “the **Inventory Report”**) and shall deliver the report to the Depositor without delay.
  4. The Storage Operator shall measure the relevant volumes at its own costs in a standardised manner according to the ISO regulation No 91/1 in kg and litres at 15ºC. The Storage Operator shall notify the Depositor of the data and the information on the density at 15ºC after any movement of the Products and in any Inventory Report.
  5. The Storage Operator shall measure the received and removed volumes considering the temperature and density of the liquid fuel and by:

(i) Calibrated flow control unit, or

(ii) Weighing using a calibrated scale, or

(iii) Onshore tank measurement, suitable for customs purposes.

In case the Depositor and the vendor (or the buyer) have in their agreement for the purchase of liquid fuels (or the agreement for the sale of liquid fuels) agreed on the inspection agency (hereinafter “**the Inspection Agency**”) for carrying out the measurement and calculation of the volumes of the delivered Products (or the volumes of the removed Products) and the inspection of the quality of the delivered Products (or the quality of the removed Products), the Storage Operator shall also accept such Inspection Agency as well as the results of the respective measurement, calculation and inspection carried out by such Inspection Agency. Above-mentioned Inspection Agency shall be independent, well-known and reputable.

* 1. The Depositor shall have the right to attend in person or appear present through an authorised representative at any receipt or removal of the Products or of the volumes of the liquid fuel stored collectively with the Products or during the Stock Exchange (as defined in Article 10 of this Agreement) or the Inventories.
  2. The Depositor shall have the right to inspect the stored Products at any time during the Working Hours (as indicated in Annex C to the respective Single Storage Contract) at the presence of the Storage Operator or the responsible customs official. The Storage Operator shall not refuse to be present at such inspections. The Depositor shall have the right to determine (measure) or let its authorised representative to determine (measure) the volumes of the Product and to take samples and to perform measuring and tests of the quality at his own cost. The Depositor shall have the right to demand the measuring and tests from the Storage Operator and the latter shall have an obligation to satisfy such request without delay. The reasonable and documented costs and expenses associated with such measuring or tests shall be borne by the Depositor.
  3. In case the Parties fail to resolve any dispute between the Parties regarding the volume or quality of the Products and/or of the liquid fuel stored collectively with the Products, both Parties shall have the right to refer such dispute to mutually agreed Inspection Agency for resolution. The Storage Operator shall facilitate the Inspection Agency to carry out the measurement and calculation of the disputable volumes and taking necessary samples of the disputable liquid fuel, and shall make available to such Inspection Agency all access, documents, resources and facilities as the Inspection Agency may reasonably require in order to carry out such activities.
  4. The Inspection Agency shall prepare a report on the results of the measurement and calculation of the disputable volumes and/or inspection of the quality of the disputable liquid fuel (hereinafter: “the **Inspection Agency’s Report”**). The Inspection Agency shall carry out the measurement, inspection and calculation in accordance with the criteria, methods and manner stipulated in this Agreement. The Inspection Agency’s Report shall be final in respect of measurement of the disputable volumes and/or inspection of the quality of the disputable liquid fuel. The Inspection Agency’s Report shall be used as the basis for further activities in connection with the relevant disputable volumes or quality. In case of dispute between the Parties regarding the Inventory Report, the relevant Inspection Agency’s Report shall replace such Inventory Report.
  5. The Inspection Agency’s reasonable costs and expenses associated with the measurement or inspection of the disputable volumes or quality shall be borne by the Party against whom the Inspection Agency decides.
  6. The Storage Operator shall immediately notify the Depositor of the difference between the volume of the Products actually delivered for storage and preservation and the respective volume of the Products notified in advance to the Storage Operator if such difference is higher than 0,5% in product category A I (Products with flashpoint < 21°C), and 0,3% in product category A III (Products with flashpoint > 55°C - 100°C), as determined pursuant to the provisions of Article 6.1 of this Agreement. The Storage Operator shall also immediately notify the Depositor of other damaged or defective condition of the Products (e.g. identified quality deviations, impurities).
  7. If the Products delivered to the Storage Operator arrive in incorrect volume or in damaged or defective condition the Storage Operator shall take any necessary steps to protect the Depositor’s interests against the relevant cargo operator or others, including, without limitation, to claim the liquidation of the incorrect volume or of damaged or defective condition from the relevant person. The Storage Operator shall take all reasonable steps to enable the Depositor to claim adequate and efficient compensation of damages from the relevant cargo operator or other relevant person. The aforesaid steps and measures shall be consulted and co-ordinated with and confirmed by the Depositor.
  8. The Storage Operator shall immediately notify the Depositor of any material circumstances related to the storage and preservation of the Products. The Storage Operator shall also immediately provide the Depositor any documents regarding the receipt or release of the Products, pumping from one tank to another as well as extermination of the polluted liquid fuel, measurement reports and written admittance and delivery forms, such as Bill of Lading, consignment notes, or any other transport documents, and loading and unloading reports.

## **Article 6**

**Volumes Accounting**

* 1. The received and removed volumes of the liquid fuels shall be calculated as follows: motor gasoline, light fuel oil, diesel, jet fuel and heavy fuel oil - on weight basis (kg).
  2. The volume of the Products to be returned by the Storage Operator to the Depositor (hereinafter “the **Returnable Volume**”) shall be determined at any time according to the volumes determined in the latest Inventory Report, or, if present, in the respective Inspection Agency’s Report and taking into account the subsequent receipts and removals of the relevant volumes.
  3. If as a result of the Inventory or the removal of the Products deficit in volumes of the Products is detected compared with the respective Returnable Volume of the moment of the Inventory or of the removal of the Products, the Depositor shall invoice from the Storage Operator the price of the deficit within 3 (three) months respectively from the receipt of the Inventory Report, (or, if present, of the respective Inspection Agency’s Report) or the removal of the Products. The Storage Operator shall settle the invoices pursuant to the terms of the respective invoices. By the payment of the invoices for the price of the deficit volume of the Products the relevant volumes of the Products shall be deemed to be returned to the Depositor.
  4. The Depositor shall calculate the prices of the deficit Products on the basis of Platts CIF NWE Cargoes / Basis ARA average of the medium-quotation of the month of the Inventory or of the removal of the Products (whichever respects to the relevant case). The sales price of the deficient Products shall consist of the aforesaid price plus the reasonable and justified transportation costs if any and import duties and stockpiling taxes (stockpiling fees), if applicable. The value added tax and excise tax (mineral oil tax), if applicable, shall be separately indicated in the invoices and shall be paid by the Storage Operator in addition to the sales price of the deficient Products.
  5. The Depositor shall, at any time, have the right to set-off the sales price of the deficient Products against the Storage Fee (as defined in Article 9.1 of this Agreement).
  6. In case of the tanks that do not have a floating roof/inner float, the deficit volumes during the storage of gasoline in the extent up to 0,25% per year of the total stored volume (in tanks without the floating roof/inner float) per grade in the respective Storage Facility, are treated as natural losses and the deficit volumes in such extent shall not be invoiced from the Storage Operator, unless the deficit is caused by a wrongful (*süüline*) activity of the Storage Operator.
  7. If the deficient volume per grade in the respective Storage Facility determined pursuant to Article 6.1 of this Agreement is more than 0,5% per year in case of A I products (Products with flashpoint < 21°C) or 0,3% per year in case of A III products (Products with flashpoint > 55°C - 100°C), the Depositor shall be entitled to demand from the Storage Operator physical replenishment in the amount of the total difference of volumes, (except the acceptable deficit volume pursuant to Article 6.6 of this Agreement), instead of invoicing the losses pursuant to Article 6.3 of this Agreement. The Storage Operator shall replenish the respective volume within 15 (fifteen) days from the receipt of the respective demand of the Depositor.
  8. If as a result of the Inventory or the removal of the Products exceeding volumes (resulting from the measuring accuracy during the Inventory) of the Products are detected compared with the respective Returnable Volume of the moment of the Inventory or of the removal of the Products, the Depositor shall make payment of the price of the exceeding volumes of the Products calculated by the Storage Operator respectively pursuant to the provisions of Article 6.4 of this Agreement against the Storage Operator’s justified invoice within 14 (fourteen) days as of receipt of such invoice.
  9. The Storage Operator shall assure that the volume of the Products on weight basis (kg) is indicated in its audited annual report, unless otherwise agreed in a Single Storage Contract.

## **Article 7**

**Liabilities and insurance**

* 1. To the extent the obligations of the Storage Operator do not derive from this Agreement or from the law, the Storage Operator shall apply the diligence of a proper storage operator during the performance of this Agreement. The Storage Operator shall in any case follow any and all applicable regulations and legislative acts of the jurisdiction on which territory the Products are stored and preserved pursuant to this Agreement.
  2. The Products shall be deemed to be delivered to the Storage Operator and to be received by a person authorised by the Depositor at the moment when the Products respectively pass the shut-off valve of the pipeline of the equipment for loading and unloading from and into land and/or water means of transport, unless otherwise stipulated in this Agreement.
  3. At all times during storing and preserving the Products, the Storage Operator shall have a valid adequate insurance, covering the liability risks related to the storage and handling of the liquid fuel, as well as comprehensive general civil liability, and also the environmental liability (soil, air, water pollution etc.). The insurance shall be obtained from a reputable and sound insurance company. For the avoidance of doubt, such insurance shall also cover the liability for any bodily injury and property damage caused to the Depositor. The Parties have hereby agreed that the property insurance of the Products will be arranged by the Depositor. The insurance shall also cover the liability risks in a manner that if any damages are caused to third parties and/or to the environment by any activities or omissions of the Storage Operator, the respective claims shall be satisfied by the Storage Operator and/or the insurance company. On the demand of the Depositor, the Storage Operator shall, at any time, prove the existence of such insurance cover to the satisfaction of the Depositor. Within fifteen days as of the execution of the respective Single Storage Contract, the Storage Operator shall provide the Depositor the proof of the existence of such insurance cover.
  4. As of the execution of this Agreement, the Storage Operator shall present to the Depositor its audited annual report for its each financial year.

## **Article 8**

**Breaches of the Agreement and Contractual Penalty**

* 1. Each Party shall bear mutual full proprietary liability for any proprietary loss caused due to the non-performance or unsatisfactory performance of their respective obligations under this Agreement and shall compensate the other Party any loss caused by a breach of its obligations, unless otherwise provided in this Agreement. Each Party shall compensate the other Party for any and all damages, costs and/or expenses which respective Party would have not suffered or incurred, had the matters been true as represented and warranted in Article 13 of this Agreement.
  2. In case of breach by the Storage Operator of any material obligation of this Agreement the Storage Operator shall pay, for an each breach committed, a contractual penalty (*leppetrahv)* in the amount equal to the decuple of the annual Storage Fee (as defined in Article 9.1 of this Agreement) indicated in a respective Single Storage Contract. The contractual penalty shall be paid by the Storage Operator within one (1) month from the receipt of the respective invoice from the Depositor. The Depositor shall have the right to present such claim of contractual penalty within six (6) months starting from the day the Depositor becomes aware of the breach by the Storage Operator.
  3. Compensation for proprietary loss caused by non-performance or unsatisfactory performance of the obligations under this Agreement or payment of the contractual penalty stipulated in Article 8.2 of this Agreement by the Storage Operator shall not affect the right of the Depositor to require the performance of the obligations by the Storage Operator.

## **Article 9**

**Storage and Handling Fees and Payment**

* 1. The Depositor shall pay to the Storage Operator the annual storage fee (as Tank Capacity fee) for the Tank Capacity made available and for the storage and preservation of the Products under a Single Storage Contract in the amount stipulated in Annex A to a Single Storage Contract in EUR/m3 per year (hereinafter “the **Storage Fee**”).
  2. The Depositor shall pay to the Storage Operator the handling fee for the handling of the Products under a Single Storage Contract (hereinafter “the **Handling Fee**”) only if handling of the Products (loading, unloading, pumping from one tank to another) is performed by the Storage Operator at the express request of the Depositor. Under no other circumstances shall the Depositor pay the Handling Fee.
  3. One receiving/returning or returning/receiving charge of the Products for the total volume in both directions during the validity of the respective Single Storage Contract shall be included in the Storage Fee and the Storage Operator shall have no right to claim the Handling Fee for such handling of the volumes of the Products.
  4. If the Handling Fee is payable pursuant to this Agreement, the Depositor shall pay the Handling Fee in the amount stipulated in Annex B to a Single Storage Contract.
  5. In addition to the Storage Fee and Handling Fee, the Depositor shall reimburse the Storage Operator the expenses for the works and services related to the due performance of the obligations under this Agreement (hereinafter “the **Additional Expenses**”) only if (i) such work and services and the respective Additional Expenses are expressly stipulated in Annex B to a Single Storage Contract and (ii) such additional works and services are rendered by the Storage Operator or arranged by the Storage Operator at the express request of the Depositor.
  6. In case the Additional Expenses are payable pursuant to this Agreement, the Depositor shall pay the Additional Expenses in the amount stipulated in Annex B to a Single Storage Contract. The Depositor shall only reimburse the Additional Expenses on the basis of the documented proof.
  7. In case of the Stock Exchange (as defined in Article 10 of this Agreement), the Storage Operator shall have no right to claim from the Depositor any Handling Fees or Additional Expenses for the handling of the Products or additional works and services performed during the Stock Exchange.
  8. For avoidance of doubt, the gauging of the respective tank(s) shall be included by the Storage Fee.
  9. The rates of the Storage Fee, of the Handling Fee and of the Additional Expenses shall not include the value added tax (VAT) and the VAT, if applicable, shall be added to the Storage Fee, to the Handling Fee and to the Additional Expenses pursuant to the applicable legislation.
  10. The Depositor shall pay the Storage Fee in monthly instalments. The Storage Fee shall be calculated as of the moment indicated in the Single Storage Contract when the relevant Tank Capacity has been made readily available for storing and preserving of the Products. Each instalment of the Storage Fee to be paid each month shall equal to 1/12 of the annual Storage Fee. The monthly instalments of Storage Fee shall be paid in arrears on the basis of invoices presented by the Storage Operator at the end of each respective month but not earlier than 14 (fourteen) days from the date of receipt of the respective invoice from the Storage Operator. In case of incomplete month, the Storage Fee shall be calculated as monthly instalment that is divided with the number of calendar days in respective month and multiplied with the number of calendar days in respective month during which the Products have been stored and preserved in the Tank Capacity.
  11. The Depositor shall pay the invoices of the Handling Fees and Additional Expenses within 14 (fourteen) days from the date of receipt of the respective invoice from the Storage Operator together with the documented proof sufficient for verification of the respective sums.
  12. The Depositor shall pay the amounts indicated in the invoices to the Storage Operator’s bank account in a credit institution located in the country of the place of the Storage Facility indicated on such invoices.
  13. The costs of cleaning of tanks and of extermination of polluted liquid fuel shall be reimbursed pursuant to the provisions of Article 11.1 to 11.7 of this Agreement.

## **Article 10**

**Exchange of Stock**

* 1. In case of Separate Storage, the Storage Operator shall perform, upon the demand of the Depositor, exchange of the stored Products because of quality reasons (hereinafter “the **Stock Exchange**”). The Depositor shall have the right to demand from the Storage Operator the Stock Exchange of all respective volumes of the Products once during the term of each respective Single Storage Contract. Details for Stock Exchange are stipulated in Annex 2.

In case of the automatic prolongation of the term of a Single Storage Contract pursuant to Article 12.3 of this Agreement, the Storage Operator shall perform the Stock Exchange of all respective volumes of the Products once during the extended period.

* 1. If the Depositor has made an agreement of Stock Exchange with a third party, such Stock Exchange shall not affect the obligations of the Storage Operator.
  2. In case of the Co-mingled Storage, the Storage Operator shall procure the renewal of the Products by the rotation of the respective volumes of the liquid fuels.

## **Article 11**

**Cleaning and Extermination**

* 1. In case of Separate Storage, after the expiration of a Single Storage Contract, the Storage Operator shall have the right to clean the Tank Capacity into the same condition of purity as before the storage and preservation of the Products at the costs of the Depositor, unless the Storage Operator is liable for pollution of the relevant Tank Capacity. The Depositor shall pay the respective costs, if any, on the basis of the justified invoices of the Storage Operator and documented proof.
  2. In case of Separate Storage, the Storage Operator shall, at any time upon the demand of the Depositor, clean the Tank Capacity, if the Tank Capacity is emptied and arrange the due extermination of the polluted liquid fuels pursuant to Article 11.4 of this Agreement. If the Depositor demands the cleaning of the Tank Capacity, the Depositor shall bear the respective cleaning and extermination costs, if any, on the basis of the relevant invoices and documented proof, unless the Storage Operator is liable for such pollution. For avoidance of doubt, the Depositor shall not bear the cleaning and extermination costs, if the Tank Capacity shall be emptied and cleaned due to technical reasons, such as testing by Technical Inspection Authority etc.
  3. In case of Co-mingled Storage, the Depositor shall not be obliged to bear any costs of cleaning of the Tank Capacity.
  4. The Storage Operator shall, upon the demand or consent of the Depositor, exterminate the polluted liquid fuel and shall follow all respective provisions related to the excise tax (liquid fuel tax). The Storage Operator shall record such extermination in a manner accepted by the relevant tax and customs authorities. In case of breach of the aforesaid obligations by the Storage Operator, the Storage Operator shall return the relevant volumes of liquid fuel to the Depositor and shall bear any and all excise tax (liquid fuel tax) related to the respective volumes.
  5. Unless the polluter is known or any person is liable for the pollution of liquid fuel, if the polluted liquid fuel stored in the Co-mingled Storage is exterminated as set forth in Article 11.4 of this Agreement, the proportion of extermination costs and of decrease of the exterminated volumes that fall on the Depositor and its co-ownership share shall be calculated pursuant to the following formula:



*Where*

*RatioDepositor* means the proportion of the total extermination costs and of exterminated volumes falling on the Depositor;

*Opening StocksDepositor* means the volume of the Products already placed in storage and preservation in the particular Tank Capacity before the beginning of the relevant period;

*ReceiptsDepositor* means the volume of the Products added into the particular Tank Capacity during the relevant period;

*RemovalDepositor* means the volumes of the Products removed from the particular Tank Capacity during the relevant period;

*Total Quantity* means the total sum of the Quantities per each depositor (the Depositor, the Storage Operator, third person) calculated pursuant to the following formula:



*Where*

*Quantity* means the result of the calculation per each depositor

*Opening Stocks (2)* means the volume of the liquid fuel already placed in the particular Tank Capacity by the respective depositor in storage and preservation before the beginning of the relevant period;

*Receipts (2)* means the volume of the liquid fuel added into the particular Tank Capacity by the respective depositor during the relevant period;

*Removals (2)* means the volumes of the liquid fuel removed from the particular Tank Capacity by the respective depositor during the relevant period;

The aforesaid formulas shall be applied in accordance with Article 6.1 of this Agreement. The formulas refer to the period from the beginning of the Single Storage Contract or respectively from the last cleaning of the respective Tank Capacity within the relevant period of the Single Storage Contract.

* 1. In the case stipulated in Article 11.5 of this Agreement, the Storage Operator shall have the right to invoice the Depositor for the respective proportion of the extermination costs found by multiplying the respective total justified extermination costs by the RatioDepositor on the basis of the relevant documented proof, unless the polluter is known or any person is liable for the pollution of liquid fuel. After removal of the volumes to be exterminated from the respective Tank Capacity, the Returnable Volume shall be deemed to be decreased by the volume found by multiplying the total justified volume to be exterminated by the RatioDepositor, unless the polluter is known or any person is liable for the pollution of liquid fuel.
  2. If the cleaning of the Tank Capacity and extermination of polluted liquid fuels causes costs or is not free of charge, the Storage Operator shall inform the Depositor of the cleaning and extermination costs before the commencement of the respective work. At least three bids from cleaning and oil extermination companies must be presented to the Depositor prior to starting the respective work. After receipt of such bids the Depositor may cancel its respective demand. The Storage Operator shall procure that the respective work shall be performed on the best possible terms and conditions for the Depositor.
  3. Article 9.11 and 9.12 of this Agreement shall be respectively applied for the payment of the applicable cleaning and extermination costs.
  4. If for cleaning purposes an emulsion is used by the Storage Operator, the Storage Operator shall determine and record the liquid fuel part and the emulsion part separately. This Article applies to both Separate Storage and Co-mingled Storage.

## **Article 12**

**Term and Termination**

* 1. Each Party may cancel (*üles öelda*) this Agreement by submitting to the other Party a written notice 12 (twelve) months in advance. Upon material reason, only the Depositor may cancel this Agreement without adhering the above-referenced term for advance notice. Under no circumstances shall this Agreement be cancelled during the validity of any Single Storage Contract.
  2. The start and the expiration of a Single Storage Contract shall be indicated in the respective Single Storage Contract.
  3. The term of a Single Storage Contract automatically prolongs by 24 (twenty four) months, if neither of the parties terminate the respective Single Storage Contract in written form by no less than 6 (six) months advance notice before the relevant expiration date. Partial termination of a Single Storage Contract shall be allowed. In case one Party notifies of the partial termination of the Single Storage Contract, the other Party shall have the right to terminate the whole Single Storage Contract from the relevant expiration date at his part by a written notice within 4 (four) weeks after the receipt of the partial termination notice.
  4. Upon material reason, each Party may extraordinarily cancel a Single Storage Contract by submitting to the other Party a written notice 6 (six) months in advance. The above term for advance notice shall not limit the right of the Depositor to demand the return of the relevant Products. If the Storage Operator extraordinarily cancels a Single Storage Contract due to the material reasons not depending on the Depositor, the Storage Operator shall reimburse the Depositor any documented costs and expenses caused to the Depositor by such extraordinary cancelling by the Storage Operator.
  5. The Depositor may cancel this Agreement and/or some or all of the Single Storage Contracts without submitting any advance notice, if

(i) the compulsory execution of the property of the Storage Operator or any insolvency proceedings in respect of the Storage Operator have been commenced; or

(ii) the Storage Operator has breached any material obligation of this Agreement.

* 1. If a Single Storage Contract has been executed for a period longer than 3 (three) years, each Party shall be entitled to initiate negotiations on adjusting the respective Storage Fees to the existent market conditions after 2 (two) years since the execution of the relevant Single Storage Contract or the last adjustment of fees. The new Storage Fees agreed by the Parties shall be effective as of the beginning of the following contractual year. If the Parties do not reach consensus within 3 (three) months, the initiating Party shall have the right to extraordinarily cancel the Single Storage Contract by submitting to the other Party a written notice 6 (six) months before the end of the running contractual year.
  2. The contractual year referred to in Article 12.6 of this Agreement shall commence on 1 April and end on 31 March of the calendar year following the beginning of the contractual year. The first contractual year shall commence at the beginning of the term of the Single Storage Contract and end on 31 March of calendar year following the beginning of the first contractual year.
  3. The termination of this Agreement or of a Single Storage Contract, as a result of which this Agreement or the respective Single Storage Contract would be terminated during the difficulties in supply (*varustamisraskused*) (as defined in Article 1(2) of the Liquid Fuel Stocks Act) shall only have legal effect upon the relevant written consent of the Depositor. If such consent is missing, this Agreement or the respective Single Storage Contract shall terminate after the end of the aforesaid difficulties in supply, unless otherwise agreed by the Parties.
  4. This Agreement and the Single Storage Contract may be withdrawn from (*taganeda*) or cancelled (*üles öelda*) only in the cases directly set forth in this Agreement, unless otherwise agreed by the Parties in writing.
  5. Upon termination of a Single Storage Contract for whatever reason, the Storage Operator shall procure the return of all Products and the related documents to the Depositor. Until actual return of the Products as stipulated above, the Storage Operator shall be bound by the obligation to store and preserve the Products as set forth in this Agreement.

## **Article 13**

**Representations and Warranties**

13.1 The Depositor hereby represents and warrants that:

13.1.1 The Depositor is a company duly established and validly existing under the laws and other legislation of its resident jurisdiction and it has sufficient active and passive legal capacity to execute this Agreement;

13.1.2 the Depositor has all the necessary authorisations which pursuant to law and other legislation are necessary for the execution of this Agreement;

13.1.3 The person who has signed this Agreement on behalf of the Depositor has sufficient and valid powers to execute this Agreement in accordance with the law and other legislation;

13.1.4 The execution of this Agreement is not prevented by any contract, court judgment or ruling to which the Depositor is party or which extends to the Depositor. The Depositor does not have any legal, organisational or other obstacles for the execution and performance of this Agreement.

13.2 The Storage Operator hereby represents and warrants that:

13.2.1 The Storage Operator is a company or other legal person duly established and validly existing under the laws and other legislation of its resident jurisdiction and it has sufficient active and passive legal capacity to execute this Agreement and it is legally entitled to conduct storage activities;

13.2.2 The Storage Operator has performed all necessary acts prescribed by law or other legislation and in its Articles of Association for the execution and performance of this Agreement, and has adopted necessary decisions of its governing bodies and obtained necessary licences and permits for the execution and performance of this Agreement;

13.2.3 The persons who have signed this Agreement on behalf of the Storage Operator have been granted sufficient powers for the execution of this Agreement in accordance with legislation and the Articles of Association of the Storage Operator and with other documents;

13.2.4 The execution of this Agreement is not prevented by any court decision or ruling to which the Storage Operator is party or which extends to the Storage Operator. The Storage Operator has no legal, organisational or other obstacles for the execution and performance of this Agreement.

13.2.5 The Storage Operator is entitled to and has the capacity and sufficient knowledge and experience to perform any and all obligations stipulated in this Agreement. The Storage Operator is aware of any and all legal regulations, including, but not limited to the safety and environmental regulations, related to the storage and handling of the Products.

## **Article 14**

**Miscellaneous Provisions**

* 1. This Agreement together with its Annexes, including the Single Storage Contracts shall constitute a uniform and integral Agreement replacing any oral and written agreements previously made between the same Parties with respect to the subject matter of this Agreement as well as the documents of respective public tender and of the bid of the Storage Operator.
  2. Any reference made in this Agreement to “this Agreement” shall mean the reference to this Agreement, all Single Storage Contracts, the Stock Exchange Contract together with their Annexes, unless the respective context clearly refers otherwise.
  3. The Parties shall be liable for the non-performance or unsatisfactory performance of their respective obligations under this Agreement, unless such non-performance or unsatisfactory performance is excused (*vabandatav*). The Party’s non-performance or unsatisfactory performance of its respective obligations under this Agreement shall be excused in case the non-performance or unsatisfactory performance is caused by circumstances which are beyond the control of the relevant Party and which the relevant Party could not reasonably have been expected to take into account at the time of the execution of this Agreement or of the respective other agreement between the Parties, or to have avoided or overcome the impediment or its consequences (Force Majeure).
  4. All notices and other communication to the respective Party hereto shall be in the English or in Estonian language and shall be deemed to have been duly given or made when delivered by hand or registered mail or facsimile to the Party in question to the addresses indicated below or to such other address as the respective Party hereto may hereafter specify in writing to the other Party:
     1. The Depositor

AS Eesti Varude Keskus

Veerenni 38B, 10138 Tallinn, ESTONIA

Phone: +372 66 00 900

E-mail: mailto: [info@espa.ee](mailto:info@espa.ee)

Contact person: Mr. Priit Enok

* + 1. The Storage Operator

Phone:

Fax:

E-mail:

Contact person:

* 1. The headings of this Agreement are for convenience of reference only and shall not in any way limit or affect the meaning or interpretation of the provisions of this Agreement.
  2. The Parties shall not disclose the fact of execution and the terms and conditions of this Agreement as well as any confidential information of other Party unless the Party is required to do so by this Agreement, applicable law or regulation or such disclosure has been consented to by the other Party in advance.
  3. No delay in performing an obligation or in exercising any right under this Agreement shall mean exemption of such obligation or waiver of such right, nor will separate or partial performance of any obligation or exercise of any right exclude further performance of such obligation or further exercise of such right.
  4. This Agreement will be governed, construed and enforced in accordance with Estonian Law.
  5. The Parties shall attempt to resolve any disputes arising from this Agreement by negotiations. If such disputes arising from the Contract cannot be resolved by negotiations of the Parties, each Party may take recourse to the Harju County Court for resolution of such disputes.
  6. If any of the provisions of this Agreement is or becomes invalid and/or is declared null and void, it does not affect the validity of the entire Agreement or other provisions of this Agreement. Should the Parties detect an invalid provision, they shall make their best efforts to amend such provision in order that it comply with law to the extent it remains closest to the original intention of the Parties.
  7. Any changes and amendments to this Agreement shall be made in written form. The general terms and conditions of the Storage Operator shall not apply.

|  |  |
| --- | --- |
| DATE AND PLACE:       ,  ………………………………….  (Signature)        (Storage Operator) | DATE AND PLACE:       , Tallinn  ………………………………….  (Signature)  Priit Enok  Chairman of the Board  AS Eesti Varude Keskus  (Depositor) |

# **Annexes to the Agreement for Storage of Liquid Fuels**

Annex 1 – Single Storage Contracts

Annex 2 – Agreement for Stock Exchange

# **Annexes to the Single Storage Contracts**

Annex A – Description of Tank, Storage Fees

Annex B – Handling Fees and Additional Expenses

Annex C – Information on Storage Facility