

**Appendix III**

## **AGREEMENT FOR SERVICES**

Services Agreement for Paldiski Windpark Gearunit inspection services

**Located in Paldiski, Harjumaa, Estonia**

**TALLINN 2017**

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## AGREEMENT FOR SERVICES

No \_\_\_\_

This Agreement for Services (hereinafter the Agreement) has been concluded in Tallinn, on \_\_\_\_ in the year two thousand and seventeen (2017)

Enefit Taastuvenergia OÜ, located at Lelle 22, 11318 Tallinn, registry code: 11184032 (hereinafter the **Buyer**), represented, on the basis of the Power of Attorney, by....., on the one side,

And

....., (hereinafter the **Consultant**), located at ....., registry code: .....represented, on the basis of an authorization/articles of association , by .....and ....., on the other side,

(Hereinafter the Buyer and Consultant referred to as the **Party** and jointly the **Parties**),

### 1 OBJECT OF THE AGREEMENT

The object of the Agreement is provision of following services for the Paldiski Wind Park:

gearunits inspection services with flexible endoscope provided by the Consultant to the Buyer as set forth in this Agreement (hereinafter the **Service**) in the period from the ....<sup>st</sup> of June 2017 to 30<sup>th</sup> of September 2017 (inclusive);

The services will mainly be carried out in Paldiski, Harjumaa, Estonia.

### 2 AGREEMENT DOCUMENTS

2.1 The Consultant shall render the Service in accordance with the Agreement and the associated documents.

2.2 This Agreement consist of this contract and its following Appendices:

**Appendix I** Scope of Works of the Tender Documents (procurement no EE-2179)

**Appendix II** Consultant's Tender nr: (including the scope of work, project organisation, time schedule and pricing)

The Appendices constitute an integral part of this Agreement. Interpretation of the various documents of the Agreement and overcoming of potential conflicts in them shall be based on the order set out in the first sentence of this clause

2.3 The Agreement and the Agreement documentation have been prepared and shall be prepared in English.

### 3 PERFORMANCE OF THE SERVICE

3.1 The Consultant shall exercise skill, care and diligence in the performance of the Service and shall carry out the Consultant's responsibilities under this Agreement in accordance with generally recognized professional standards applicable to the class of services provided in this document.

3.2 The Consultant shall in all professional matters act as a faithful adviser to the Buyer.

- 3.3 The Consultant and his personnel shall respect the local laws and customs and follow the health and safety regulations valid at the site of Paldiski Wind Park.
- 3.4 The Consultant shall use the key personnel detailed in Appendix II in the performance of the Service. Replacement of a key person is allowed with the written consent of the Buyer. In circumstances of illness, death, change of employer outside the Consultant, pregnancy or another corresponding reason beyond the Consultant's reasonable control, the Consultant will be entitled to replace such key person in consultation with the Buyer.

#### **4 REMUNERATION AND TERMS OF PAYMENT**

- 4.1 The Buyer shall pay to the Consultant for work and expenses under this Agreement as set out in Appendix II.
- 4.2 The Buyer shall pay the Consultant on the basis of the presented invoices.
- 4.3 The Consultant shall present the assessment report to the Buyer before invoicing procedure.. The Buyer is obliged to accept the assessment report or raise objections to the report within 14 (fourteen) working days after the receipt of the report. If the Buyer fails to accept the report or raise objections to the report within the established term, it shall be considered that the Buyer has accepted the report.
- 4.4 All prices and payments to the Consultant are exclusive of any direct or indirect taxes (other than the Consultant's income tax in its domicile), withholdings, duties, bank charges and similar dues.
- 4.5 Value added tax (VAT), sales tax and other equivalent tax, if applicable, is not included in the prices and will be marked separately in the invoice and paid by the Buyer.
- 4.6 The Buyer shall pay the invoice presented in accordance with the Agreement within 35 (thirty-five) days after receipt of the invoice.
- 4.7 If the Buyer fails to pay the Consultant any sums by their due date for payment pursuant to clause 4.6 above, the Buyer shall pay interest as from the due date for payment until the actual date of payment at the rate of five (5) percent + the reference rate of the European Central Bank per annum.

#### **5 THE CONSULTANT'S OBLIGATIONS AND RIGHTS**

- 5.1 The Consultant is obliged:
  - 5.1.1 to render the Service impartially, representing the Buyer's interests and objectives, adhering to legal acts. In the performance of the Agreement, the Consultant shall be independent from the financial interests of the Contractor, manufacturers of materials and structures;
  - 5.1.2 to organize the work so that the Wind generator is safe to use and to ensure that relevant legislation in Republic of Estonia and GE 2.5 wind turbine safety requirements are fulfilled.
  - 5.1.3 to use personnel in inspections work who have the required attainments of technical work and safety and experience, and whose qualification is checked periodically by certified staff or institution;
  - 5.1.4 to ensure that their staff is equipped with all the necessary materials, machinery, safety and any other equipment, which is needed to perform necessary repair works;
  - 5.1.5 while executing the work, Consultant is obligated to comply with labor, environmental and fire safety requirements;
  - 5.1.6 to seek approval from the Buyer for the use of sub-Consultants, other than the ones named in Appendix I, who are used by the Consultant for the provision of the Service and who shall hold a corresponding license and/or be entered in the register of economic activities, and, on the Buyer's request, submit data on the qualification of direct Service providers or sub-Consultants, which the Consultant uses in the provision of the Service. Regardless of the co-ordination of the sub-Consultants

by the Buyer, the Consultant shall be responsible for the activity and/or non-activity of all of its sub-Consultants;

- 5.1.7 to without undue delay inform the Buyer of any circumstances which may hinder performance of the Service in accordance with the Agreement;
- 5.1.8 to allow the Buyer to inspect the course of provision of the Service, and give any information reasonably required by the Buyer on the circumstances related to the rendering of the Service;
- 5.1.9 during the provision of the Service and a period of five (5) years thereafter, to keep confidential any information of confidential and proprietary nature made available to the Consultant, if the Consultant knew that the confidentiality of such information is within the interests of the Buyer;
- 5.1.10 to respond to any notices or expressions of will submitted in the course of performance of the Agreement concerning disputes arising from the Agreement or the performance of the Agreement (hereinafter the Expression of Will) without undue delay;
- 5.1.11 to perform the Service for every nine (9) GE 2.5 MW turbine;
- 5.1.12 to submit to the Buyer, in written form for every GE 2.5 MW turbine, a full inspection report along with a separate inspection description, including pictures, inspection results and a proposal for future steps. If problems in GE 2.5 MW are discovered, the Consultant must also present a professional opinion regarding GE 2.5 MW lifetime change and possible production loss in the report;
- 5.1.13 to conduct expert analysis and assemble the report, and to give the Buyer advice in issues related to the inspection results.

5.2 The Consultant shall have the right:

- 5.2.1 To receive the Remuneration to the Consultant under the Agreement for the Service performed in accordance with the Agreement;

## **6 THE BUYER'S OBLIGATIONS AND RIGHTS**

6.1 The Buyer is obliged:

- 6.1.1 to inform the Consultant of any necessary aspects related to the performance of the Agreement;
- 6.1.2 to provide the Consultant with a source data required for the provision of the Service;
- 6.1.3 to accept from the Consultant the Service which complies with the Agreement;
- 6.1.4 during and after the provision of the Service, to keep confidential any information which was made available in the course of provision of the Service, if the Buyer knew or was supposed to know that the confidentiality of such information is within the interests of the Consultant;
- 6.1.5 to respond to any Expressions of Will associated with disputes arising from the Agreement or the performance of the Agreement within reasonable time;
- 6.1.6 to fulfil other obligations arising from the Agreement.

6.2 The Buyer shall have the right:

- 6.2.1 to suspend provision of the Service by the Consultant, if the Consultant materially fails to fulfil the obligations stipulated in the Agreement, and this failure may jeopardize provision of the Service in accordance with the Agreement and/or delivery of the Service.

## **7 DEFICIENCIES IN THE WORK**

- 7.1 The Consultant shall exercise skill, care and diligence in the performance of the Services and shall carry out the Consultant's responsibilities under this Agreement in accordance with the Agreement and generally recognized professional standards applicable to the class of services provided in this document. If, during the six (6) month period following completion of the Consultant's Services, it is shown that the Consultant has failed to meet the requirements stated in the Agreement, and the Buyer has promptly notified the Consultant in writing of such failure, the Consultant shall perform such necessary corrective measures and compensate the direct damages caused to the Buyer through such failure as set out in this Agreement.
- 7.2 .
- 7.3 The approvals given by the Buyer in the course of Service provision and/or acceptance of the Service by the Buyer in accordance with the Agreement, shall not exempt the Consultant from the appropriate fulfilment of any obligations arising from the Agreement, or from other consequences provided by the Agreement in case of failure to fulfil or appropriately fulfil its obligations hereunder. These approvals and/or acceptance of the Service by the Buyer in accordance with the Agreement shall not exclude or restrict the exercising of the Buyer's rights arising from the Agreement.
- 7.4 The Buyer shall inform the Consultant of the Service's non-compliance with the requirements arising from the Agreement within a reasonable period of time after discovering the non-compliance.
- 7.5 Any damage caused deliberately or through gross negligence shall be fully compensated by the Party who caused the damage.
- 7.6 The Consultant shall not be held liable for any damage caused to the Buyer, unless the Consultant is at fault for causing the damage.

## **8 LIABILITY**

- 8.1 The Parties shall be liable for all the infringements committed by the persons, who participate in the performance of the obligations arising from the Agreement or from the legislation, in accordance with the limitations envisaged in this Agreement. A breach or an undue performance of an obligation is excusable in the event of *Force Majeure*.
- 8.2 In the event of a breach of the Agreement the Party may use separately or jointly all remedies provided by law or this Agreement, unless it has been expressly excluded or limited in the present Agreement.
- 8.3 The Parties shall in no event have any liability under or in relation to this Agreement (including any breach thereof) for any indirect or consequential damages of any nature and without limitation, any damages arising out of or pertaining to loss of profits or anticipated profits or other revenue, interest, loss of product or business interruption. Furthermore, the Consultant has no liability for damages which are caused by reasons or circumstances not attributable to the Consultant.
- 8.4 In case the Consultant has breached the confidentiality clause, the Buyer shall be entitled to demand a contractual penalty in the amount of 10 000 (ten thousand) EUR per breach of contract. In case of any other essential breach of the Agreement, the Buyer is entitled to demand from the Consultant the contractual penalty of 25% from the fee payable under the Agreement during the expected term of the Agreement.
- 8.5 If the Consultant fails to provide the Service by the 30<sup>th</sup> of September 2017 (inclusive), the Buyer shall be entitled to demand from the Contractor a contractual penalty of 0,1 % from the the fee payable under the Agreement during the expected term of the Agreement per each delayed day.

## **9 FORCE MAJEURE**

- 9.1 The Parties shall be exempted from the performance of the Agreement for a period during which the performance of the Agreement is hindered by force majeure. Circumstances, which the affected Party could not have foreseen, or, even if he had foreseen, could not have prevented, shall be considered as force majeure. The Parties shall be obliged to apply any appropriate measure to avoid causing damage to the other Party, and ensure performance of the Agreement where possible.
- 9.2 The other Party shall be informed without undue delay in written form of the occurrence of force majeure circumstances.

- 9.3 In case of occurrence of force majeure circumstances, the term established in the Agreement shall be postponed by the period of occurrence of the above force majeure circumstances.
- 9.4 If the force majeure circumstances last for more than 2 (two) months, the Parties shall have the right to terminate the Agreement.

## **10 CONFIDENTIALITY**

- 10.1 During the term of this Agreement and five (5) years thereafter, the Consultant shall not disclose, orally or in writing, to any third party without the Buyer's prior written consent, any information regarding terms of this Agreement as well as all information that has become known to it in the course of or as a result of performance of contract. The Consultant may use the title of the Services as his professional reference without a prior consent of the Buyer.
- 10.2 The Buyer shall not during the term of this Agreement and five years thereafter, orally or in written form, disclose to any third party, and shall keep strictly confidential, any and all technical, commercial and managerial information, know-how and expertise which the Consultant has provided and which under the normal trade practices are considered as trade secrets.
- 10.3 The provisions of this section 10 shall not apply to information that; (a) is or becomes public knowledge otherwise than through the receiving party's breach of his confidentiality obligations; or (b) was obtained by the receiving party from a third party having no obligation of confidentiality with respect to such information; or (c) can be shown to be known by the recipient by written records made prior to disclosure by the disclosing party; or (d) in such circumstances where a competent court or law requires disclosure of confidential information.
- 10.4 The Consultant may use the name and the title of the Service as his professional reference without a prior consent of the Buyer.

## **11 VALIDITY, TERMINATION AND EXPIRY OF THE AGREEMENT**

- 11.1 The Agreement shall enter into force from the moment of its signing by the Parties, and shall remain in force until performance of the obligations arising from the Agreement by the Parties.
- 11.2 The Agreement may be amended and terminated by the Parties' written consent.
- 11.3 Both Parties may terminate the Agreement,
- 1) if the other Party has materially violated the obligations arising from the Agreement or
  - 2) if the other Party becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which has a similar effect to any of these acts or events.
- 11.4 The other Party shall be informed of the termination in writing at least 1 (one) month in advance.
- 11.5 Upon any discontinuation or postponement of the Services or termination of the Agreement, the Consultant shall be entitled to reimbursement in full for all Services and Additional Services performed and any other sums due pursuant to this Agreement up to the effective date of the discontinuation, postponement or termination.
- 11.6 Upon termination of the Agreement, the Consultant shall present an invoice and a report on the provided Service within 20 (twenty) working days after receiving the corresponding notice.

## **12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 If the Services or its part, also the documents which are subject of the Agreements, are considered as products or works falling under the copyright protection, then the Agreement shall be considered simultaneously as a copyright contract in a sense of the copyright law, with legal consequences listed below:

- 12.1.1 by concluding the Agreement, the Contractor transfers to the Buyer all property rights on the subject matter of author's rights;
- 12.1.2 by concluding the Agreement, the Contractor transfers the ownership of work to the Buyer, including the documents which are considered as a subject of work;
- 12.1.3 the remuneration paid to the Contractor on the basis of the Agreement also includes the author's bonus (author's remuneration) under the regulation of the copyright law.

### **13 SETTLEMENT OF DISPUTES**

- 13.1 All disputes arising out of or in connection with the present Agreement shall be settled in Harju County Court of Estonia.
- 13.2 The disputes on and arising from Agreement shall be governed by the laws of the Republic of Estonia without reference to any other jurisdiction. It is expressly agreed that the United Nations Convention on Contracts for International Sale of Goods (CISG 1980) shall not be applied to this Agreement.

### **14 EXPRESSIONS OF WILL**

- 14.1 Any Expressions of Will related to the Agreement and the performance of the Agreement, if these do not deviate from the terms and conditions of the Agreement, shall be considered as presented in accordance with the Agreement, provided that the Expressions of Will are presented to the other Party for a signature, or forwarded by post (including e-mail) or fax (unless the Agreement stipulates that the Expressions of Will may only be forwarded in writing) to the individuals at the below addresses:

14.1.1 Buyer: Enefit Taastuenergia OÜ Technical Manager Reigo Kebja  
telephone: +372 71 52 768, +372 5884 3834  
telefax: +37271 52 200  
e-mail: [reigo.kebja@energia.ee](mailto:reigo.kebja@energia.ee)

14.1.2 Consultant:  
telephone: +  
telefax: +  
e-mail:

- 14.2 Any Expressions of Will related to the Agreement and the performance of the Agreement, if these do not deviate from the terms and conditions of the Agreement, shall only be considered valid, if presented by the individuals specified in clauses 14.1.1 and 15.1.2, or individuals authorized by them.

### **15 OTHER**

- 15.1 By signing the Agreement, the Consultant shall confirm having a complete overview – sufficient for the performance of the Agreement – of the volume and scope of the Service to be provided, as well as other reasonably foreseeable circumstances related to the Service, and being able to provide the Service in accordance with the terms and conditions of the Agreement.
- 15.2 The Parties shall not have the right to transfer the rights and/or obligations arising from the Agreement to third parties without the other Party's written consent, except for transfer of the rights and/or obligations arising from the Agreement to the subsidiary of Enefit Taastuenergia OÜ into whose ownership or possession the Buyer's structural unit or a part of the structural unit is granted. This Agreement has been concluded in two copies of equal legal force, of which both Parties shall retain one copy.
- 15.3 The Agreement shall enter into force upon its signing by the Parties' authorised representatives.

## 16 THE PARTIES' SIGNATURES AND CONTACT INFORMATION

**Enefit Taastuenergia OÜ**

Registry code: 11184032

Lelle 22 11318 TALLINN

Registry code:

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