CONTRACT FOR CONSULTANCY SERVICES

BETWEEN

Maritime Transport Agency (“MTA”) of the Ministry of Economy and Sustainable Development of Georgia

AND

[ ]

[Date]

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**CONTRACT FOR CONSULTANCY SERVICES**

This contract for consultancy services (the “**Contract**”) is made on [date] between:

1. **Maritime Transport Agency (“MTA”) of the Ministry of Economy and Sustainable Development of Georgia**

and

1. **[COMPANY NAME] (the “Consultant**”),

individually referred to as a “Party”, and together referred to as the “Parties”.

# 1. Background

MTA has applied for and received financial support from Swedfund International AB (“**Swedfund**”) for the financing of a feasibility study for Sustainable Port Waste Management in Georgia. The Consultant has been selected to execute the study following a tender process.

A binding financing commitment letter from Swedfund is provided in Annex 1 (the “**Financing** **Commitment**”). It is noted that the terms and conditions set out therein is a prerequisite for Swedfund commitment to fully finance the study and that any breach thereof may lead to Swedfund termination of the Financing Commitment.

Against the background of the foregoing, MTA and the Consultant have agreed as follows:

# 2. Description of Assignment

The Consultant shall carry out the assignment (the “**Assignment**”) as detailed in the Terms of Reference, Annex 2.

# 3. Deliverables

The Consultant shall submit to MTA the deliverables in accordance with the following schedule:

|  |  |  |
| --- | --- | --- |
| **Deliverable**  | **Content** | **Time for submission** |
| Inception Report | Summary of first assessment of existing situation and data, as specified in section 4.2 Tasks A-G.Identification of relevant stakeholdersUpdated Work Plan including manning schedule | 1 month after Project start |
| Interim Report | Preliminary findings, conclusions and recommendations for particularly tasks A-G, H-K and P | 2-3 months after Project start (early November) |
| Draft Feasibility Study  | Final draft reporting on tasks A-G, and draft reporting on tasks H-P. 1. **PRF Development Action Plan** on short and long term
2. **Conceptual design of a SPWM system** including logistics, facilities for reception, storage, recycling, treatment and disposal
3. **Financial study** on capital and operational cost for the proposed SPWM system including fees, tariffs, and business cases
4. **Assessment of environment, health and social risks and impacts**
5. **Capacity development plan** for various stakeholders and recommendations for organizational improvements
 | 4 months after Project start |
| Workshop and documentation | Task Q. Presentations (MS PPT) of the Draft FS. Documentation from the workshop, program, list of participants, brief report on inputs from participants and conclusions | Shortly after submission of Draft FS |
| Final Feasibility Study  | Finalization of the Draft FS based on Client’s review and inputs from the Workshop, all tasks A-P plus reporting from task Q  | 2 weeks after receiving comments from the Client  |

All deliverables shall be submitted to MTA in English language and only the final version of the report should be submitted in both English and Georgian language.

MTA shall approve or request modifications to any interim reports in writing to the Consultant within seven (7) business days from receipt of such deliverables. If MTA fails to notify the Consultant within such seven (7) business day period, MTA shall be deemed to have accepted such deliverables.

# 4. Personnel

The Consultant shall supply personnel according to description in consultant proposal, Annex 3.

The Consultant shall provide a team leader acceptable to MTA for the supervision and coordination of personnel operations in the field and who will be responsible for liaison between the Consultant and MTA.

The Consultant shall be responsible for its consultants, advisors, sub-consultants, suppliers etc. For the avoidance of doubt, the Consultant shall not be responsible for the acts or omissions or performance by the consultants, contractors, advisors or suppliers engaged by MTA in respect of the Assignment (whether or not recommended by the Consultant), nor shall it control, direct or supervise the construction methods, means, techniques, sequences or procedures of such contractors, subcontractors or suppliers of their services for the Assignment.

# 5. Commencement date

The Assignment shall commence in 15.08.2021 and be completed latest by 21.12.2021, or such later dates as agreed in writing between MTA and the Consultant.

# 6. Facilities and services provided by MTA

MTA shall provide the Consultant free of charge the services, facilities, equipment, staff, documents and information relevant to the assignment. MTA shall promptly fulfil all of MTA's responsibilities and shall promptly consider requests by the Consultant for information, directions or decisions and diligently provide the requested information or inform the Consultant of MTA's direction or decision within a reasonable time so as not to delay the Assignment.

MTA shall within its authority boundaries, make available to the Consultant any information and data pertaining to the Assignment which is required by the Consultant to perform the services and shall within its authority boundaries, when notified by the Consultant, perform any ancillary services that are necessary to enable the Consultant to provide the services.

MTA shall arrange where necessary for the Consultant's access to any required locations to enable the Consultant to provide the services.

MTA shall obtain approvals, licenses and permits or any other authorizations or rights from all governmental authorities or other persons as reasonably required for the performance of the Assignment.

# 7. Sub-consultants

It is anticipated that the Consultant may subcontract either a national consultant firm or individual national experts. The Consultant has the responsibility to notify MTA in advance and receive MTA approval before any sub-consultant is engaged for the study.

# 8. Undertakings

The Consultant undertakes to and shall procure and ensure that its sub-consultants undertake to:

1. conduct business in a sustainable and responsible manner with a long term perspective and strive to adhere to international standards and internationally recognised human rights as well as internationally acknowledged standards for business integrity and corporate governance;
2. comply with legal and regulatory requirements in the jurisdictions where they operate;
3. comply with the Harmonized EDFI Exclusion List[[1]](#footnote-1);
4. comply with applicable IFC Performance Standards; and
5. prohibit all kind of corruption, such as bribery, extortion, facilitation payments, nepotism and cronyism, fraud, money laundering, financing of terrorism and political contributions and other unethical behaviour.

# 9. Payments under the Contract

The Consultant shall submit invoices to MTA following the reimbursement plan in Annex 4. Such invoices shall be paid directly by Swedfund on behalf of MTA as set out in the Financing Commitment within thirty (30) days of submission of the invoices.

Any invoices shall be submitted to MTA with a copy to Swedfund. MTA shall notify Swedfund of its approval or non-approval (as applicable) of any invoices to be partly or fully paid by Swedfund within thirty (30) business days from receipt of such invoice by mail: e-mail PA@swedfund.se

The notification to Swedfund shall include the following information: (i) reference number on the invoice from the consultant; (ii) report of carried out work (e.g. Inception report); (iii) amount on the invoice to be paid; and (iv) a statement whether the invoice is approved, or not. Any payment by Swedfund shall be made directly to the Consultant. Swedfund shall pay an approved invoice within thirty (30) days following receipt thereof.

AII payments to the Consultant shall be made to the bank account set out below:

**Payment method** Wire transfer

**Bank name** X

**Address** X

**Account name** X

**Account number or IBAN** X

**SWIFT/BIC** X

# 10. Maximum payment

The amount payable to the Consultant for the services defined in this Contract shall not exceed the sum of [amount] Swedish Krona (SEK) excluding VAT (the “**Maximum Amount**”).

The Consultant is of the understanding that the Consultant and its personnel (as well as sub-consultants and their personnel) shall be exempted from any taxes, duties, fees, and other impositions levied, under the applicable law of Georgia except for

taxes of a de minimis nature imposed on local lodging, food, transportation or airport

arrivals or departures.

Thus, the amount payable under this Contract as set out above, as well as any following changes to this amount, is excluding of all local taxes (e.g. local sales tax, withholding tax, income tax etc.) in Georgia. Should any local tax be applicable upon or a as consequence of the performance of the obligations under this Contract, costs for such tax and the administration therefore shall be compensated for by MTA to the Consultant.

# 11. Authorised representative of MTA

The authorised representative of MTA may take any action required and execute any documents required under this Contract and in relation to the Assignment on behalf of MTA.

The authorised representative of MTA is:

[Name]

[Title]

Tel:

Email:

# 12. Authorised representative of the Consultant

The authorised representative of the Consultant may take any action required and execute any documents required under this Contract and in relation to the Assignment on behalf of the Consultant.

The authorised representative of the Consultant is:

[Name]

[Title]

Tel:

Email:

# 13. Intellectual Property Rights

All documents (reports, plans, maps, diagrams, etc.) and other materials compiled or prepared by the Consultant in the course of the Assignment shall be the property of MTA and Swedfund. Subject to confidentiality, the Consultant shall have an irrevocable right of indefinitive duration do use such documents.

# 14. Liability

Subject to the limitations below, the Consultant shall be liable for damages the Consultant and/or its sub-consultants have caused MTA through lack of professionalism, disregard for customary due care or other negligence in the implementation of the Assignment. Where MTA has shown that damage has occurred and has made likely that the damage is due to an error in the Consultant’s document or an omission by the Consultant and/or its sub-consultants, the Consultant must show that the Consultant and/or its sub-consultants are not liable for the damage in order to exempt itself from liability.

The Consultant’s total liability for damages due to the Assignment is limited to the Maximum Amount. This amount shall not include damages for delay.

In order for a claim for damages to give rise to a right to compensation, it must be made in writing within one (1) month after MTA has reasonable grounds to assume that the Consultant is liable for the damage, but no later than nine (9) months after MTA became aware of the damage. In addition, the claim must be presented within three (3) years of the date on which the Assignment was completed or otherwise came to an end.

# 15. Insurance

The Consultant shall, prior to the commencement of the Assignment, take up appropriate insurance for the carrying out of the Assignment.

# 16. Confidentiality

The Consultant shall not disclose any non-public confidential information received from MTA and/or related to the Assignment to a third party without the prior written consent by MTA during the term of this Contract and during two years thereafter. This duty of confidentiality is not applicable to information (i) required to be disclosed by law or regulation and (ii) information lawfully known to the Consultant prior to receiving such from MTA. It is noted that Swedfund shall not be considered a third party.

# 17. Audits and independent evaluations

The Consultant shall and shall procure and ensure that its sub-consultants shall, upon request by Swedfund, co-operate with and assist Swedfund free of charge to perform audits and follow-ups as well as independent evaluations of the Assignment.

# 18. Fraud, misrepresentation or corruption

It is noted that either Party may terminate the agreement with immediate effect should the other Party have fraudulently mislead the first Party, made misrepresentations or been engaged in corruption.

It is noted that Swedfund may terminate its Financing Commitment with immediate effect should the Parties have fraudulently mislead Swedfund, made misrepresentations or been engaged in corruption. The Consultant furthermore accept and agree that Swedfund, on behalf of MTA, may request immediate repayment together with interest if the Consultant and/or its sub-consultants have contributed in the fraud, misrepresentation or corruption.

# 19. Term of the Contract

This Contract shall become effective on the date hereof and shall remain in force until the earlier of (i) the termination of this Contract pursuant to this Section 19, and (ii) Assignment has been completed and the Parties have fulfilled their respective obligations hereunder.

Either Party may immediately terminate this Contract upon: (ii) the other Party’s bankruptcy or liquidation or if it is otherwise becoming insolvent; (ii) the other Party’s material breach of this Contract which has not been rectified within ten (10) business days from the receipt of a written notice; and/or (iii) Swedfund’s withdrawal of financing.

On termination, the Consultant will be paid for all authorized work performed up to the termination date plus reasonable termination expenses.

# 20. Notices and requests

Any notice or request required under this Contract from a Party shall be in writing and is handed, mailed or e-mailed to the Party at the address specified below.

**For MTA:**

[Name]

[Title]

Tel:

Email:

**For the Consultant:**

[Name]

[Title], [Company]

Tel:

Email:

# 21. Amendments

All modifications of or amendments to this Contract must be made in writing, signed by both Parties and approved by Swedfund.

Either Party may, at any time, propose to the other Party changes to the Assignment including, without limitation, additions, deletions, rescheduling and acceleration or deceleration to all or any part of the Assignment.

In the event a proposed change directly or indirectly causes an increase or decrease in the time or cost to perform the Assignment, the Parties shall without delay negotiate in good faith an equitable adjustment to the schedule or compensation or both. The Consultant shall not proceed with any proposed change unless the Contract has been appropriately modified in writing as set out above.

# 22. Disputes

These terms and conditions shall be governed by the substantive laws of England and Wales.

Any dispute, controversy or claim arising out of or in connection with these terms and conditions, or the breach, termination or invalidity thereof, shall be resolved by friendly negotiations.

If no solution has been reached within sixty (60) days after the dispute arose, during which the parties shall have met at least twice, the matter shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (the ICC).

The arbitration tribunal shall be composed of one arbitrator. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

The Parties agree to treat the proceedings, all documents and other information exchanged between the Parties, the tribunal and any decision or award from the tribunal as strictly confidential and not to disclose any such information.
This notwithstanding, a Party shall not be prevented from disclosing such information in order to safeguard in the best possible way its rights vis-à-vis the other Party in connection with the dispute, or if the Party is obliged to disclose pursuant to law, regulation, a decision or request by an authority or similar. The confidentiality undertaking following from this Section 22 shall apply without any limitation in time.

\*\*\*

This Contract has been duly executed in two (2) original copies, of which each of the Parties has taken one (1) copy.

|  |  |  |
| --- | --- | --- |
| [Place and date] |  | [Place and date] |
| [NAME] | [NAME] |
|  |  |  |
| Name:Position: |  | Name:Position: |
| Name:Position: |  | Name:Position: |

# Annex 1. Financing Commitment

Swedfund is the Development Finance Institution of the Swedish state. The programme Swedfund Strategic Project Development aims to support sustainable project development. The programme offers support by facilitating advisory services and co-financing of studies. The support and co-financing from Swedfund Strategic Project Development can be regarded as a grant to strengthen and develop bilateral co-operation, targeting projects that are of high priority for the beneficiary and that have relevance to Swedish know-how and experiences.

Sustainability, meaning environmental and social considerations, labor rights, human rights, gender, anti-corruption, corporate governance and business ethics, is crucial in all projects supported by Swedfund Strategic Project Development.

The project for Georgia comprises a study regarding [description]. We acknowledge that you have assigned [company] as consultant to carry out the project.

The undertaking to fully finance the agreed study from Swedfund will become effective upon your acceptance of the terms and conditions stipulated herein and when the contract between the Consultant and you is duly executed and in full force and effect.

See attached Swedfund commitment letter incl. conditions.

# Annex 2. Terms of Reference

See attached ToR document.

# Annex 3. Consultant Proposal

See attached Consultant Proposal.

# Annex 4. Reimbursement plan

|  |  |  |
| --- | --- | --- |
| **Deliverable**  | **Part of lump sum payment (%)** | **Lump sum payment (SEK)** |
| 1. Advance payment upon contract signing
 | 10% |  |
| 1. Inception Report
 | 10% |  |
| 1. Interim Report
 | 25% |  |
| 1. Draft Feasibility Study and Workshop incl. documentation
 | 30% |  |
| 1. Final Feasibility Study
 | 25% |  |

1. https://www.swedfund.se/media/1122/harmonized\_edfi\_exclusion\_list\_2012.pdf [↑](#footnote-ref-1)