

SERVICE CONTRACT No AA-010079-001

FINANCED FROM THE EASTERN PARTNERSHIP TECHNICAL ASSISTANCE TRUST FUND

MADE BETWEEN:

The European Investment Bank, having its head office at 100, Boulevard Konrad Adenauer, L-2950 Luxembourg, Grand Duchy of Luxembourg, (the “**Contracting Authority**”),
and

[Option 1] <full official name of the Consultant> <ISO country code>, <Legal status/title>¹, <Official registration number>², <Full official address>, <VAT number>³ OR

[Option 2] the consortium composed of <full official name and ISO country code of each of the members of the consortium>, led and represented by <full official name of the Leader> <ISO country code>, <Legal status/title>⁴, <Official registration number>⁵, <Full official address>, <VAT number>⁶, (the “**Consultant**”)

WHEREAS:

By a finance contract dated 24/07/2019, the Contracting Authority made available to The Republic of Belarus a credit in amount of up to EUR 66,000,000, (the “**Finance Contract**”).

The Contracting Authority has concluded, on <date of signature>, a Cooperation Agreement with Ministry of Housing and Utilities (the “**Promoter**”) in relation to this technical assistance operation (the “**Cooperation Agreement**”);

In connection with the Finance Contract and the Cooperation Agreement, the Contracting Authority and the Consultant have agreed to enter into this Service Contract (the “**Contract**”) on the terms and conditions set out below.

SPECIAL CONDITIONS

(1) Subject

The subject of this Contract, with identification number **AA-010079-001** and title “Belarus Utility Services Modernisation - Project Implementation Support” is the performance of the services as further described in Annex II (the “**Services**”) to be implemented in Belarus.

(2) Structure of the Contract

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- 1 Where the contracting party is an individual.
 - 2 Where applicable. For individuals, mention their ID card or passport or equivalent document - number
 - 3 Except where the contracting party is not VAT registered.
 - 4 Where the contracting party is an individual.
 - 5 Where applicable. For individuals, mention their ID card or passport or equivalent document - number
 - 6 Except where the contracting party is not VAT registered.

The Consultant will carry out the Services on the terms and conditions set out in this Contract, which comprises, in order of precedence, these special conditions (the "**Special Conditions**") and the following annexes:

- Annex I: General Conditions for service contracts financed by the European Union (the "**General Conditions**")
- Annex II: Terms of reference including clarifications before the deadline for submission of tenders (the "**Terms of Reference**")
- Annex III: Organisation and methodology [*if the case, please add the following:*] including clarifications from the tenderer provided during tender evaluation
- Annex IV: Key experts
- Annex V: Budget breakdown
- Annex VI: Forms and other relevant documents
- Annex VII: Report of factual findings and terms of reference for an expenditure verification

In case of any contradiction between the above documents, their provisions shall be applied according to the above order of precedence, starting with the Special Conditions.

(3) Contract value

This Contract, established in Euro, is a **fee-based contract**. Based on the maximum fees, incidental expenditure and expenditure verification provision defined in Annex V, the maximum contract value is **EUR <amount> (amount in letters) ("Maximum Contract Value")**.

(4) Commencement Date

The date for commencing the implementation of the Services shall be *<date / date of signature of the contract by both parties>* (the "**Commencement Date**").

(5) Period of implementation

The period of implementation of the tasks identified in Annexes II & III is **72** months from the Commencement Date.

(6) Reporting

The Consultant shall submit progress reports as specified in the Terms of Reference.

(7) Payments and bank account

- 7.1 Payments will be made in Euro in accordance with Article 29 of the General Conditions into the bank account notified by the Consultant to the Contracting Authority in accordance with Articles 7.8 and 20.7 of the General Conditions.
- 7.2 The payments will be made according to the following schedule, subject to the provisions of Articles 26 to 33 of the General Conditions:

Month		EUR
1	First pre-financing payment ⁷	<amount> ⁸
6-monthly	Renewed pre-financing payments and interim payments	<amount> ⁹
<Month number>	Forecast balance	<amount> ¹⁰
	Total	<Maximum Contract Value>

The actual amounts payable after the first pre-financing payment will vary. They must be based on the Consultant's invoice accompanied by an interim progress report and an expenditure verification report subject to approval of those reports in accordance with Article 27 in the General Conditions.

The aggregate amount of the advance and interim invoices issued by the Consultant to the Contracting Authority shall not exceed 90% of the Maximum Contract Value. Should an invoice be issued for an amount exceeding 90% of the Maximum Contract Value, the Contracting Authority shall only pay outstanding amount due up to 90% of the Maximum Contract Value.

- 7.3 Unless otherwise permitted under the terms of the Sanction (as defined in Article 8 of the General Conditions), the Contracting Authority shall not make, nor shall the Consultant request, any payments under this Contract as of the date of a Sanction Event (as defined in Article 8 of the General Conditions), irrespective of whether the payment concerns delivery of Services predating the Sanction Event. For the avoidance of doubt, payments so extinguished shall not be recoverable.

(8) Contact addresses

Any written communication relating to this Contract between the Contracting Authority and the Consultant must state the Contract title and identification number, and must be sent by post, fax, e-mail or by hand to the addresses identified in accordance with Articles 5.3 and 7.8 of the General Conditions.

(9) Law and language of the Contract

- 9.1 This Contract and any dispute or claim arising out of or in connection with it shall be governed by the laws of the Grand Duchy of Luxembourg.
- 9.2 The Courts of the city of Luxembourg shall have exclusive jurisdiction to settle any dispute or claims arising out of the Contract.
- 9.3 The language of the Contract and of all written communications between the Consultant, the Contracting Authority [and the Promoter] shall be English.

(10) Tax and customs arrangements

No duties, levies or taxes, including VAT, which may be payable in the beneficiary country/countries will be charged to the Contracting Authority

(11) Other specific conditions applying to the Contract

- 11.1 Any subcontracting must be done in accordance with Article 4 of the General Conditions.

⁷ The consultant is not required to ask for pre-financing.
Maximum of 30 % of the Maximum Contract Value if the implementation period is 24 months or less, and 20 % of the Maximum Contract Value if the implementation period is more than 24 months.

⁹ Balance of first pre-financing payment and forecast balance

¹⁰ 10% of the maximum contract value

- 11.2 The Consultant must take the necessary measures to ensure the visibility of the funding source of the Contract. Such measures must be in accordance with the applicable rules on visibility, as specified in Annex II – Terms of Reference.
- 11.3 The following provisions shall amend or supplement the General Conditions:
- 11.3.1 The following paragraph is added to Article 4 of the General Conditions: “4.9 Without prejudice to the right of the Contracting Authority to terminate the Contract in accordance with its provisions, the Contracting Authority may request the Consultant to replace a subcontractor found to have been engaged in conduct bringing the Contracting Authority into disrepute, including a Sanction Event (as defined in Article 8.9 of the General Conditions) with another subcontractor of equal or greater quality. Failure by the Consultant to replace the subcontractor shall constitute a breach of this Contract for the purpose of Article 34 of the General Conditions.”
- 11.3.2 In relation to Article 6 of the General Conditions “Assistance with local regulations”, the term “the Contracting Authority of the beneficiary country” shall be read as referring to the Promoter, as identified in the Recitals to this Contract.
- 11.3.3 The following paragraph shall be added to Article 8 of the General Conditions: “8.9 *The Consultant undertakes not to breach, nor cause the Contracting Authority to breach, any sanctions or restrictive measures imposed or administered by a competent body or official institution or agency (each a “Sanction”) and shall inform the Contracting Authority in writing as soon as possible of any “Sanction Event”, that is where:*
- (a) *the Consultant, its staff, subcontractors and their staff, and any other persons acting on behalf of the Consultant in the performance of the Services, or any entity or person which directly or indirectly owns or controls or directs the Consultant, or which the Consultant acts on behalf of, breaches, or becomes in breach of or the target of, a Sanction; or*
 - (b) *a country or territory (including their government) in which any of the entities or persons referred to in point (a) above are located or resident in, or organised or incorporated under, becomes the target of a Sanction.*
- The Consultant shall ensure that it maintains appropriate internal controls and safeguards designed to prevent the violation of any Sanction.*
- The Parties acknowledge and agree that all Sanction-related undertakings are only sought and given to the extent that to do so is permissible pursuant to any applicable anti-boycott rule of the European Union, such as Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, p.1) as amended from time to time.”*
- 11.3.4 The following paragraph shall be added to Article 12 of the General Conditions: “12.6 At its own expense, the Consultant shall indemnify, protect and defend the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage (including any fines or penalties imposed on the Contracting Authority) arising out of the Consultant’s breach of its legal and/or contractual obligations in respect of Sanctions and personal data protection.”
- 11.3.5 In relation to Article 13.2, 13.3 and 13.4 of the General Conditions, the Consultant shall ensure that all the insurance policies effected under these provisions shall contain a waiver of subrogation rights, in favour of the Contracting Authority.
- 11.3.6 Article 13.3 of the General Conditions shall read as follows: “Within 20 days of signing the Contract, the Consultant shall take out, unless it already has such a policy, and maintain, a full indemnity insurance policy, for a sum up to the higher of the maximum amount foreseen by the legislation of the beneficiary country and headquarters, and covering, during the period of implementation of the tasks, the following aspects:
- (a) The Consultant’s liability in respect of sickness or industrial accident affecting its employees, including the cost of repatriation on health grounds;
 - (b) Loss of, or damage to, the Contracting Authority’s equipment, if any, used by the Consultant, its agents or employees, to perform the Contract;

- (c) Civil liability in the event of accidents caused to third parties or to the Contracting Authority and any employee of that Authority, arising out of the performance of the Contract by the Consultant, its agents or employees;
 - (d) Accidental death or permanent disability resulting from bodily injury incurred by any person in connection with the performance of the Contract by the Consultant, its agents or employees.”
- 11.4.7 In relation to Article 19.1 of the General Conditions, the “implementation period” shall be read as referring to any specific period of time mentioned in the Contract within which certain tasks / activities have to be performed and/or certain outputs have to be produced.
- 11.4.8 In relation to Article 19 of the General Conditions, paragraph 19.2 shall be amended to: “The daily rate for liquidated damages will be 0.05% of the Maximum Contract Value”.
- 11.4.9 Within the framework of Article 24.2 of the General Conditions, the person authorised by the Contracting Authority to approve the Consultant’s timesheets on a monthly basis is the Promoter. For the services delivered off-site, the timesheets must be counter-signed by the Consultant’s designated Project Director / TA Coordinator.
- 11.4.10 The following paragraph shall be added to Article 28 of the General Conditions: *“28.5 If the expenditure verification report submitted by the external auditor does not comply with the model provided in Annex VII to the Contract in terms of verifications to be performed and level of assurance to be provided, the Contracting Authority reserves the right to refuse the payment of the expenditure covered by that report until a full verification of the supporting documents is carried out by the Contracting Authority itself. In any and all such cases, the Contracting Authority shall not make any payments for the costs of the expenditure verification.”*
- 11.4.11 In relation Article 34 of the General Conditions, the Contracting Authority’s liability will be limited to wilful misconduct or gross negligence.
- 11.4.12 Article 35 of the General Conditions shall read as follows:
- “35.1 Without prejudice to the right of the Contracting Authority to terminate the Contract under Article 36, the Contracting Authority may at any time suspend the Contract or any part thereof (including the payments), in particular where it considers such suspension in the interest of the project or where there are suspected or established errors, irregularities or fraud committed by the Consultant in the performance of another contract funded by the general budget of the European Union, by EDF or by the Contracting Authority which are likely to affect the performance of the present Contract. Suspension shall take effect on the day that the Consultant receives written notice from the Contracting Authority, or at a later date when the notice so provides.*
- 35.2 The Contracting Authority shall suspend the payments and/or the execution of the Contract:*
- (a) where the award procedure or the performance of the Contract is vitiated by substantial errors or irregularities, or by suspected or proven fraud. In addition, where such errors, irregularities or fraud are attributable to the Consultant, the Contracting Authority may refuse to make further payments or may proceed to recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud;*
 - (b) where the Contracting Authority is obliged to do so pursuant to (i) a request by the providers of the funding for the Contract, or (ii) the provisions of the contracting arrangements between the Contracting Authority and the providers of the funding or the Contract, as these are identified in the Special Conditions or the Terms of Reference;*
 - (c) a Sanction Event.*
- 35.3 During the period of suspension, the Consultant shall take such protective measures as may be necessary to mitigate any loss and submit, for the written approval of the Contracting Authority, an estimate of associated expenses (“Mitigation Expenses”). Upon the submission of receipts, the Contracting Authority shall reimburse*

the Consultant for all approved Mitigation Expenses unless the suspension of the Contract or payments thereunder is enacted pursuant to Article 35.2.

35.4 Except for the situations described in Article 35.2, and unless otherwise agreed in writing by the Parties, the maximum period of suspension shall be 90 calendar days. Upon expiry of this period, and before availing itself of the right specified under Article 37.1(c), the Consultant shall seek written instructions from the Contracting Authority on whether the Contract shall be fully or partially resumed, or terminated."

11.4.13 A new letter (n) shall be added to Article 36.3 of the General Conditions, reading as follows: *"(n) a Sanction Event occurs;"*

11.4.14 In relation to Article 36 of the General Conditions, the following paragraph shall be added: *"36.11. If, for any reason whatsoever the Finance Contract or the Cooperation Agreement is terminated or ceases to be valid and in full force and effect, the Contracting Authority may, upon written notice to the Consultant, immediately terminate this Contract and inform the Consultant of the terms of such termination."*

11.4.15 A new Article 41 shall be added to the General Conditions, reading as follows:

"41.1 Any personal data included in the Contract shall be processed by the Contracting Authority pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p.39). The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with monitoring or inspection in application of EU law. The data subjects shall have the right to access their personal data and to rectify any such data. Should the data subject have any queries concerning the processing of his/her personal data, s/he shall address them to the Contracting Authority. The data subject shall have right of recourse to the European Data Protection Supervisor in accordance with the provisions of the aforementioned Regulation.

41.2 Where the contract requires processing personal data, the Consultant may act only under the supervision of the data controller, in particular with regard to the purposes of processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

41.3 The data shall be confidential within the meaning of the Regulation referred to in Article 41.1. The Consultant shall limit access to the data to staff strictly needed to perform, manage and monitor the contract.

41.4 When acting as personal data processor on behalf of the Contracting Authority, the Consultant undertakes to adopt technical and organisational security measures to address the risks inherent in processing and in the nature of the personal data concerned in order to:

a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:

- (i) unauthorised reading, copying, alteration or removal of storage media;*
- (ii) unauthorised data input, unauthorised disclosure, alteration or erasure of stored personal data;*
- (iii) unauthorised persons from using data-processing systems by means of data transmission facilities*

b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

c) record which personal data have been communicated, when and to whom;

d) ensure that personal data processed on behalf of third parties can be processed only in the manner prescribed by the Contracting Authority;

- e) *ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;*
- f) *design its organisational structure in such a way that it meets data protection requirements."*

11.4.16 The Contracting Authority shall not be liable towards the Consultant for any act or omission of the Promoter or for the failure of the Promoter to comply with its obligations set out in the Cooperation Agreement. Any such act, omission or failure shall not be interpreted as giving the right to the Consultant to terminate the Contract under the provisions of Article 37 of the General Conditions.

11.4.17 The Consultant will be an independent Contractor and nothing in the Contract will render him a worker, an employee or a partner of the Contracting Authority.

11.4 In addition following derogations from the General Conditions shall apply:

11.4.1 Article 40.3 is not applicable.

Signed in English in three (3) originals, (each page of which has been initialled by a representative of each Party), two (2) originals being for the Contracting Authority and one (1) original being for the Consultant.

**Signed for and on behalf of
EUROPEAN INVESTMENT BANK**

**Signed for and on behalf of
[the consortium led and
represented by]
THE CONSULTANT**

Date:

Date:

Date: