

Service Provision Agreement

Between COWI A/S on behalf of Western Balkans Investment Framework (WBIF)
 Infrastructure Project Facility - Technical Assistance 8 (IPF 8) Consortium
 of Parallelsvej 2, DK-2800 Kongens Lyngby, Denmark
 (hereinafter called "the Consultant")
 and **Name of the Service Provider**
 of **Address, postal code, city, country**
 (hereinafter called "the Service Provider") WHEREAS:

A: WHEREAS On 28 May 2019, COWI A/S, as lead partner of the consortium named Western Balkans Investment Framework (WBIF) Infrastructure Project Facility - Technical Assistance 8 (IPF 8) Consortium (composed of: COWI A/S (DK), COWI AS (NO), CESTRA d.o.o Beograd (SR), Egis International SAS (FR), ENVIROPLAN MELETHTIKH-SYMBOLYOI ANAPTYKSIKON KAI TEXNIKON ERGON A.E.(GR),GOPA Infra GmbH (DE), GOPA International Energy Consultants GmbH (Gopa Intec) (DE), SYSTEMA Transport Planning Consultants SM Ltd. (GR), TRENECON Consulting and Planning Ltd. (HU), Tetra Tech International Development BV (NL) (formerly known as WYG International B.V.), WYG International Danismanlik Limited Sirketi (WYG Türkiye) (TR) ("the Consortium"), has entered into a consultancy agreement (hereinafter called "the Main Agreement") with the European Investment Bank (hereinafter called "the Client") covering the consultancy services for "Western Balkans Investment Framework, Infrastructure Project Facility – Technical Assistance 8 (IPF 8), Infrastructures: Energy, Environment, Social, Transport and Digital economy", to be carried out in Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, and Kosovo* with identification number TA2018148 R0 IPA" (hereinafter called "the Project") which is financed from a direct contribution from EU IPA funds. Under the Main Agreement the Consultant is instructed to deliver services, including but not limited to the implementation of several sub-projects.

B: On (date) the Consultant has launched an **open tender** procedure for **Name of the Services** in respect to the Sub-Project **Code and Name**

C: : The **Name of the Service Provider**, following the evaluation was first ranked and the Consultant has accepted the offer] (Appendix 2) and the Client has issued its no-objection

D: The Consultant now wishes to appoint the Service Provider to perform under the Agreement the requested Services – namely, **Name of the Services** within the Scope of the subproject: **Code and Name**

THE CONSULTANT AND THE SERVICE PROVIDER AGREE AS FOLLOWS:

- 1 In this Service Provision Agreement words and expressions shall have the same meanings as are respectively assigned to them in Clause 1.1 [Definitions] of the General Conditions of the Service Provision Agreement.
- 2 The following documents shall be deemed to form and be read and construed as part of the Service Provision Agreement and shall be given the order of precedence as below:
 - (a) The General Conditions of the Main Agreement
 - (b) This Form of Service Provision Agreement
 - (c) Appendices 1 to 7 (read in conjunction with each other)
 - (d) The Service Provision Agreement Particular Conditions
 - (e) The FIDIC Sub-Consultancy Agreement General Conditions (Edition 2017)
- 3 In consideration of the payments to be made by the Consultant to the Service Provider under the Service Provision Agreement, the Service Provider hereby agrees with the Consultant to perform the Services in conformity with the provisions of the Service Provision Agreement.

The Consultant hereby agrees to pay the Service Provider in consideration of the performance of the Services such amounts as may become payable under the provisions of the Service Provision Agreement at the times and in the manner prescribed by the Service Provision Agreement.

AUTHORISED SIGNATURE OF CONSULTANT:	AUTHORISED SIGNATURE(S) OF SERVICE PROVIDER:
Signature	Signature
Michael Jacobsen	Name
IPF8 Team-Leader	Position
Date	Date

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

Particular Conditions

	Part A	References from Clauses in the General Conditions
1.1	Definitions	
1.1.3	Client	European Investment Bank
1.1.4	Commencement Date	Date
	Service Provider	Name of the Service Provider
1.1.6	Consultant's Representative	Michael Jacobsen
1.1.9	Country	Name
1.1.25	Service Provider's Representative	Name
1.1.26	Time for Completion	Amount of months/years
1.1.31	Beneficiary	Name of the Ministry/Institution
1.1.32	Promoter	Name of the Ministry/Institution
1.1.33	Lead International Financial Institution (IFI)	Name of the Institution
1.3	Notices and other Communications	
1.3.1(c)		Communication Letter and e-mail. Agreements and contract only by letter or approved digital solution
1.3.1(d)	Address for communications	
	Consultant's address:	Parallelvej 2, DK-2800 Kongens Lyngby, Denmark
	Registration/VAT number:	44623528
	Email:	michael.j@wbif-ipf8.eu
	Telephone	+45 41761523
	Service Provider's address	Address
	Registration/VAT number:	number
	Email:	email
	Telephone:	+number
1.4	Law and Language	
1.4.1	Law governing the Service Provision Agreement	Kingdom of Denmark
1.4.2	Ruling language of the Service Provision Agreement	English
1.4.3	Language for communications	English
1.8	Confidentiality	
1.8.3	Period for expiry of confidentiality	Equal to General Conditions of the Main Agreement
8	Liabilities	
8.2.1	Period of Liability	5 years and 30 days
8.3.1	Limit of Liability	Equal to the Service Provision Agreement Amount as defined in Appendix 3
9	Insurance	
9.1.1	Insurances to be taken out by Service Provider	
	Professional Indemnity Insurance	Equal to the Service Provision Agreement Amount
	Public Liability Insurance	Equal to the Service Provision Agreement

		Amount
10	Disputes and Arbitration	
	10.4.1(a) Arbitration rules	Danish Institute of Arbitration
	10.4.1(c) Language of arbitration	English

Part B Additional or Amended Clauses**1.1.5 Add to the Clause:**

The term "Sub-Consultancy Agreement" in the FIDIC General Conditions is replaced in this Agreement with "Service Provision Agreement".

1.1.9 Add to the Clause:

Country also includes the countries, where the Consultant's Project Management Office, the Client, Lead IFI and other relevant international institutions are located.

1.1.16 Delete.**1.1.21 Add to the Clause:**

In the FIDIC General Conditions, the term "Sub-Consultant" refers in the context of this Service Provision Agreement to "the Service Provider". Therefore all terms "Sub-Consultant" and phrases including "Sub-Consultancy" should be read accordingly.

1.1.24 Add to the Clause:

In the FIDIC General Conditions, the term "Sub-Consultancy Services" refers in the context of this Service Provision Agreement to "the Services"

1.2.7 Replace with:

Reference to "price", "rates", "costs", "expenses", "damages" and the like shall be a reference to the value of such item including of all applicable taxes (including VAT, duties, insurances etc) and all expenses unless specified otherwise.

1.5 Delete.**1.7 Replace with:** All rights, including intellectual and property rights as well as rights to publish the results of the Consultants works shall remain with the Consultant and as regulated by the Main Agreement.**1.10.3 Add New Clause:**

The the Service Provider is obliged to act in accordance with the Code of Ethics (Appendix 7) and the Business Integrity Policy (Appendix 6). Thus, no offer, payment, consideration, or benefit of any kind, which constitutes illegal or corrupt practices, shall be made, either directly or indirectly, as an inducement or reward in relation to the execution of this Service Provision Agreement. The Consultant has the right to terminate this Service Provision Agreement with immediate effect if the Service Provider or its personnel violates the said policy.

1.11.3 Add New Clause:

This Agreement does not create an employer-employee relationship between either the Service Provider or its personnel, and the Consultant.

3.2.1 Replace:

The Service Provider shall be deemed to have full knowledge of the provisions of this Service Provision Agreement and its attachments, including the Terms of References for Services of the Sub-Project attached at Appendix 1

3.4.1 Replace:

The personnel who are proposed by the Service Provider to provide the Services for the Sub-Project shall

be subject to acceptance by the Consultant with regard to their qualifications and experience. The Consultant may consult to the Client, to the Lead IFI and to the Beneficiary before providing his acceptance or at any time during the provision of the Services.

3.3.4 **Add New Clause:**

The Service Provider is obliged, in case it is in possession of valid ISO Standard Certificate (which has to be presented), to show to IPF8 representative: its Quality Manual and upon his/her request, the implementation of sample forms of such system, as described in the Quality Manual.

In case the Service Provider is not certified according to ISO Standard, it is obliged to demonstrate what necessary measures will be taken to secure the quality of the outputs according to the requirements of the Sub-project for good performance of the works. IPF8 representative shall request in this case the Service Provider to apply the relevant procedures of IPF8 according to IPF8 Project Manual, which shall be handed in to the Service Provider.

3.6.2 **Replace:**

The Consultant may require the Service Provider to replace any personnel where in the reasonable opinion of the Consultant and/or instructions provided by the Client, the Lead IFI and the Beneficiary, such personnel are not competent or capable of performing the Services satisfactory. The cost of such replacement shall be borne by the Service Provider.

3.6.3 **Add New Clause:**

For any approved replacement pursuant the clauses 3.6.1 and 3.6.2, the Service Provider shall provide all back-up and support necessary to prevent any delay and financial and reputational damages to the Consultant. In such case the Service Provider will replace the expert in maximum 7 days following the notice of replacement. The cost of any replacements under this clause shall be covered by the Service Provider.

5.2.4 **Add New Clause:**

All variations will be submitted by the Consultant for the approval of the Lead IFI and the Client without which they are not effective.

Before the KE final approval is issued, Should the need for further similar additional services arise, they can be contracted through an amendment up to 50% of the ceiling amount of this Agreement. For contracting additional services, the rates provided in Annexe to Financial offer will be used.

6.4.1(d) **Replace:**

(d) At its sole discretion upon giving the Service Provider twenty-eight (28) days notice provided always that the Consultant shall not be entitled to use this provision in order to obtain the Services from others;

6.4.1(e) **Replace:**

(e) without further notice, if the Main Agreement or implementation of the Sub-Project is terminated by the Client.

7.1.2(c) **Add New Clause:**

(c) No Exceptional Cost will be eligible for payment if the Notice in Clause 7.1.2(a) does not have the prior approval of the Consultant and the Client.

7.5.1 **Add to the Clause:**

The Service Provider shall keep, save and provide all proofing documents concerning the provided Services for 7 years following the completion of this Service Provision Agreement and provide them

immediately upon the request of the Consultant.

APPENDICES

Appendices form part of the Service Provision Agreement.

Appendix 1	Terms of references for the Services
Appendix 2	Service Provider's offer
Appendix 3	Remuneration and Payment
Appendix 4	Equipment and Facilities
Appendix 5	Rules for Adjudication
Appendix 6	COWI'S BUSINESS INTEGRITY POLICY
Appendix 7	COWI'S CODE OF ETHICS

Appendix 1 Terms of references for the Services

Appendix 2 Service Provider's offer

Appendix 3 Remuneration and Payment

1. Fees and expenses

The Consultants shall pay the Service Provider remuneration, corresponding for the Services, in following instalments :

<i>Milestone description</i>	<i>Percentage of total</i>	<i>Amount</i>
<i>Upon mobilisation of the team and equipment of the Service Provider</i>	<i>5%</i>	
<i>Upon completion of field works and submission of lithological profile at the section A.</i>	<i>10%</i>	
<i>Upon completion of the field works and submission of lithological profile at the section B.</i>	<i>15%</i>	
<i>Upon completion of the field works and submission of lithological profile at the section C.</i>	<i>20%</i>	
<i>Upon submission of the preliminary parameters for the design for section A</i>	<i>5%</i>	
<i>Upon submission of the preliminary parameters for the design for section B</i>	<i>10%</i>	
<i>Upon submission of the preliminary parameters for the design for section C</i>	<i>10%</i>	
<i>Upon approval by competent authority of elaborates in compliance with Law on planning and Construction and subsequent bylaws) for three separate subsections</i>	<i>10%</i>	
<i>Upon approval by competent authority of elaborates in compliance with Law on planning and Construction and subsequent bylaws) for three separate subsections</i>	<i>15%</i>	
<i>Total</i>	<i>100%</i>	<i>xxxx</i>

Ceiling amount of this Agreement is **xxxxxx Euro (in letters Euro)** (Hereinafter referred to as "**Service Provision Agreement Amount**").

This price does not include VAT. VAT will be subjected and processed in accordance with the legislation in the country of the Service Provider regarding projects financed by EU funds.

The remuneration will cover all necessary costs and expenses for completing the Services as well as all taxes, employer obligations etc. unless explicitly stated under 3. below.

2. Coverage

The payment shall constitute the entire payment for the Services and includes thus any expenses related to carrying out the Service, including but not limited to local and international transport, accommodation and subsistence, printing, etc., any leave allowance, overhead costs, all mandatory or voluntary social security contributions to public or private institutions, VAT on purchases, personal and other taxation, personnel insurance, all other employer obligations and other expenses incurred in the performance of the services, if not otherwise described below.

3. Expenses

There are no expenses to be covered additional to the remuneration defined in Article 1 of this Appendix, except if agreed by both parties. [EXAMPLE – HOWEVER ANY DEVIATION FROM THIS REQUIRES A PRIORI APPROVAL OF THE IPF8 TEAM LEADER]

4. Terms of payment

Payment to the Service Provider by the Consultant will be made in line with following payment modality:

The invoices shall be presented in accordance with the milestones defined in the Article 1 of this Appendix.

The invoices shall be subjected to approvals of the **Sectoral Project Manager [Project Manager]**¹ of the Subproject and/or the responsible Key Expert (KE) **and IPF8 Team Leader (TL)** . The invoice shall be paid within **30** days on the receipt.

A retention of 15 % shall be applied to the total amount of each invoice. Accumulated amount of the retention money shall be paid upon issue of the Positive report from the State Revision Committee.

Payment shall be made to the Service Provider's bank account which will be indicated in its invoice, in the country of registration of the Service Provider or in the country where the job is carried out.

All payment shall be made in Euro currency.

5. **Price regulation**

All rates shall be fixed and shall remain unchanged during this Agreement.

¹ Whichever is applicable

Appendix 4 Equipment and Facilities

1. All necessary equipment, hardware and software for the provision of the Services will be provided by the Service Provider. In case the Service Provider is bringing equipment from outside of Serbia it will be his responsibility to prepare or required documentation in accordance with local legislation and bare any cost related to that activity.
2. All equipment and hardware to be used during and for provision of the Services, that need periodic or ad hoc maintenance and/or calibration shall be properly maintained and/or calibrated in compliance with the instructions of the manufacturers or any other updated manual instructed by the Consultant. All ad-hoc or periodic calibrations of the equipment and hardware shall be certified. Certifications shall be provided by the Service Provider to the Consultant, whenever asked.

All software used for provision of the Services by the Service Provider shall be legal and properly licenced, at the latest updates and compliant with the software used by the Consultant. Lower updates of the software shall only be allowed with written acceptance of the Consultant before their use.

Appendix 5 Rules for Adjudication

General

1 Any reference in the Service Provision Agreement to the Rules for Adjudication shall be deemed to be a reference to these Rules.

Appointment of Adjudicator

2 Definitions in the Service Provision Agreement shall apply in these Rules.

3 The Parties shall jointly ensure the appointment of the Adjudicator. The Adjudicator shall be a suitably qualified person.

4 If for any reason the appointment of the Adjudicator is not agreed at the latest within 14 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Service Provision Agreement or, if none, to the President of FIDIC or his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive.

5 The Adjudicator's appointment may be terminated by mutual agreement of the Parties. The Adjudicator's appointment shall expire when the Services have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Appointment

6 The Adjudicator is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.

7 The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Services form part other than in accordance with these Rules.

8 The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Service Provision Agreement.

9 The Adjudicator shall treat the details of the Service Provision Agreement and all activities and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.

10 The Adjudicator may resign by giving 28 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under these Rules, the Parties shall agree upon a replacement Adjudicator within 14 days or Rule 4 shall apply.

11 The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to have been in bad faith.

12 If the Adjudicator shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

Payment

- 13 The Adjudicator shall be paid the fees and expenses set out in the Adjudicator's Agreement.
- 14 The retainer fee, if applicable, shall be payment in full for:
 - (a) being available, on 28 days' notice, for all hearings and visits;
 - (b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;
 - (c) all services performed hereunder except those performed during the days referred to in Rule 15.
- 15 The daily fee shall be payable for each working day preparing for or attending visits or hearings or preparing decisions including any associated travelling time.
- 16 The retainer and daily fees shall remain fixed for the period of tenure of the Adjudicator.
- 17 All payments to the Adjudicator shall be made by the Parties as determined by the Adjudicator. The Adjudicator's invoices for any monthly retainer shall be submitted quarterly in advance and invoices for daily fees and expenses shall be submitted following the conclusion of a visit or hearing. All invoices shall contain a brief description of the activities performed during the relevant period. The Adjudicator may suspend work if any invoice remains unpaid at the expiry of the period for payment, provided that 7 days prior notice has been given to both Parties.
- 18 If a Party fails to pay an invoice addressed to it, the other Party shall be entitled to pay the sum due to the Adjudicator and recover the sum paid from the defaulting Party.

Procedure for Obtaining Adjudicator's Decision

- 19 A dispute between the Parties may be referred in writing by either Party to the Adjudicator for his decision, with a copy to the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and refer to these Rules.
- 20 The Adjudicator may decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him prior to, at or after the hearing. The Parties shall promptly provide the Adjudicator with sufficient copies of any documentation and information relevant to the Agreement that he may request.
- 21 The Adjudicator shall act as an impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he thinks fit, not being bound by any rules or procedures other than those set out herein. Without limiting the foregoing, the Adjudicator shall have power to:
 - (a) decide upon the Adjudicator's own jurisdiction, and as to the scope of any dispute referred to him,
 - (b) make use of his own specialist knowledge, if any,
 - (c) adopt an inquisitorial procedure,
 - (d) decide upon the payment of interest in accordance with the Agreement,
 - (e) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,

- (f) refuse admission to hearings to any persons other than the Consultant, the Service Provider and their respective representatives, and to proceed in the absence of any Party who the Adjudicator is satisfied received notice of the hearing.
- 22 All communications between either of the Parties and the Adjudicator and all hearings shall be in the language of the Adjudicator's Agreement. All such communications shall be copied to the other Party.
- 23 No later than the fifty-sixth day after the day on which the Adjudicator received a reference or, if later, the day on which the Adjudicator's Agreement came into effect, the Adjudicator shall give written notice of his decision to the Parties. Such decision shall include reasons and state that it is given under these Rules.

Appendix 6 COWI'S BUSINESS INTEGRITY POLICY

COWI'S BUSINESS INTEGRITY POLICY:

COWI wishes to maintain its impartiality and independence and contribute globally to a fair conduct of business, avoiding extraneous influence on selection, execution or compensation procedures.

We will not in our services or in any other activities, directly or indirectly, accept bribery, extortion, fraud, collusion or any other undue business activity.

Appendix 7 COWI'S CODE OF ETHICS

COWI HAS THUS ADOPTED FIDIC CODE OF ETHICS, WHICH READS AS FOLLOWS:

Responsibility to society and the consulting industry

The consulting engineer shall:

- Accept the responsibility of the consulting industry to society.
- Seek solutions that are compatible with the principles of sustainable development.
- At all times uphold the dignity, standing and reputation of the consulting

Competence

The consulting engineer shall:

- Maintain knowledge and skills at levels consistent with development in technology, legislation and management, and apply due skill, care and diligence in the services rendered to the client.
- Perform services only when competent to perform them.

Integrity

The consulting engineer shall:

- Act at all times in the legitimate interest of the client and provide all services with integrity and faithfulness.

Impartiality

The consulting engineer shall:

- Be impartial in the provision of professional advice, judgment or decision.
- Inform the client of any potential conflict of interest that might arise in the performance of services to the client.
- Not accept remuneration which prejudices independent judgment.

Fairness to others

The consulting engineer shall:

- Promote the concept of "Quality-Based Selection" (QBS).
- Neither carelessly nor intentionally do anything to injure the reputation or business of others.
- Neither directly nor indirectly attempt to take the place of another consulting engineer, already appointed for a specific work.
- Not take over the work of another consulting engineer before notifying the consulting engineer in question, and without being advised in writing by the client of the termination of the prior appointment for that work.
- In the event of being asked to review the work of another, behave in accordance with appropriate conduct and courtesy.

Corruption

The consulting engineer shall:

- Neither offer nor accept remuneration of any kind which in perception or in effect either a) seeks to influence the process of selection or compensation of consulting engineers and/or their clients or b) seeks to affect the consulting engineer's impartial judgment.

Co-operate fully with any legitimately constituted investigative body which makes inquiry into the administration of any contract for services or construction