



2 STANDARD PACKAGE FOR PPP AGREEMENTS: MEMORANDUM OF UNDERSTANDING

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INTRODUCTION

This document is produced in the framework of the FISH MED NET project co-funded by the ENI CBC MED Programme. FISH MED NET involves public and private partner organizations from France (notably Corsica), Italy (notably Sardinia, Liguria and Puglia), Tunisia, Lebanon and Palestine. The project aims to develop Mediterranean Alliances between the enterprises active in the Blue economy following the diversification of artisanal fishing, and to develop public authorities' capacity to encourage sustainable development of the fishing sector. Following the analysis "Mapping of the needs of the Public Authorities related to fishery activities and support schemes in place", as well as the results of the rounds tables held in all partner countries that have engaged both public and private stakeholders from the fishery sector, the Ministry of Agriculture of Lebanon, in cooperation with all partners, has produced some standard packages including procedures and formats that might be useful to develop Public-Private Partnerships (PPPs). According to the different national contexts, norms and legislations, the typologies of potential PPPs could change and vary from country to country. Also considering the differences between the fishery sectors in the involved countries at economic, social and legislative level, there is a certain level of heterogeneity within countries. So that, it must be noted that the standard packages should be always adapted to the country's characteristics and norms, and must not in any way be used as a substitute for specific legal advice.

The following standard packages are identified on the basis of existing practices of Public-Private Partnerships (PPPs) in each target territory:

1. The concession agreement
2. The memorandum of understanding
3. Community-led local development initiatives
4. The service agreement

Each standard package includes the same structure:

- Procedures
- Standard template
- Bibliography

This specific document includes a focus on one form of the public private agreement known as the **Memorandum of Understanding**.

2.THE MEMORANDUM OF UNDERSTANDING

The following document will contain an overview of the agreement known as Memorandum of Understanding or MOU. Although not a PPP agreement in nature, the MOU may play a crucial role in the execution and delivery of the PPP agreement.

What is a MOU: A Memorandum of Understanding is a formal agreement which outlines the common lines and the general framework of the relationship between two or more parties and may be used by governments to coordinate interagency work. By formal we mean a writing agreement signed by all parties involved and not an oral agreement. By nature, a MOU is an early-stage agreement and will provide a general roadmap for the parties' duties and obligations preceding negotiation. It is of the utmost importance to note that a memorandum of understanding does not constitute a final binding agreement, although the hereto may, to a certain extent, vary from jurisdiction to jurisdiction. However, such an agreement **must never be treated as or considered a binding agreement.**

In the context of PPP the MOU will constitute a non-binding non-obligatory agreement depicting the intentions and the general outline of the parties obligations in the joint endeavor to develop a specific sector or activity.

MOU in the context of PPP: A MOU is in no way a PPP contract. As previously defined, a PPP is "a cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined public needs for services or infrastructure through the transfer between partners of resources, risks and rewards", a MOU does not satisfy these criteria and remains a general framework non-binding agreement. Although not a PPP contract a MOU may still serve a purpose within the PPP working package. As such MOUs are not mandatory within the PPP legal framework and maybe redundant. The need for a MOU in the context of PPP must be assessed on a case per case basis by the legal team at hand.

2.1 Procedures: Key elements of a Memorandum of Understanding

In order for a MOU to be effective it must include, inter-alia, the following elements:

- A clear statement of the party's agency;
- A detailed presentation of the MOU objectives;
- A clear description of the expected obligations and responsibilities of each party in accordance with the project goals, objectives and target outputs;
- A clear description of the staff responsible for completing the specific responsibilities and the reporting requirements;
- A description of how the partnership will benefit the project;
- An exhaustive listing of the resources contributed by each party (time allocated, in-kind contribution.....)
- A warranty that the parties accept full responsibility for the performance of the partnership.
- A clear determination of information relating to effective date, duration, amendments and termination.

The MOU must be signed by all partners. Signatories must be officially authorized to sign on behalf of the agency and include title and agency name and must warrant such authority. Furthermore, certain governmental agencies may wish to include standard clauses or what we call critical language. An example of critical language is the following text issued by the USAID's General Counsel's office: "The Parties enter into this MOU while wishing to maintain their own separate and unique missions and mandates, and their own accountabilities. Unless specifically provided otherwise, the cooperation among the Parties as outlined in this MOU shall not be construed as a partnership or other type of legal entity or personality. Each Party shall accept full and sole responsibility for any and all expenses incurred by itself relating to this MOU. Nothing in this MOU shall be construed as superseding or interfering in any way with any agreements or contracts entered into among the Parties, either prior to or subsequent to the signing of this MOU. Nothing in this MOU shall be construed as an exclusive working relationship. The Parties specifically acknowledge that this MOU is not an obligation of funds, nor does it constitute a legally binding commitment by any Party or create any rights in any third party." An MOU may be drafted in general terms or go into more specific details of the partnership, once more, this will greatly depend on the project at hand and the foreseeability of the project requirements on both the operational and legal level. It is however preferable to limit the MOU to the fundamental scope and framework of the project since further details will be incorporated in the PPP agreement. It is advisable to complete the MOU and all required due diligence by both parties prior to engaging in the formal negotiation otherwise the use of a MOU would be voided of any benefit.

Benefits of a MOU:

Although not legally binding there are many benefits that derive from the formalization of the relationship between the prospective parties to a PPP agreement through an MOU. Some of the key takeaways and benefits of such a formalization are as follows:

- A clear understanding of each parties' roles, obligations and expectation which reduces the possibility of future conflicts and misunderstandings.
- A clear outline of the operational charge and decision-making scheme in the implementation of the PPP agreement.
- A formalization of the negotiation between the involved parties.
- A clear depiction of the project goals and objective which intern allows to a more effective goal-oriented negotiation.
- A preexisting contractual framework for the project applicable to future legal agreements between preexisting parties and third parties in case of project expansion.

2.2 Standard template: The Memorandum of Understanding

This template aims to provide a general framework for the Memorandum of Understanding for joint initiatives between public and private sector and must not in any way be used as it is for a specific project nor it does at as a substitute for project specific legal advice.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Memorandum") is made and effective []:

Between:

Public authority (the "First Party") residing for the purpose of this Agreement at its head office located in:

Duly represented
by.....

And:

The Company (the "Second Party")
..... residing for the purpose of this Agreement at its head office located in:
.....

Duly represented
by.....

Both the First Party and the Second Party shall hereafter be jointly referred to as "The Parties".

Whereas the Conceding Authority has a mandate to (*Specify general mandate of the agency*), and is desirous of engaging a private sector entity to undertake (*Specify project*).

And whereas the Concession Holder is a company with experience in and is desirous and capable of

And whereas The Parties have therefore entered into this Agreement to set up the terms and conditions of their arrangement.

And whereas The Parties collectively desire to enter into this MOU to memorialize the terms and conditions of their anticipated collaboration.

IN CONSIDERATION of the promises and other good and valuable consideration (the sufficiency and receipt of which are hereby acknowledged) the parties agree as follows:

1. Introduction

The above introduction, recitals along with any and all exhibits and/or schedules and/or attachments enclosed with,

and referred to, in the present MOU – if any– shall be considered as an integral part of the present MOU in its interpretation and construction.

2. Objective

The purpose of the present MoU is to put in writing the oral understanding of The Parties while regulating their mutual rights and obligations in view of ensuring the proper and efficient implementation of their contractual relationship. The Parties acknowledge that the subject matter of this MoU is setting the framework of the strategic partnership, which purpose is to (clearly define the MOU objective and benefits of the project).

3. Contribution of the Parties

The contribution of each Party shall be as follows:

3.1 **Contribution of the First Party** the contribution of **The First Party** to the partnership shall consist of the implementation of its obligations hereunder, namely:

- []
- []
- []

3.2 **Contribution of the Second Party** the contribution of **The Second Party** to the partnership shall consist of the implementation of its obligations hereunder, namely:

- []
- []
- []

4. Representations and warranties

The Parties hereby represent and warrant to each other that:

1. Both signatories have all requisite administrative, corporate and legal power and full right and legal authority to enter into and fully carry out its obligations hereunder and to consummate the transactions contemplated hereby;
2. It has not and will not enter into any agreement that is inconsistent with its obligations hereunder;
3. The execution, delivery and performance by each Party of the present MOU do not (i) conflict with or violate any law applicable to such Party, (ii) conflict with, or result in a breach of or default under, any provisions of the articles of association of such Party, (iii) result in the creation of any lien on the assets of such Party or (iv) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation under the articles of association or any agreement to which it is a party or by which its assets are bound.

5. Confidentiality

The Parties agree to keep the existence and terms of the present MOU and all confidential information disclosed to each other as confidential and all documents, reports or information remitted or provided hereunder. Unless required by applicable regulation or law, no Party shall disclose to any third party, entity or company any of the terms and conditions of the present MoU and any confidential information, without the other Party's prior written consent. "Confidential Information" means any and all proprietary technology, platforms, accounts, processes, methods of doing business, devices, techniques, employee lists, personnel records and related data, customer lists and customer data, sales and marketing plans and data, details about ongoing or proposed transactions and projects, financial information such as the Parties and their Associated entities' earning, assets, debts or other financial statements and data, supplier lists, plans, know-how, technical invention, trade secrets, recipes, accounts Passwords and all other information that contains or discloses information about the Parties and their Associated entities which is in the possession of the other Party (including its agents and employees) and which has not been published or made known to the general public. Confidential Information includes not just written documents, but information stored electronically, magnetically, or in any other format.

6. Term and Termination of the MOU

6.1 The term (hereinafter referred to as the "**Initial Term**") of the present MoU shall commence on the Effective Date and shall continue for a period of (.....) years. Prior to the end of the Initial Term and each "**Renewal Term**" (as hereafter defined), the present MOU will automatically extend for a (.....) month period (each, a "Renewal Term") unless either Party sends the other Party a notice of non-renewal at least (.....) days prior to the expiration of the "**Term**" (as hereafter defined). The Initial Term and any Renewal Terms shall be collectively referred to herein as the "**Term**."

6.2 In the event any Party defaults to any of their obligations provided for and/or however arising from and/or however connected to the present MOU , the Parties agree that the non-defaulting Party shall have the irrevocable right to terminate the present MOU on the full responsibility of the defaulting Party, without the need for any prior notice and/or court intervention whatsoever, and defaulting Party undertakes to pay the non-defaulting Party adequate damages for the actual and potential losses as well lost profits to the maximum allowed by enforceable laws and court precedents.

6.3 Beyond point 9.2 above, either Party may terminate the present MOU by serving the other Party a thirty (30) days prior written notice.

7. Applicable Law and Competent Jurisdiction

The present MoU shall be construed and interpreted in accordance with the applicable laws of Any dispute arising from or in connection with the present MoU shall be settled by the competent courts in its executive bureau.

8. Severability

The invalidity or unenforceability of any provisions of the present MoU shall not affect the validity or enforceability of any other provision of the present MoU, which shall remain in full force and effect.

9. Whole Agreement and Amendment

- a. The present MoU constitutes the sole and entire understanding between the Parties with respect to the subject matter of the present MoU, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, written or oral, between the Parties with respect to the subject matter of this MoU. Furthermore, the express terms of the present MoU control and supersede any course of performance, course of business, custom, or usage of the trade inconsistent with any of the terms of the present MoU.
- b. The present MoU may only be amended, altered, revised or otherwise modified by a duly dated writing signed by the Parties.

10. Notices and reporting

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given and delivered, when delivered by hand or when mailed by registered mail or certified mail or when received via telecopy in all cases addressed to the "Party" for whom intended at its address set forth above; or in each case to such other address as the Party may have furnished to other Party in writing. Notices shall be effective upon receipt.

11. Counterparts

The present MoU has been executed in two original copies, one original copy to be kept by each Party.

By signing here below, the Parties freely and irrevocably declare that this (.....) pages MoU were thoroughly and carefully read, reviewed and examined by each of the Parties. The Parties also acknowledge that they had enough time to seek and obtain independent and competent legal advice from their legal advisors as to the content, tenor, implications and consequences of entering into the present MoU.

On behalf of the First Party:

By:

Capacity: Authorized Signatory.

Date: [●]/[●]/2022

.....

Signature

On Behalf of the Second Party:

By:

Capacity: Authorized Signatory.

Date: [●]/[●]/2022

.....

Signature

2.3 Bibliography

- The World Bank, Public-Private Partnership Legal Resource Center, <https://ppp.worldbank.org/public-private-partnership/>
- The World Bank, Public-Private Partnerships (PPPs) – Tools, Public-Private Partnerships (PPPs) – Tools (worldbank.org)
- The World Bank, The PPP Reference Guide Version 3.0, <https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-3-0>
- The World Bank, The PPP Reference Guide Version 2.0, The PPP Reference Guide Version 2.0 (worldbank.org)