



4 STANDARD PACKAGE FOR PPP AGREEMENTS: SERVICE AGREEMENT

Output 4.3

DOCUMENT INFORMATION

Deliverable code

Output 4.3

Deliverable title

FISH MED NET Standard packages for PPP agreements

Activity code

A.4.3.1 (under the WP4)

Activity title

Definition of the standard packages for PPPs

**Responsible for
drafting the
document**

PP2 – Haliéus

Version

1

Date

01/04/2023

Version	Date	Author	Description of changes
1.0	14/11/2022	PP6	First draft initiated
2.0	01/04/2023	PP6	Definition of the final version

TABLE OF CONTENTS

Standard package 1: Concession agreement

03	<u>Introduction</u>
04	<u>3.1 Procedures</u>
08	<u>3.2 Standard template: the Memorandum of Understanding</u>
43	<u>3.3 Bibliography</u>

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 **service agreement**.

3. THE SERVICE AGREEMENT

This specific document includes a focus on the service agreement to develop Public-private partnerships (PPPs). According to the World Bank, PPPs are a “mechanism for the government to procure and implement public infrastructure and/or services using the resources and expertise of the private sector. Where governments are facing ageing or lack of infrastructure and require more efficient services, a partnership with the private sector can help foster new solutions and bring finance”. Service agreements are used in both the public and private sectors. However, public authorities have not sufficiently taken up the possibilities to use strategic service agreements to foster innovation and sustainable development, especially in the fishery sector. Through partnership between the public and private sector, the service agreement could enable:

- the delivery of efficient, cost-effective and measurable public services through the engagement of private actors;
- improved operation and efficiency of public services by accessing private sector processes, technology and innovation;
- increased long term value-for-money created through appropriate risk sharing between the public and the private sectors.

As each country has unique challenges, needs, and specific capacities to implement PPPs, it is up to each country to address its own opportunities and challenges and assess whether the local environment would enable or hinder a PPP through a service contract. Service agreements are regulated across a number of jurisdictions and legal frameworks that set out national-specific terms in each specific country. The flexible regulation allows its use across a wide range of industry sectors such as, but not limited to, social services, local development or environment. This typology of contract is already widely used by public authorities and public entities in a wide range of cases within the fishery sector. Among others, cases have been identified of fishermen who already provided the following tasks under a service contract: support to environmental research and monitoring (such as the support in sampling of water or fish stocks for environmental agencies or Universities), environmental services (collection of wastes from the sea), didactical services (fishermen lessons to students or tourists), just to name a few. Such initiatives are often part of specific public projects, but more and more they are becoming integrated in the institutional work of the different public actors.

¹ Commons Provisions Regulation (CPR) No 1303/2013, European Union.

4.1 Procedures: Service Agreement

A service agreement is a contract between a service provider and a contracting body, which regulates the terms of the transactions between them. The purpose of a service agreement is to create a clear understanding of all the roles, responsibilities, rules, and regulations, including information about what the services to be provided are, when they will take place, and what the company will pay to have them provided. It also includes details about the commitments and obligations that both parties will take on under the agreement. A framework agreement also clarifies the responsibilities each party has. The agreement might include other areas like business ethics, privacy, access to property and networks and other social commitments. The service provider's primary obligation under the service agreement is to ensure the contracting body receives exactly the result pursued with the agreement. The contract must therefore be performed exercising diligence and adhering to the technical standards applicable. The primary obligation of the contracting body is to pay the service provider the price for the work or service performed. In addition to this obligation, most national jurisdictions require the contracting body to cooperate with the service provider for the full duration of the agreement. This entails an obligation for the contracting body to ensure that the other party is put in the condition (legal and material) to perform the agreement. Most national jurisdictions do not impose any formal requirement for the contract to be legally binding. Parties are therefore allowed to conclude a contract for works and services either verbally or in written form. As for the duration, even if the performance of the work is prolonged in time, performance cannot be considered as continuous or periodic. This means that, once the agreement is terminated, any performance must be returned to the other party.

4.2 Standard template: Service Agreement

Please note that this document is intended to serve as an example and be used as reference only. Articles of the service agreement must be adapted on a national basis according to each country's legal and institutional framework.

Service Agreement between the public authority (the Contracting body) and the company (the Service provider) to implement Public Private Partnerships (PPPs) and Community Led Local Development initiatives on fishery diversification

whereby

1. The public authority (the Contracting body) has a mandate to (*Specify general mandate of the agency*), and needs to engage a private sector entity to undertake Public Private Partnerships (PPPs) and Community Led Local Development initiatives on fishery diversification.
2. (The Service provider) is a company with experience in developing, operating and maintaining and is capable of developing and operating a
3. The Parties have therefore entered into this Service Agreement to set up the terms and conditions of their arrangement.

BETWEEN

The company (the Service provider) represented by _____, as Legal Representative, and for this role domiciled in the _____, VAT no. _____

AND

The public authority (the Contracting body) _____ represented by _____, as _____, and for this role domiciled in the _____

THE FOLLOWING IS AGREED

(The articles 1, 2 and 3 of this template for the service agreement clarify the purpose of the agreement, as well as the provision of services and product delivery. It also states who's responsible for providing services or overseeing the delivery and installation of a product).

ARTICLE 1 – PURPOSE

This Agreement shall establish and stipulate the means of cooperation between the company (the Service provider) and the public authority (the Contracting body), which intends to _____
Ex. *to ensure a service of accompaniment to the environmental agency for sampling the water in the N°3 mussels farms located in the Region of XX*

ARTICLE 2 – THE COMMITMENT OF THE COMPANY (THE SERVICE PROVIDER)

(All service agreements should clearly state the term of the contract including all specific activities within the service agreements).

The company (the Service provider) shall agree to implement the following actions and/or produce the following output/s:

ARTICLE 3 – THE COMMITMENT OF THE PUBLIC AUTHORITY (THE CONTRACTING BODY)

(Specify all specific activities within the service agreements). Ex.

The public authority (the Contracting body) shall agree to:

- *collaborate with the company (the Service provider) to carry out the project;*
- *carry out together the actions concerning information gathering and dissemination that shall result in a wider propagation of the project activities;*
- *etc...*

ARTICLE 4 – DURATION

(The article is about the duration of the contract. It usually specifies renewal conditions and procedures)

This Agreement enter in force on _____ and shall terminate on _____. The Agreement may be renewed after said date according to procedures which shall be established following the project conclusion and shall provide the necessary information to carry out said procedures.

ARTICLE 5 – USE OF DATA

(The article is about the use of personal data in line with national / international laws and regulations).

Both Parties hereby declare to be informed that the information provided or in any case collected in consequence to and during the fulfilment of this agreement, shall be solely used for consultation, preparation, networking, comparison with other information and/or any ulterior manual and/or automated processing and, furthermore, in the case of statistical use, for the sole use of said data on an anonymous basis.

ARTICLE 6 – COSTS

(The article states the projected costs. A specific financial budget could also be annexed to the agreement. A Global Price Contract (Global Lump Sum) means a service contract under which the services are performed for an all inclusive fixed price. A unit price contract estimates costs based on quantifiable, predetermined units of work).

The total eligible costs are estimated at EUR <amount>.

ARTICLE 7 – REPORTING AND PAYMENT

(The article specifies what activity reports – financial, accounting, technical and/or legal statements – shall be published and submitted, including a payment schedule. The company (the Service provider) shall maintain its books and records regarding all activities associated with the service agreement in accordance with Applicable Laws or Regulations. The public authority (the Contracting body) shall exercise its rights to monitor activities and performances of the service agreement).

The company (the Service provider) shall submit a report within 1 month after the end of the reporting period, following the format provided by the public authority (the Contracting body)

Payments shall be made as follows:

Initial pre-financing payment: [EUR] <amount> at the latest 30 days after the enter into force of this agreement.

Balance of the amount of the grant upon acceptance of the final report by the public authority (the Contracting body).

ARTICLE 8 – TERMINATION OF THE AGREEMENT

(This article clarifies how the parties terminate the service agreement. This is an important clause in determining which party is liable for payment of damages for breaking the agreement).

The Contracting body may terminate this contract without any financial indemnity towards its parts when:

- a. the Service provider fails, without justification, to fulfil any substantial obligation set by this contract and, after being given notice to comply with those obligations, still fails to do so or to furnish satisfactory explanation within 30 days of receipt of the notice;
- b. the Contracting body has evidence that the Service provider has committed substantial errors, fraud or corruption in the implementation of the action, including conflict of interest.

ARTICLE 9 – DISPUTE OR CONFLICT RESOLUTION

(This article is a key element of the service agreement that helps minimise the chance and cost of litigation. Some framework agreements appoint a mediator to resolve the conflict, or they may state that arbitration is the preferred method of dispute resolution).

This agreement shall be governed by the law of the country of the Contracting body, i.e. <name of the country>.

The parties to this agreement shall do everything possible to settle amicably any dispute arising between them during the implementation of this agreement To that end, they shall communicate their positions and any solution that they consider possible in writing, and meet each other at either's request. The Service provider and the Contracting body shall reply to a request sent for an amicable settlement within 20 days. Once this period has expired, or if the attempt to reach an amicable settlement has not produced an agreement within 60 days of the first request, the Service provider and the Contracting body may notify the other part that it considers the procedure to have failed. In the event of failure of the above procedures, each party to this agreement may submit the dispute to the courts of the country of the contracting body, i.e. <name of the country>.

Place, date

Sighted, approved and signed by

The public authority
(the Contracting body)

The company
(the Service provider)

4.3 Bibliography

- The World Bank, Guidance on PPP Contractual Provisions (2019), <https://ppp.worldbank.org/public-private-partnership/library/guidance-ppp-contractual-provisions-2019>
- The World Bank, Public-Private Partnership Legal Resource Center, <https://ppp.worldbank.org/public-private-partnership/>
- The World Bank, PPP Reference Guide Version 3.0, <https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-3-0>
- Contractscounsel, Service Framework Agreement, <https://www.contractscounsel.com/t/us/service-framework-agreement>
- European PPP Expertise Centre Library, <http://www.eib.org/epec/index>