

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE
AND
THE INSTITUTE OF FRENCH INTERNATIONAL LEGAL EXPERTS (IFEJI) AND THE
CONFEDERATION OF INTERNATIONAL CONTRACTORS ASSOCIATIONS (CICA)

The **United Nations Economic Commission for Europe** (hereinafter referred to as “UNECE”), as represented by Christian Friis Bach, Executive Secretary

And **The Confederation of International Contractors Associations** (hereinafter referred to as “CICA”) as represented by Roger Fiszelson, Director General and,

The Institute of French International Legal Experts (hereinafter referred to as “IFEJI”) as represented by David Gordon-Krief, President,

hereinafter referred to as the “Parties”,

- **RECOGNIZING** the desire of the Parties to establish and develop cooperation to promote the UNECE Public-Private Partnerships (PPPs) Initiative and in particular the UNECE International PPP Centre of Excellence as a tool for social and economic development,

- **TAKING INTO ACCOUNT** the desire of the Parties to establish an appropriate mechanism for such cooperation,

hereby agree to the following:

Article 1

(1) The Parties agree to cooperate and promote the overall UNECE PPP Initiative, inter alia:

- (a) The goals and objectives of the UNECE International PPP Centre of Excellence (hereinafter referred to as “ICoE”) in Geneva, Switzerland – an integral part of the UNECE secretariat;
- (b) The creation of the International Specialist Centre of Excellence for PPP policy, laws and institutions in France (hereinafter referred to as the “Centre”), as an institution established jointly by IFEJI/CICA and the French Government, organized as and operating in accordance with the statement of purpose contained in Annex I and the list of deliverables contained in Annex II comprising, inter alia;

1. The implementation of an initial two-year work programme;

2. The development and promotion of international Concession/PPP best practice guides on policy, laws and institutions; and

3. The development of a PPP Knowledge Centre and training platform for international exchanges and dissemination of international Concession/PPP best practice guides on policy, laws and institutions.

(c) Other areas of common interest.

- (2) Within the framework of this Memorandum of Understanding (hereinafter referred to as the “Memorandum”), the Parties will be guided by the general principles and standards of international law and shall cooperate in accordance with the principles of equity, transparency, reciprocity and neutrality in accordance with UN Rules.
- (3) The Parties will work together towards the implementation of the provisions of this Memorandum through their authorized representatives, as designated by the Parties, in addressing emerging issues and initiating joint activities.

Article 2

- (1) IFEJI/CICA and the Centre shall be entrusted with the following tasks and responsibilities:
 - (a) Provide the UNECE funds amounting to a total of Euro 200,000 in five installments of Euro 40,000 per year for a five (5) year period in extra budgetary resources pursuant to Article 4 towards the PPP work undertaken by the ICoE;
 - (b) Set up, and incorporate the Centre, jointly with the French Government, as a not for profit entity created under French law fully bound by all terms and conditions of this Memorandum under the name of “International Specialist Centre of Excellence for PPP policy, laws and institutions”, and working towards the goals and objectives, and under the guidance of the ICoE, as further detailed in Annexes I and II. The working languages of the Centre are English and French;
 - (c) In close cooperation with UNECE, identify international PPP best practice models in PPP policy, laws and institutions;
 - (d) Coordinate with and assist the UNECE in promoting the overall goals and objectives of the UNECE ICoE, including:
 - (i) Organize, host and fund regular symposiums, workshops, training programmes and seminars in PPP policy, laws and institutions, including an international conference to promote the Centre in Paris to be held in 2015; and
 - (ii) Develop and produce print and audio-visual materials related to the Centre, including marketing materials.
 - (e) Following the commencement of full operations of the Centre, the person in charge of the Centre shall report in writing twice a year to the UNECE on the overall performance of the Centre. Reporting activities shall include:
 - (i) The number of new members and number of governments that received assistance from the Centre;
 - (ii) The number of seminars, workshops, training programmes, conferences and other similar activities held;
 - (iii) Update of the PPP best practice models in PPP policy, laws and institutions on a regular basis, and at least on an annual basis; and

- (iv) Any other activity related to the Centre as agreed with UNECE.
 - (f) Establish and operate a dedicated website and an international call-centre for the Centre;
 - (g) Subject to prior information being given to the UNECE for coordination purposes, be entitled to collect and retain revenues derived from any activities conducted by the Centre that are not covered by this Memorandum such as specific training or assistance requested by countries and organizations, as well as for specific requests for drafting templates and regulations.
 - (h) Own all intellectual property and in particular, the copyright on all documentation produced in the deliverables as specified in Annex II;
 - (i) Grant to the UNECE an exclusive royalty-free worldwide license for any non-commercial use, in all media, of the works referred to in Annex II, including such future modification as may appropriately advance UNECE PPP standards, for the duration of its copyright in all languages. It is expected that the future economic benefit to the UNECE for the use of this license would not exceed USD \$100,000.
- (2) The UNECE shall:
- (a) Continue to promote the goals and objectives of the ICoE;
 - (b) Identify a suitably qualified bilingual (French and English) focal point within the secretariat to act as liaison and to develop the relationship between the Centre and UNECE in compliance with the terms of this Memorandum;
 - (c) Guide and oversee the Centre's implementation of the work programme in Annex II;
 - (d) Coordinate the interface between the Centre and other participants in the ICoE;
 - (e) Warrant that, for the duration of the Memorandum, it will not enter into any other agreement or arrangement with any other government or entity to host a Centre on PPPs in PPP policy, laws and institutions;
 - (f) Liaise with the Bureau of the UNECE Team of Specialists on Public-Private Partnerships, which provides overall substantive and policy guidance to the ICoE;
 - (g) Direct to the Centre information and queries from member States, the private sector and International Organizations, regarding assistance and training activities relating to international best practices in policy, laws and institutions in Concessions and PPP;
 - (h) Inform the Centre, in advance, of any Concession or PPP training project to which ICoE may contribute or endorse making use of the deliverables and knowhow of the Centre and seek the involvement of the Centre to design and organize such training; and
 - (i) Facilitate the dissemination and publication of the material developed by the Centre.

Article 3

- (1) It is expected that operations and services by the Centre commence in June 2015.
- (2) The activities under the Memorandum shall be performed in accordance with the schedule set out in Annex II.

Article 4

- (1) The first transfer of funds by IFEJI/CICA amounting to Euro 40,000 pursuant to Article 2(1)(a), shall be effected in June 2015. The UNECE's bank details are contained in Annex IV.
- (2) The second transfer of funds by IFEJI/CICA amounting to Euro 40,000 pursuant to Article 2(1)(a), shall be effected in June 2016, the third transfer of funds by IFEJI/CICA amounting to Euro 40,000 pursuant to Article 2(1)(a), shall be effected in June 2017, the fourth transfer of funds by IFEJI/CICA amounting to Euro 40,000 pursuant to Article 2(1)(a), shall be effected in June 2018, and the fifth transfer of funds by IFEJI/CICA amounting to Euro 40,000 pursuant to Article 2(1)(a), shall be effected in June 2019.
- (3) The funds transferred from IFEJI/CICA to the UNECE for the purpose of the Memorandum shall be exclusively administered and accounted for by the UNECE in accordance with the applicable United Nations financial regulations, rules and directives applicable to technical cooperation trust fund accounts. The contribution is subject exclusively to the internal and external auditing procedures of the United Nations. The UNECE shall reserve the right to reallocate contributions to other activities within the UNECE PPP work.
- (4) The contribution is inclusive of the standard United Nations Programme Support Cost of thirteen (13) per cent.
- (5) All financial accounts and statements shall be expressed in United States dollars. No specific financial reporting is required, and no return obligation exists and any unused balance and interest income earned will be credited to the fund as an un-earmarked contribution for ongoing PPP activities.

Article 5

- (1) Any modifications or changes to the present Memorandum shall be made in writing with the consent of both parties, and shall take effect on the date of signature by the parties.

Article 6

- (1) The Memorandum is concluded for a period of five (5) years and it shall enter into force upon signature by both parties and shall remain valid until such time as any Party provides a notice of termination to the other Party with a minimum notice period of six (6) months. This notice period does not apply in case the Centre ceases to exist as an entity.
- (2) In the event that this Memorandum is terminated in accordance with Article 6 (1):
 - (a) The Centre shall provide UNECE with both hard and electronic copies of all documentation, within thirty (30) days of the termination taking effect;
 - (b) The Parties shall fulfil in good faith any aspect of their respective commitments expressly undertaken prior to the termination taking effect. This would include all funds already committed prior to the termination of this agreement; and
 - (c) In the event that UNECE subsequently enters into a separate agreement with another entity to deliver activities similar to those previously devolved to the Centre, the Centre shall provide the UNECE with reasonable non-financial assistance in transferring operational knowledge of the Centre to that new entity.

Article 7

- (1) Each Party shall appoint an authorized representative, who shall at all times have the authority to act on behalf of that Party in respect of this Memorandum. The identity and contact information for each Party's authorized representative are specified in Annex III.

Article 8

- (1) All communication between the Parties in respect to the terms of this Memorandum will only have effect for the purposes of this Memorandum if it is:
 - (a) In writing;
 - (b) In English;
 - (c) Signed and dated by the sending Party's authorized representative;
 - (d) Clearly marked for the attention of the receiving Party's appointed Representative; and
 - (e) Delivered by any means as reasonably specified by the intended recipient, including by mail, fax and/or email.
- (2) Communications will take effect from the time they are received by the receiving Party's authorized representative, unless a later time is expressly specified in that communication.

Article 9

- (1) In fulfilling its obligations under this Memorandum, the Centre may only use the United Nations logo subject to the express prior consent of the UNECE for each instance of use.

Article 10

- (1) The Parties agree to seek the resolution of any dispute arising in connection with the application and/or interpretation of the present Memorandum in a spirit of cooperation and good faith, through communication between each Party's authorized representative as identified in Annex III.
- (2) If a dispute cannot be resolved at the operating level, the subject of disagreement will be recorded in writing by each party and presented to the other party for consideration. If resolution to the dispute is not reached within thirty (30) days, the authorized representatives of each Party will forward the written record of the dispute to the respective executive head for consideration and settlement.
- (3) Nothing in or relating to the present Memorandum will constitute, nor imply, a waiver from the privileges and immunities enjoyed by the UNECE under the terms of the 1946 Convention on the Privileges and Immunities of the United Nations.

Signed in Paris on 21 May 2015 in two copies, each copy in the English language.

For the United Nations Economic
Commission for Europe (UNECE)

For IFEJI and CICA

.....

Christian Friis Bach
Executive Secretary

.....

David Gordon-Krief
President, IFEJI

.....

Roger Fiszelson
Director General, CICA

Annex I : Statement of Purpose

- The main purpose of the Centre, in the form of a not-for-profit entity under French law and working under the auspices of the UNECE International PPP Centre of Excellence project, is to contribute to the UNECE's objectives in the area of PPPs with a special focus on Concession-PPPs.
- The Parties are convinced that such a Centre is the most appropriate response to address complex issues where conventional approaches have shown their limits and contribute in a decisive manner to the realization of pipelines of PPP projects contributing to economic and social development.
- The intent of the Parties in the establishment of a UNECE-affiliated Centre is not only to identify all the key issues, formulate PPP best practices, disseminate them in coordination with all stakeholders, but also to enhance national capacities for Concessions and PPPs by leveraging already existing PPP resources at the international, regional and national levels.

Annex II (A) : Concept Note on Deliverables

The creation of a Specialist Centre on PPP policy, laws and institutions is an important step towards promoting excellence in PPPs and the Centre can make a significant contribution to economic growth and development.

This situation has been recognized by UNECE. Consequently, an international PPP group bringing together this working group and other experts has volunteered to develop, under the umbrella of UNECE, a Specialist Centre on PPP best practices in policy, laws and institutions located in France.

1. Scope and deliverables of the Specialist Centre

The initial work programme focuses mainly on the family of Concession PPPs which is comprised of a physical infrastructure that is the basis of essential public services and which trigger payments by the individual beneficiaries of the service.

- i) The first deliverable of the Centre shall be to develop innovative and global methods to facilitate a better access to relevant experiences from projects, legislation and day-to-day practices allowing the useful analysis of these materials with the help of internationally recognized experts. (It is expected that this will be completed in 12 months)
- ii) The second deliverable shall be a synthesis of the most useful lessons learned around the world based on a professional and coordinated approach and leading to the formulation and promotion of core principles and best practices of a more or less universal nature. This synthesis will be presented in the form of Concept Notes and Position Papers on the main topics identified as conditions of success for concession PPPs (currently 30 topics have been identified for a chain of conditions).
- iii) The Centre shall afterwards organize consultations, to debate and review the content of the documents produced with key stakeholders, including: industry representatives, legal experts; financial advisers; technical advisers (e.g. engineers); local and national government representatives; international institutions; banking and financial industry representatives; as well as representatives of end-users, taxpayers and other stakeholders from the civil society, and always in close coordination with UNECE and in accordance with the principles of equity, transparency, reciprocity and neutrality.
- iv) The overall objective is to put at the disposal of the international community an authoritative and integrated set of documents addressing, in a complete and clear manner, the key issues which impair or prevent the planning, development and implementation of Concessions and PPP projects. This set of documents will facilitate the implementation of projects and local programmes and enable the drafting of documents taking into account local investment climates and practices. It will include contract clauses, guidance notes, templates, contracts and framework legislation leading to lower transaction costs, sustainable PPPs in developing countries, and better governance.
- v) Thereafter, the Centre will contribute to the design of model contracts, framework laws and institutions, as well as to UNECE programmes aiming at formulating international PPP standards and/or PPP model laws.

- vi) Another key objective is to design training programmes to be put at the disposal of the PPP training centres around the world including, possibly, a PPP training centre commissioned by the Centre which would place an emphasis on e-learning techniques.

Annex II (B): Initial Work Programme

	CONTRIBUTION FROM INSTITUTIONS OR GROUPS	CONTRIBUTION FROM IPPEC EXPERT TEAM	DELIVERABLES	COMMENTS
OPERATION PHASE				
1. <u>Raw materials</u>				
❖ Identifying the materials	IFEJI/CICA/ MEDEF and other interested stakeholders coordinated by a liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with IT skills.	Report on the outcome of the methodological approach and proposals for improvements. Structured database with innovative methods of updating.	
❖ Searching or gathering the materials	IFEJI/CICA/ MEDEF and other interested stakeholders coordinated by a liaison officer UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with IT skills.	Report on the outcome of the methodological approach and proposals for improvements. Structured database with innovative methods of updating.	A protocol should clarify the standards for searching and gathering the materials depending on their nature (laws, guide lines, implementing regulations, etc.) and a level of confidentiality and related to a particular project. This will include deadlines, partnership approach between the center and various organizations, etc.
❖ Sorting and reviewing the materials	IFEJI/CICA/ MEDEF and other interested stakeholders coordinated by a liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with IT skills.	Report clarifying the priorities for the future use of the materials as well as the conditions under which a particular type of material or part of it should be used (a relevance test) 10 Reports	A scientific approach should be adopted and various well defined tasks for keeping only selected materials by nature of PPPs or by industry which can be a strong basis on lessons learned. They should take into consideration the nature of the project within the PPP family or within the region and country or industry sector. Reference shall always be made to the economic value of the project.

			<p>outlining the justification for the main issues to be addressed at different levels taking into account the number and size of existing projects and potential of future projects.</p> <p>Structured database with innovative methods of updating.</p>	
❖ Analyzing the materials	<p>IFEJI/CICA/MEDEF and other interested stakeholders coordinated by a liaison officer</p> <p>UNECE liaison officer.</p>	<p>Senior Concession PPP experts.</p> <p>Bilingual senior documentalists with IT skills.</p>	<p>Report describing the analytical methodology, the role of economists, lawyers and the standard documents to be used for an objective and straightforward analysis.</p>	<p>Unless otherwise fully justified, the same approach will be applied to the analysis of all starting from the objectives for which the material was developed, the general results, the main issues, the main positive factors, the actions taken for dealing with the issues, the positive and negative consequences compared with the initial objectives, the overall stakeholders' perceptions, the perception from each main stakeholder, i.e.: Contracting Authority, ministries, lenders, contractors, operators, suppliers, subcontractors, communities, etc.)</p>
❖ Outline plan for concept notes or position papers	<p>IFEJI/CICA/MEDEF and other interested stakeholders coordinated by a liaison officer</p> <p>UNECE liaison officer.</p>	<p>Senior Concession PPP experts.</p> <p>Bilingual senior documentalists with IT skills.</p>	<p>Concept Note and Position Papers based upon issues identified in the field and proposing when appropriate the identification and promotion of concepts, best practices, sample clauses or regulations,</p>	

			etc.	
2. Drafting of concept notes and studies				
❖ For the purpose of packaging and disseminating the information	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with IT skills.	Papers and studies for different audiences and only delivered after review in a coordinated manner by the expert team with the help of the concession PPP experts advisory group.	A first draft is made by experts in the field. Before agreeing upon the lessons to be learned the expert team will meet to exchange and to weigh the relevance of each sectoral conclusion on lessons learned within the overall project's objectives. Studies and papers should be developed for different purposes and audiences and always in an integrated manner
❖ For the purpose of training	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with legal and IT skills.	All papers and studies prepared and reviewed in addition by national and international training centers and final users of the programmes.	A first draft is made by experts in the field. Before agreeing upon the lessons to be learned the expert team will meet to exchange and to weigh the relevance of each sectoral conclusion on lessons learned based upon the overall project's objectives. Studies and papers should be developed for different purposes and audiences and always in an integrated manner
❖ For the purpose of e-learning	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with legal and IT skills.	All papers and studies prepared and reviewed in addition by national and international training centers and final users of the	A first draft is made by experts in the field. Before agreeing upon the lessons to be learned the expert team will meet to exchange and to weigh the relevance of each sectoral conclusion on lessons learned within the overall

			programmes.	project's objectives. Studies and papers should be developed for different purposes and audiences always in an integrated manner
3. Drafting of documents for universal use				
❖ Guidance notes and procedures	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with legal and IT skills.	First series of papers limited to best practices and recommendations of a universal nature. Second series of papers to be developed based on sectoral approaches and specific legal systems.	
❖ Standard bidding documents	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with legal and IT skills.	PPP guidelines that follow the more generic guidelines of the World Bank for public procurement.	
❖ Framework laws and regulations	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with legal and IT skills.	Framework legal, regulatory or procedural provisions of a universal nature that cover all the key issues that are to be addressed for sustainable development of pipelines of PPP projects (written in plain language)	

❖ Template contracts	IFEJI/CICA/MEDEF joint liaison officer. UNECE liaison officer.	Senior Concession PPP experts. Bilingual senior documentalists with legal and IT skills.	Based upon an inclusive approach, template clauses for each main family of PPP projects and, to the extent useful, for easy implementation in different legal systems (written in plain language)	
-----------------------------	---	---	---	--

ANNEX III: REPRESENTATIVES OF PARTIES

Representative: UNECE

Name: Geoffrey Hamilton

Position: Chief, Cooperation and Partnerships Section, Economic Cooperation and Trade Division,
United Nations Economic Commission for Europe (UNECE)

Address: Office No. 468, Palais des Nations, CH-1211 Geneva 10, Switzerland

Phone: +41 22 91 72838

Email: geoffrey.hamilton@unece.org

Representative: CICA / IFEJI

Name: Marc Frilet

Position: Vice-President of IFEJI

Address: 91, Rue du Faubourg Saint Honoré

F-75008 Paris

France

Phone: +33 156 260040

Email: avocats@frilet.com

ANNEX IV: UNECE'S BANK DETAILS

The payment of the contribution mentioned in Article 2(a) of the Memorandum will be effected by **IFEJI/CICA** in favour of the UNECE to the following bank account:

Account Name: UNOG General Fund
Account Number: 485001802
Account currency: United States dollars
Bank Name: JP Morgan Chase
Bank Address: 277 Park Avenue, 23rd Floor, New York, NY 10172, USA
Bank Number: (ABA) 021000021
Bank Swift Code: CHAS US 33
Reference: Clearly Credit: "**ECE-E182: UNECE Public-Private Partnerships (PPP) Initiative**"