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| --- |
| **memorandum of understanding**  |

A Memorandum of Understanding is an agreement that defines the framework for the negotiations between the parties in relation to the specific project.

Generally, the MoU express the intentions of the parties and it typically outlines an intended line of common actions to be performed by the parties and regulates questions concerning information exchange, confidentiality and communication.

In the same way as letters of intent, a MoU expresses the good faith intention of the parties to take part in a project without legally obligating the parties to carry out the project. Where a letter of intent typically express the immediate intention of the parties, a MoU typically includes a more detailed outline of the project, the expected contributions by each party and the possible project organisation.

This template should be used taking into consideration that it should be adjusted to the specific project and the parties.

***Important Information***

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**Contents**

[1. Background 6](#_Toc468185222)

[2. Key terms – agreements 6](#_Toc468185227)

[3. Contributions 6](#_Toc468185233)

[4. project organisation and communication 7](#_Toc468185238)

[5. Exclusivity 7](#_Toc468185244)

[6. Definitive agreements 7](#_Toc468185246)

[7. Confidentiality 7](#_Toc468185250)

[8. Costs and expenses 8](#_Toc468185252)

[9. Termination 8](#_Toc468185255)

[10. Statement of intent only and binding effect 8](#_Toc468185258)

[11. Governing LAW AND ARBITRATION 8](#_Toc468185261)

[12. SIGNATURES 10](#_Toc468185266)

[13. References 11](#_Toc468185268)

This Memorandum of Understanding (MOU) is made on the ¦[date]| between

¦[Name]**|**

¦[Address]|

¦[City]|

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

and

[Name]

[Address]

[City]

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

and

[Name]

[Address]

[City]

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

and

[Name]

[Address]

[City]

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

(collectively the “Parties” and individually the “Party)

# Background

## ¦The Parties have agreed to further explore the business opportunity in relation to the project that is further outlined in Exhibit [●] (hereinafter the “Project”). [Include an outline description of the Project, including the key deliverables of the Project and milestones.]

## This MoU summarises the Parties’ understanding of the intended future collaboration and the obligations of each Party in relation to the Project. The purpose of the MoU is to establish a basis for further discussions between the Parties with a view to enter into binding agreements concerning the Project.

## **[**The Parties have prior to this MoU signed a separate Non-Disclosure Agreement dated [●] (the “NDA”) [and/or] a separate Letter of Intent dated [●] (the “LoI”). This MoU supersedes any prior agreements, whether written or oral, including the NDA [and/or] the LoI, except as otherwise explicitly stated in this MoU.**]**

## The MoU does not create any binding obligations, expressed or implied, on the Parties, except as expressly set forth in this MoU.

# Key terms – agreements

## The Parties wish to collaborate with the view to be able to prepare a joint proposal to the Customer

## [[1]](#endnote-1) for the Project (as defined in Exhibit [●]). In order to achieve this, the Parties have agreed to the following steps:

## The Parties will enter into the following agreements on terms and conditions to be agreed between the Parties: [Include description of relevant agreements to be entered into by the Parties, e.g. co-development agreement, co-operation agreement or consortium agreement, including (if relevant) the key terms of such agreements]

## **[**Alternatively**:** The Parties will enter into a joint venture agreement (the “Joint Venture Agreement”) on terms and conditions to be agreed between the Parties. As part of the Joint Venture Agreement, the Parties will incorporate a joint venture company (the “Company”) which shall enter into binding agreement(s) with the Customer for the delivery of the Project.**]**

## **[**The Parties shall incorporate the Company and the Parties shall own the shares in the Company in the following ratio: [Include description of the expected ownership]. The joint shareholding will be governed by a shareholders agreement setting out the main terms in respect of the shareholding, including business plan, contributions, dividend policy, divestment, financing and transfer of shares etc.**][[2]](#endnote-2)**

# Contributions

## Party [●] shall contribute with:

### [Include description of key areas of expertise and outline relevant tasks]

## Party [●] shall contribute with:

### [Include description of key areas of expertise and outline relevant tasks[[3]](#endnote-3)]

# project organisation and communication

## The Parties designate [●] as the coordinator of the Project (hereinafter the “Coordinator”) to represent the Parties in the continued negotiations with the Customer[[4]](#endnote-4).

## The Coordinator agrees not to amend or modify, without previous consent, any documents, data or information supplied by the other Parties.

## The Coordinator shall keep the Parties informed of the progress of the Project and the negotiations with the Customer on an on-going basis or at any Party’s request, and the Coordinator shall make available any correspondence or any other documents that have been sent to the Customer or received from the Customer.

## **[**An overview of the project organisation is set out in Exhibit [●]**]**[Include description of key areas of expertise and responsibilities]

## Each Party shall appoint a key contact person that is responsible for the overall communication between the Parties in relation to the Project. Subject to the understanding that a Party may appoint other key contact persons from time to time, the following key contact persons have been appointed:

* [●]
* [●]

# Exclusivity

## Until the date of termination of the MoU, the Parties shall not enter into discussions with any third party regarding a possible collaboration in relation to the Project.

# Definitive agreements

## [Promptly / As soon as possible] after the execution of the MoU, the Parties shall enter into good faith negotiations with a view to enter into the binding agreements that are mentioned in clause 2.[[5]](#endnote-5)

## [●] shall be responsible for preparing the draft agreement(s). [In addition, [●] shall be responsible for drafting any other documents that are deemed to be necessary for the Project.]

## Notwithstanding clause 6.2, each Party shall use its best endeavors to prepare and provide in due time all the documents, data and information that are deemed necessary for the Project.

# Confidentiality

## Prior to this MoU, the Parties have signed a separate Non-Disclosure Agreement dated [●] (the “NDA”). The confidentiality obligations that are set out in the NDA shall also apply to this MoU and any Confidential Information (as defined) that are exchanged between the Parties going forward[[6]](#endnote-6).

# Costs and expenses

## Except as set out in any binding agreements, each Party shall bear its own costs and expenses, including, but not limited to, legal and professional fees that are incurred in pursuing or consummating binding agreements in relation to the Project.[[7]](#endnote-7)

## **[**Notwithstanding clause 8.1, the Parties have agreed to reimburse [●] [on a pro rata basis] any [reasonable] fees and expenses to legal and other professional advisors that [●] has incurred as a result of preparing the agreements set out in clause 6.2.**]**

# Termination

## If legally binding agreements have not been entered into on or before [date], this MoU shall automatically cease to be of effect, except for clause 6 (Confidentiality), clause 7 (Costs and Expenses) and clause 10 (Governing law and arbitration) which clauses shall survive such termination.

## Otherwise, the Parties shall in case of such termination have no further obligations or liabilities towards each other.

# Statement of intent only and binding effect

## This MoU is a statement of present intent only and does not create any legally binding commitment or obligations on any of the Parties, except as set forth in clause 5 (Exclusivity), clause 7 (Confidentiality), clause 8 (Costs and Expenses), clause 9.2 (Termination) and clause 11 (Governing law and arbitration).

## The rights and obligations of the Parties in relation to the Project shall be only as set forth in final executed agreement(s).

# Governing LAW AND ARBITRATION

## This MoU and any dispute arising out of or in connection with this MoU, shall be governed by and construed in accordance with the laws of Denmark.

## Any dispute between or by Parties arising out of or in connection with this MoU shall be finally settled by arbitration in accordance with the rules of the Danish Institute of Arbitration (Danish Arbitration). The arbitration procedure shall take place in [●] and shall be carried out in the [English] language.

## Notwithstanding the foregoing, a Party shall be entitled to initiate legal proceedings concerning injunctions before the ordinary courts with a view to enforcing clause 5 (Exclusivity) and clause 7 (Confidentiality).

## The proceedings and any award shall be kept confidential by the Parties.

# SIGNATURES

## This MoU is signed in [●] original copies, one for each of the Parties.

|  |  |  |
| --- | --- | --- |
| ¦[Place]|, on ¦[Date]|: |  | ¦[Place]|, on ¦[Date]|: |
| For ¦[Part1]|: |  | For ¦[Part2]|: |
|  |  |  |
|  |  |  |
|  |  |  |
| ¦[Name and Title]| |  | ¦[Name and Title]| |

|  |  |  |
| --- | --- | --- |
| ¦[Place]|, on ¦[Date]|: |  | ¦[Place]|, on ¦[Date]|: |
| For ¦[Part3]|: |  | For ¦[Part4]|: |
|  |  |  |
|  |  |  |
|  |  |  |
| ¦[Name and Title]| |  | ¦[Name and Title]| |

# References

1. The term ”customer” should be defined in Exhibit A or in the MoU. The text of clause 2.1 should be adapted to fit with the expected deliveries. [↑](#endnote-ref-1)
2. Clause 2.3 and 2.4 is based on the understanding that a joint venture structure is set up, whereas clause 2.2 is based on a contractual set-up with no accompanying corporate structure. [↑](#endnote-ref-2)
3. The content of the key terms will vary depending on the project deliverables and the field of expertise of the involved parties. The key terms – including the contributions by each party - should always be carefully assessed and should be set out clearly in the MoU. [↑](#endnote-ref-3)
4. As mentioned above, the term ”customer” should be defined. [↑](#endnote-ref-4)
5. If relevant, further information on specific agreements to be entered into by the parties may be included. [↑](#endnote-ref-5)
6. If the parties have not entered into a separate Non-Disclosure Agreement, separate provisions on “confidentiality” should be included as part of the MoU. [↑](#endnote-ref-6)
7. It is stipulated that each party shall bear its own costs. However, the parties may decide to split the costs differently. [↑](#endnote-ref-7)